

PUBLIC SECTOR

GOVT — JUSTICE

1993

Amnesty International sets up 'groups' in SA

□ 'Vital role' awaiting new Cape Town branch

STEFAANS BRUMMER
Staff Reporter

WITHOUT much fanfare the international human rights organisation, Amnesty International, has established a presence in South Africa, and a Cape Town branch is getting off the ground

A "pre-group" of human-rights-concerned Cape Town people have met a number of times and the intention is to establish a "group" — the Amnesty International parlance for a branch

Other South African branches are also in embryonic state, but a meeting is to be held in Port Elizabeth next month to decide on national headquarters. The intention is to establish affiliation to the London-based parent body at a national level

The Cape Town pre-group's first public meeting was addressed by Professor Winston Nagan, chief of the United States section of Amnesty International between 1989 and 1991, in Athlone last night

The Port Elizabeth-born professor, attached to the law department at

the University of Florida, is temporarily back in South Africa as a visiting Fulbright Professor at the University of Cape Town

In an interview last night he said "Some of the most courageous human rights workers (in the world) are here. They are the unsung heroes of South Africa"

He said Amnesty International had decided in 1989 to make its presence in Eastern European and Third World countries a major priority. "A presence at least indirectly is an important vehicle for raising respect for human rights in a country"

Each branch faced its own challenges, and the Cape Town group could play an important role in human rights education and nurturing respect for civil society

Professor Nagan said the establishment of a Cape Town group "has put human rights workers in touch with the larger world community of activists. There are immense resources at the international level, there are contacts, there is a world support network"

He said Amnesty International's

success stemmed partly from its combination of volunteer workers and paid (although "a pittance") staff members, and partly from the "narrow" mandate, which permitted a great degree of coherence

The mandate focused on opposing and educating about the "forms of human rights abuse commonly seen as the worst kind — killings, torture, disappearances, arbitrary detentions"

The secret was to personalise human rights issues, for example by "adopting" a prisoner of conscience. "We've taken it from an abstraction to where ordinary people can identify"

Campaigns included letter-writing, media management, visits to embassies — "every tool to bring pressure to offending governments"

But Amnesty International insisted on remaining totally neutral and non-ideological — probably a reason for the respect it has even from governments

● Contacts for the Cape Town group are Mr Anton Katz ☎23 9690 and Mr Noel van Breda ☎73 6981

252

ANC 1/7/93

This man passionately believes in the innocence of his son, convicted

for three murders

THE STRANGE CASE OF THE BLOODIEST FOOTMURDERERS

A

FATHER'S six-year crusade has brought to light startling evidence that his son, convicted of a brutal triple murder in 1987, may have been the victim of a miscarriage of justice.

Vassilios Skoularikis is convinced that the

sensational Rand Supreme Court trial of his son, Dimitrios, and of Austrian national Friedrich Wilhelm Brenner was a travesty. He believes he has uncovered evidence that would overturn the original guilty verdict — if, as he is demanding, the case is retried

forward 217-817193.

(252)

THE POLICE MURDER
BY VASSILIOS SKOULARIKIS

- A bloody palmprint found at the murder scene matching Brenner's
- A fingerprint matching Skoularikis'
- Two cartridge cases allegedly discovered in an ashtray at Skoularikis' home, ballistically matched to cartridge cases found at the scene of the killings.



Among others, the International Commission of Jurists, the Council of Bars and Law Societies of the European Community, various European parliaments, two retired judges of the South African Appeal Court and a former South African public prosecutor (See separate story)

Skoularikis and Brenner were convicted of the June 1986 murder of Costas Phakos, his wife Anna-Maria and her father, the so-called "Polony King", Alphonse Talpa, in suburban Germiston. The victims had been Skoularikis' family friends.

Thousands of pages of affidavits, reports by expert witnesses and other documents have since been assembled by Skoularikis senior. They point, he says, to the falsification of evidence, the intimidation and suborning of witnesses, the suppression of eye-witness testimony, the destruction of evidence, and perjury.

In what appeared to be a gangland slaying, at least 20 bullets were fired by the killers, six at point-blank range into the body of Anna-Maria (at least five while she was prostrate and helpless on the floor), three into the body of Costas, and three — after he had been gagged and handcuffed — into Talpa's body. All three of the victims had been repeatedly stabbed.

Paradoxically, the defence called no witnesses — either to give substantial evidence or evidence in mitigation of sentence. At the same time, the prosecution advanced no reason why Skoularikis should have brutally murdered close family friends Central to the prosecution case were

which the state alleged were used in the slayings. A bullethead removed from Brenner's chest and matched to bullets discharged at the scene of the crime.

The testimony of an employee of Skoularikis, who told the court that on the fatal day, Skoularikis had announced his murderous intent.

However, Skoularikis senior's investigation has raised questions about all these pieces of evidence.

According to the testimony of investigating officer Lieutenant Nicolaas Vlok, investigators found a bloody palmprint on the door to the bathroom where Talpa's body was discovered. This was later matched by police forensic experts to Brenner.

However, there is doubt as to when the print appeared. When police first arrived on the murder scene, they were accompanied by a video unit. Although the bathroom door in question does appear in the video they made, there is no sign of a palmprint.

The print appears only in the still photographs police photographers took — they claim on the day after the murder.

There are further oddities: pictures showing the palmprint differ in a number of particulars from others taken by the police photographers. Cupboard doors have been closed and pools of blood cleaned

Vassilios Skoularikis has collected thousands of pages of evidence

Photo: RU

up. Such things were not officially done until later, suggesting a later date for these palmprint photographs.

Much later, police produced a polaroid photograph purporting to have been taken directly from the door. It was on the basis of this, they claimed, that the match to Brenner was made.

But leading European forensic expert, Pieter Leendert Zevenbergen, formerly chief of the Municipal Police Laboratories in the Hague, found on the basis of a professionally made copy of the original polaroid that there were insufficient grounds for convincing dactyloscopic analysis.

Most devastatingly, Johannesburg-based photographer Ian Houlston, after minutely analysing the polaroid photograph, concluded it was a composite montage, made up of two or more separate parts.

He also showed, in part because the top edge of the door is not visible in the photograph, that the picture in question was not of the palmprint which appeared in other pictures.

Similar doubts exist over the major piece of evidence linking Skoularikis to the crime — a single fingerprint discovered, as Vlok testified, on a roll of bloodstained tape allegedly used to gag Talpa before killing him.

Skoularikis says in an affidavit he was tortured in police cells, among other things that shocks so severe that they can't be put into words.

On such occasions he claims he has been tortured, a fingerprint could have been taken in this state

"Gross miscarriage of justice", "heinous injustice", "obligation to effect an immediate release" — not phrases legal observers employ lightly.

Yet some of the world's most august legal and political bodies, as well as many distinguished individuals and human rights organisations, have used such phrases in pressing the South African government for the retrial of Dimitrios Skoularikis and Friedrich Wilhelm Brenner.

Among those crying foul over their conviction in February 1987 on three charges of murder are the International Commission of Jurists, the Council of Bars and Law Societies of the European Community, the parliament of the EC, the Republic of Greece, Austria and the Netherlands, Africa

Watch and Lawyers for Human Rights.

Equally convinced there are grounds for a mistrial are two retired judges of the South African Appeal Court, as well as senior legal advisers to the Department of Justice.

Most remarkable of all is the crusade of former Transvaal and Free State Attorney General, Dr Percy Yutar, to see, as he puts it, "justice done".

Yutar, best known as the man who prosecuted the Rivonia trialists, has for the past three years acted pro amico for Skoularikis. In one of a series of (generally unanswered) letters to, among others, President FW de Klerk, Justice Minister Kobie Coetsee and Correctional Services Minister Adrian Vlok, he says the failure to "either refer the case back to

the trial court to hear further evidence or to grant a free pardon" would "result in a gross miscarriage of justice and be an unbelievable blot on our administration of justice".

The International Commission of Jurists bluntly indicts the "incompetence of the initial defence counsel" — who failed to call any witnesses — and conclude that on the basis of evidence "either not available or not presented to the trial court we have no hesitation in saying that ... the case for retrial is made out".

Yutar lists nine witnesses not called before the court, whose testimony, in his opinion, could "shatter" the original verdict. The Council of Bars and Law Societies of the EC is equally outspoken, saying "there is evidence ... which can only shake

the finding. The South African government has refused to accept the findings of the Commission of Enquiry into the trial. In late 1987, the Commission of Enquiry into the trial of Dimitrios Skoularikis and Friedrich Wilhelm Brenner was set up. Most recently, the Commission of Enquiry into the trial of Dimitrios Skoularikis and Friedrich Wilhelm Brenner was set up.

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rs. Should you believe him? Some eminent local and international figures, including ex-judges, do ...

Other Journalists would mark
UNWELL 217-817193.

VASSILIOS Skoularikis, Dimitrios' father, believes that somewhere in the murk of his son's business dealings in the homelands lies the explanation for the irregularities of the February 1987 trial. Dimitrios Skoularikis was involved in grandiose business schemes centring on his connections in the governments of KwaNdebele and Transkei, and with the regime of Chief Leabua Jonathan in Lesotho.

Appointed adviser to then KwaNdebele chief minister Simon Skosana in 1983, then later dealing closely with the Matanzima regime in Transkei, Skoularikis was behind a number of projects which could, so he claims, have reduced the economic dependency of the homelands on South Africa. They included construction projects, casinos and dog racing tracks,

Vlok has denied the torture claims, but several witnesses allege they saw Skoularikis being savagely assaulted

Another key piece of evidence was Vlok's supposed discovery of two used cartridge cases in an ashtray in Skoularikis' home. These, Vlok showed, matched four others found on the scene of the crime

But scrutiny of the police video clearly shows six spent cartridge cases in all, not merely the four handed in by police investigators. Two had disappeared — and two were discovered in Skoularikis' ashtray. His domestic worker testified in an affidavit that she had cleaned the ashtray after her employer had last used it and before police searched the premises, without seeing the cartridge cases in question.

According to police testimony, a 9mm pistol belonging to Skoularikis senior and a .38 revolver belonging to Skoularikis himself were discovered,

coal mining and the conversion of Port St Johns into a harbour, allowing Transkei and Lesotho to bypass South African ports.

Skoularikis was working as a broker for international oil companies, was involved in billion transfers, and funds — including \$15-million from a Brazilian bank — had already been raised for certain of the schemes.

Skoularikis claims that in 1984, a series of anonymous telephone calls warning him to keep clear of the homelands culminated in a motor accident which he believes was an attempt on his life.

In March 1986 police allegedly raided Skoularikis' offices, conducting an eight-hour search and removing documents and a typewriter. Documents relating to many of the homeland projects were said to have been seized.

According to a statement by Skoularikis' co-accused, Friedrich Brenner, he had been introduced into the Skoularikis scenario as a spy. First meeting Skoularikis in late 1985, Brenner claims he was blackmailed in January 1986 by two

members of the security forces to obtain information regarding Skoularikis' business dealings. One of these was a Captain du Preez of the SAP — identified by a police card — and the other was introduced as a Captain Cilliers of "State Security", though no identification was displayed.

What they wanted (and what he gave them), Brenner alleges, was information and photostat copies relating to Skoularikis' activities, especially in the homelands, as well as diagrams of his home, copies of his keys and the like.

Brenner's allegations have been dismissed by Major-General Basie Smit, at the time head of all special investigations units in the SAP, who said Skoularikis had never been under scrutiny by any special investigations branch of the SAP. He further denied the existence of any Captain Cilliers in the Security Police.

However, Smit's testimony contradicts that of investigating officer Lieutenant Nicolaas Vlok in opposing Skoularikis' bail application. Vlok went out of his way to sketch in a picture of Skoularikis

the trial — the guns belonging to Skoularikis senior and junior had not been fired, nor could they be fired at all. Skoularikis senior's 9mm handgun was malfunctioning even before the murders were committed

Still further doubt was cast on the court findings by the fact that according to police records, six bullets were removed from Skoularikis junior's gun; the gun owned by him was in fact a five-shooter.

Most puzzling of all is that the murder weapons were apparently silenced — their relative velocity and the fact that the shots were not heard by witnesses 30m away suggests this. Tests at the scene of the murder — the Talpa house is at the end of a cul de sac — and in matched conditions showed that ordinary gunshots of the same calibre could clearly be heard 150m away

Yet none of the weapons accepted by the court as

as a potential risk to national security.

He noted that Skoularikis was born in Tashkent in the Soviet Union. This is true: his father defected there after fighting in the Greek resistance during World War 2.

Vlok next asserted, without substantiating the claim, that Skoularikis had travelled on a number of different passports to clandestine destinations. He alleged — again without offering proof — that two of Skoularikis' associates in his homeland business ventures were CIA and KGB agents.

During the Harms Commission hearings of 1990, it emerged that there was indeed a senior Civil Co-operation Bureau member who operated under the name of Braam Cilliers and who testified before the commission in heavy disguise.

Moreover, it was admitted by members of the CCB's Region 6 — to which this Cilliers belonged — that its operatives had been responsible for the assassination, only a month after the Phakos Talpa killings, of KwaNdebele strongman Piet Ntuli, Skoularikis' closest ally within the KwaNdebele government.

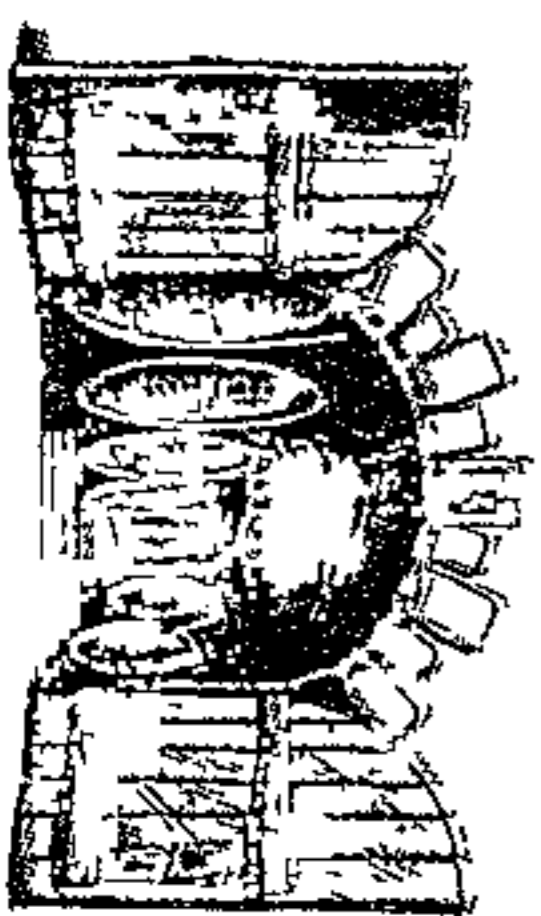
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BERGKELDER BULLETIN NO 66



3930 wines from 26 countries Judged at Vinexpo, France.

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... them were another .38 licensed to Costas Phakos, a handgun which subsequently went missing, partially melted handcuffs, a piece of plastic tape, a cardboard box used to package the handcuffs, as well as a number of bullets. All the items, a prosecution witness testified, had been packed in a briefcase.

The briefcase, described by the witness as being black and having locks and metal attachments, was handed in to the court as two scraps of brownish, melted sportsbag. It was not explained how the cardboard handcuff box and the length of plastic tape had survived a veld fire so intense it had melted the handcuffs, nor why the bullets were unexploded.

There was also the question of the known criminals who allegedly discovered the guns. While one was produced as a witness, the other, Vlok told the court, was unavailable because he had escaped from custody. The police record book shows that charges against him were withdrawn. According to an affidavit by the man's employer, the man was well known to Vlok, as was his whereabouts at the time of the trial.

Giving ballistic evidence, a Sergeant Visser said he had test-fired the three guns, but had been unable to match bullets to bores, so badly had the guns been damaged. This fact notwithstanding the court found that the guns in question had in fact been discharged at the scene of the crime, and not only this but also said which bullets had been fired from which gun.

According to two independent ballistics experts — Austrian Dr Istvan Laendler and local expert Dr Peter Klitzow, who examined them in the course of

... been adapted for silencers
he key state witness regarding intention was Mike Horianos, a former employee of Skoularikis, who testified that on the day of the murders, he had visited Skoularikis.

He said he had found him sitting at a table with three handguns displayed on it. He said Skoularikis had told him, "Today is the day."

But witnesses later made affidavits that Horianos had not mentioned this incident in discussions of the murder before the trial. Instead, several witnesses allege, he repeatedly told them Skoularikis was being "unjustly accused". Affidavits were also led to the effect that he had not visited Skoularikis on the day of the killings.

There are equally puzzling anomalies of omission. Though the trial court recorded there were no witnesses to the murders, this was not true. The Phakos' minor children had been hidden in the living room, and claimed they saw the murderers as they fled. Five-year-old Nathalie Phakos insisted that Skoularikis, a family friend known to her as Uncle Jimmy, had not been among them.

The evidence was not presented to the court. And in an extraordinary tape-recorded conversation with Skoularikis senior, Vlok admitted to being aware of the children's claims, but said "It had nothing to do with the court case."

Police cannot re-open cases

THE ATTORNEY GENERAL has said that the police cannot re-open cases in the aftermath of the Special Inquiries Panel report.

The Special Inquiries Panel report into the deaths of 18 African authorities have stonewalled the claim by Skoularikis' and Brenner's appeal was turned down in 1989 the death sentences were commuted by a decree to 25 years' imprisonment.

In 1991 an application for release as political prisoners and an indemnity Act was rejected. An appeal to a special Indemnity Committee, submitted in 1992, was answered. A petition for retrial on the basis of new evidence first submitted in 1989, has yet to be adjudged by the court.

News has just been received from Bordeaux, France, that at the Vinexpo '93 held in that city, a Bergkelder wine, Alto Cabernet Sauvignon 1984, was awarded a gold medal — the only South African entry to be honoured with gold.

In addition, Alto Cabernet Sauvignon 1984 went on to receive a Grand Prix d'Honneur trophy in the Challenge International Du Vin Blaye-Bourg, an international competition reserved for exhibitors at Vinexpo and for which only gold medal winners qualify. Only 17 trophies were awarded which were presented at the gala evening — the Soirée de Gala — held at Citadelle de Bourg-sur-Gironde on 23 June 1993.

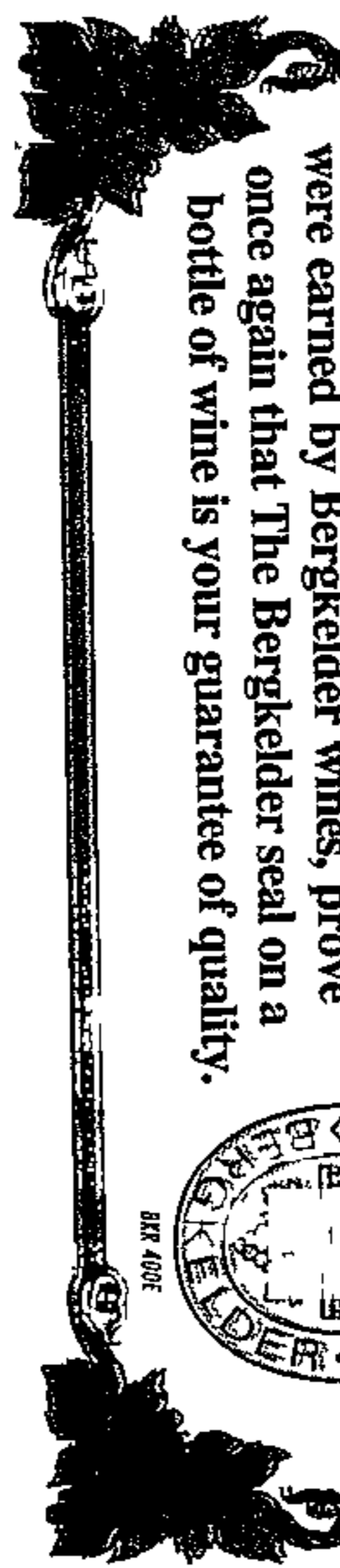
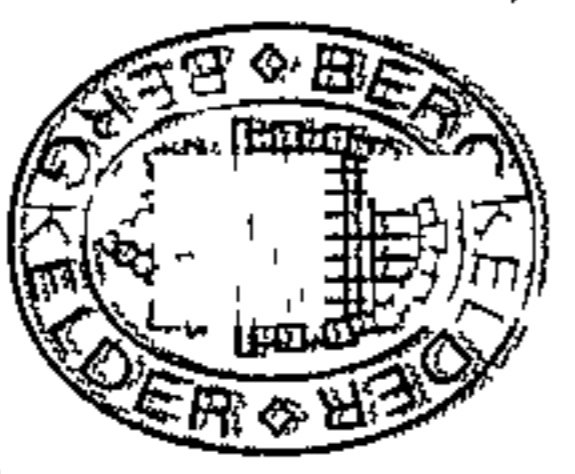
Held every two years, the Vinexpo is considered to be the world's largest wine exhibition and in the event just held, wine-makers from 26 countries submitted no fewer than 3930 wines for judging by 1250 judges.

In addition to Alto's top accolade, other wines made by The Bergkelder and its wine estate partners that were awarded medals for outstanding quality at Vinexpo '93 were Fleur du Cap Pinotage 1988, Pongrácz Méthode Champenoise Sparkling Wine and L'Ormarins Optima 1989.

The Bergkelder's commitment to quality extends from the vine to the winery and beyond. For example, The Bergkelder played a major role in encouraging wine growers to plant noble "premium" varieties and took the lead in 1978 to introduce maturation in small casks of new French oak. To quote *Wynboer* magazine:

"Excellence is the hallmark of every innovation that comes from The Bergkelder."

Year after year, wines from The Bergkelder and its wine estate partners continue to win international honours. The latest achievements at Vinexpo, where 4 of the 6 awards to South Africa were earned by Bergkelder wines, prove once again that The Bergkelder seal on a bottle of wine is your guarantee of quality.



AFRICA

Military divided, confusion rules

W/ward 2/7-8/7/93,

The military government in Nigeria acted swiftly to annul the June elections but there is confusion over what it is going to do next. **CHRIS MCGREAL reports**

NIGERIANS know what it is their military government does not want. It is Moshood Abiola as president. General Ibrahim Babangida defied the scorn and anger at his incongruous reasoning to overturn the nearest thing Nigeria has had to a free election. But what the military wants in Chief Abiola's place is less certain.

Some Nigerians see the annulment of the June 12 vote as final evidence of a hidden agenda by Babangida to hold on to power, others that the military's agenda is to instal a sympathetic civilian to the presidency.

What was plain, as Babangida cancelled one election and called another from which the victor of the annulled vote is barred, is that the military government is itself divided. Even before the vote, there was indecision and disagreement within the ruling military council over how to respond to the

looming Abiola victory and the extent to which the army should retain power. One senior officer and close ally of the general has since resigned in protest at the overturning of the election, and others appear set to follow.

Supporters of the military government moved to scupper the election shortly before the vote. There had been rumours in May that the military would not accept an Abiola victory. A small but powerful clique of officers and religious leaders from the north rejected Abiola because, although a Muslim, he is from the south and Yoruba. Other officers feared he might delve into military corruption. Two days before the vote, the shadowy Association for Better Nigeria (ABN) persuaded

the Abuja high court to stop the ballot. The national electoral commission defied the order but the ABN was back in court after the election to halt release of the results. The legal grounds were spurious and the ABN, with its close ties to the military, acted with its approval. The ensuing court battle was the excuse Babangida required. The election was annulled.

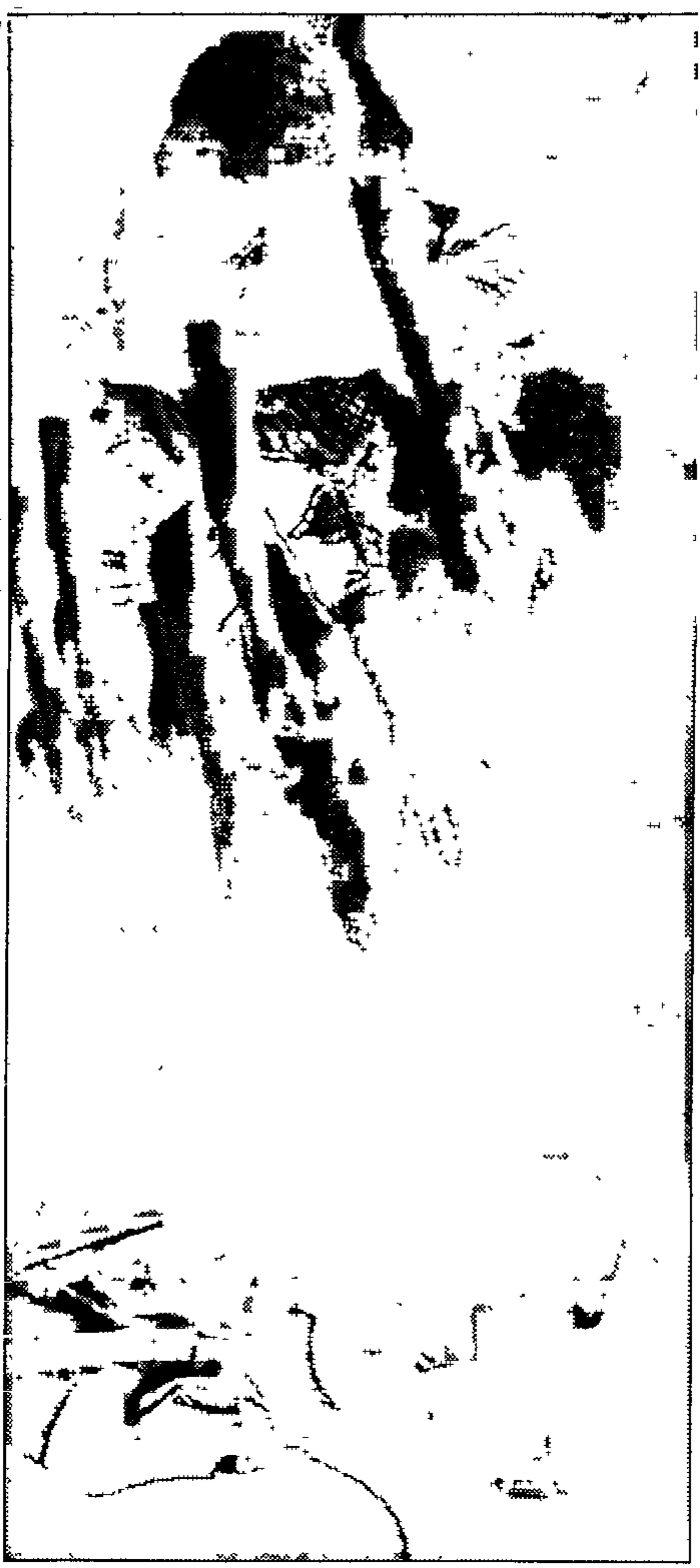
There was immediate if shielded dissent within the military. Colonel Abubakar Dangwa Umar, former military governor of Kaduna and commander of an army school, was counted amongst Babangida's closest allies. The colonel played key roles in the 1985 coup that brought the general to power and in putting down a rebellion three

years ago. Last year he threatened to resign if the transition to civilian rule were blocked. After Babingida annulled the election, he did quit, saying he could not explain the government's decision to his men and would not order his troops out against civil protests. Several former staff officers urged the general to stick with the transition programme no matter how difficult.

On Friday, Babangida met his field commanders and the military council. One Nigerian source close to the military says the general's position was threatened in the run-up to the election and that his handling of the election crisis would determine his future. Some field commanders explained to him that ordinary soldiers would not be happy if the transition was scuppered, but a more forceful group won over Babangida emerged from the meeting flustered and uncertain as he promised that despite overturning the election a democratically-elected president would be installed. But the address to the nation he was to have made that night was postponed.

On Saturday it was again delayed amid further wrangling in the military. One source said the general swung between the alternatives of a second election or allowing the national assembly to choose a new president. The legislature was rejected because Abiola's party holds a majority. When Babangida's speech finally came there was general disbelief that the government could hope to meet the August 27 deadline for civilian rule with anything resembling a free election. The move was widely derided as disgraceful, divisive, a constitutional joke and political tragedy.

The speech was unspecific except for the narrow condition designed to exclude Abiola from competing again. The hurried manner in which the strategy was cobbled together could be seen in the requirement for candidates to have been members of a political party for at least a year. After the government annulled the presidential primaries last year, it ordered fresh registration of their membership. Technically, no-one in Nigeria has been a member of any political party for longer



bid photo for the 1993

Faculty of Law

Professor and Head: Private Law

Requirements: • A Doctorate or Master's degree in Private Law from any university where the Roman Dutch Legal System is taught, as well as a proven research/publications record • Appropriate lecturing experience

Duties: • Lecture Private Law subjects, especially South African Law of Contract and Delict to undergraduate and post-graduate students

Professor and Head: African and Comparative Law

Requirements: • A Doctorate or Master's degree in African Law and/or Comparative Law • A proven research/publications record • Appropriate lecturing experience

Duties: • Lecture African Law at undergraduate and post-graduate levels and Private International Law at post-graduate level

Faculty of Science

Professor: Physical Geography

Requirements: • A Ph D with appropriate experience in the fields of Biogeography, Biopedology, Geomorphology, and Climate and Meteorology • A good research/publications record • Practical experience and knowledge of Geographic Information Systems (GIS) will be a strong recommendation

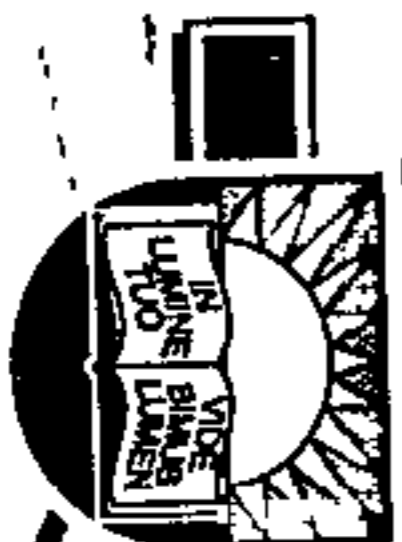
Duties: • In addition to teaching, the incumbent will be expected to supervise and promote students to Ph D level

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BRIEFS

UN's 'new colonialism'

CAIRO — Sudanese military ruler Omar Hassan al-Qashir told an African summit the United Nations was the tool of a new colonialism and its peacekeeping troops should leave Somalia. "It is about time to ring the bells of alarm and alert the people and countries of Africa about the necessity of fighting colonialism, which as soon as it left through the front door as a result of armed struggle returned to try and enter through the back door," he said. *Sapa wire 2/7-8/7/93*
MOGADISHU — The UN death toll in Somalia rose to 31 when a second Pakistani was reported killed in a raid on a suspected ammunition dump. — Sapa

Elections rigged

BRAZZAVILLE — The Congolese Supreme Court said there were irregularities in the organisation of the country's recent general elections whose results were challenged by the opposition and sparked unrest. *Sapa wire 2/7-8/7/93*

Dawn of democracy

ZOMBA — Malawi's parliament, spurred by a huge popular vote for multi-party democracy, adapted laws to end one-party rule and allow exiled dissidents to return home. *Sapa 2/7-8/7/93*

Embargo lifted

WASHINGTON — The United States has lifted a domestic arms embargo against Angola, allowing the sale of non-lethal military equipment, the US State Department said. *Sapa 2/7-8/7/93*

Islamic scholar
endorses killings

By Deborah Pugh **CAIRO**

ONE of the world's leading Islamic scholars, Sheikh Muhammad Ghazali, has shocked Egyptians by effectively endorsing the extra-judicial killing of anyone who opposes the implementation of Islamic law, known as the Shari'ah.

Sheikh Ghazali's views were given while testifying at the trial of Islamic militants accused of murdering the Egyptian author, Farag Fouda

They brought strong criticism this week from the Egyptian Organisation for Human Rights, which said that his testimony was "tantamount to the excommunication of a large section of Muslim society, as well as a clear invitation to murder. It is a legitimisation of the various acts of terrorism and violence that have afflicted this country in recent times."

Sheikh Muhammad Ghazali was called on to give evidence last week by the defence, which is attempting to prove that the accused were acting in accordance with Islam by assassinating Fouda in front of his office in June last year. When asked if someone who opposed the application of Islamic law was an apostate, Sheikh Ghazali told the court. "Yes, he is an apostate."

The Sheikh then went on to explain that the death penalty was generally accepted by Muslim jurists as the punishment for apostasy, to be carried out by the state, although he thought life imprisonment was sufficient. Liberal Muslims argue that in early Islam apostasy meant treason against

Sapa

2/7-8/7/93

TO PAGE 24

BUSINESS

Manuel's changed manifesto

ANC economics supremo Trevor Manuel is in the hottest seat in Plain Street. REG RUMNEY reports

ANC economics supremo Trevor Manuel is in the hottest seat in Plain Street. REG RUMNEY reports

HIGH up in the African National Congress' Plain Street HQ, department of economic planning head Trevor Manuel grapples with the accusation of being in favour of a socialist "commandist" approach to the economy.

Many governments, he says, have been or are "commandist" and he mentions the role of MITI in Japan and how the German government leaned on the private sector to invest in the former GDR on unification. These governments are not necessarily "socialist commandist", he reckons.

This is the same Trevor Manuel who not so long ago raised the ire of white South Africans by using the United States as an example of how capitalism failed. He still points to 25 percent of Americans having no access to health care in one of the richest countries in the world.

But there is no longer talk of nationalising the commanding heights. Manuel has mastered the economic terrain, offering a more sophisticated vision of economic policy. For instance, he acknowledges the price of reintegration in the world economy will be pressure to liberalise the economy, and spells out the ANC's differentiated approach to trade barriers — an approach, moreover, which fits in with a broader industrial policy.

The emphasis remains on the state's responsibility for economic policy, and affirmative action and beefing-up of anti-trust policy are on the cards. Also, he vows to make institutions such as the Industrial Development Corporation, the Small Business Development Corporation and the Development Bank more accountable.

The ANC's May 1992 policy guidelines dealt directly with the question of possible state intervention in the economy. Business hailed a playing-down of nationalisation. And there was, and is, a perception that the leadership of the ANC had been won over by the persuasive logic of the



Trevor Manuel ... Mastering the terrain

he stresses, "are custodians of adopted positions rather than makers of policy."

Asked about the state's ability to resist pressures for overhasty solutions, Manuel says frustrations are high now, partly because the negotiations have dragged on for three years and partly because of the worsening economy.

"There will always be a difficulty about the speed with which you can tackle problems," he observes. He is well aware of the dangers of macro-economic populism. "There will be intense debate about these issues. The problem is the phase of the debate about these specifics is not as deep as it was in the run-up to the policy conference."

Obviously, Manuel is concerned that the options of the future state have been constrained by the spending record of the previous government.

"Our constituency must clamour for housing," he notes. But he says a shortage of 1.4-million units will cost the state billions more in expenditure. The state cannot assume responsibility for

industrial and development policy.

"The Building Industries Federation says 300 000 houses a year need to be built and its members can deliver these. Last year the public and private sector together did not build more than 35 000. A question arises about the capacity of the building-materials sector to supply all these needs and the speed at which they can do so. There is also the question of the efficiency of the markets in the materials-supply sector, and this may be linked into anti-trust policy."

Here he mentions the cement cartel. "You can import cement of the same quality more cheaply." This line of reasoning would imply a lowering of tariff barriers, and could lead to a loss of jobs.

Manuel says the cement industry is relatively capital intensive, and its loss may have to be balanced against the needs of another industry with many jobs. "You need to look at how much of the housing backlog the fiscus can take care of and what instruments you have to design to bring private sector to the party."

The private sector, interested now only in a small, wealthy segment of the market, cannot sit on the sidelines, he says. "The problem remains that, as long as people are homeless, there will be a lot of pressure on the state to respond."

The National Economic Forum holds out some hope of bridging that gap by achieving a social accord between business, labour and the state. The NEF, he says, needs to be strengthened and properly resourced.

Manuel has already stirred some controversy about the NEF. A paper delivered to a South African Clothing and Textile Workers' Union conference on June 18 has been interpreted as a first shot across the bows of the union movement in a war over who controls economic policy.

Manuel says the ANC is committed to the NEF, and reiterates that no government has a monopoly on wisdom. There is a danger of the NEF and a myriad of other forums all talking at cross-purposes. The state has the ultimate responsibility for macro-economic policy and, though

Bottoms up!

Consumers

Win beer war

By MONDLI MAKHANYA

BEER drinkers are poised for a really festive season this Christmas as South African Breweries and the National Sorghum Breweries lock horns in a battle for market share. A price war is anticipated when NSB ventures into the clear-beer market around November.

NSB has spent close to R2-billion preparing to enter this market, having acquired two breweries near Verwoerdburg. A number of foreign brewers — rumours suggest Millers of America is one — have also been roped in for expertise and capital. A marketing campaign will kick off soon.

The NSB's challenge to SAB, which controls 98 percent of the beer market, has been described as "extremely bold". History is littered with casualties who have dared challenge the monolith. Ironically, the brewery where NSB plans to brew its beer was bought from Ricco, which was edged out of the market in its infancy by SAB.

It's a formidable task indeed for a company just two years out of state ownership. But, judging by NSB performance since the Industrial Development Corporation sold it to private, mainly black, shareholders two years ago, it may stand a chance.

NSB's annual turnover has increased from R310-million to over R500-million. And, unlike Iscor, whose share price has fallen considerably since privatisation in 1988, NSB's has been stable.

The company has also embarked on a diversification programme, having bought Jabula Foods from Premier, and has begun exporting sorghum to neighbouring countries.

"We have confounded the prophets of doom," boasts NSB spokesman Derrick Luthayi. "Many were saying we wouldn't even last a year."

necessarily understand or approve of the shift. Manuel points out that the May 1992 policy guidelines went further than any other policy process in South Africa in trying to bring people along with it through a process of widespread workshopping at regional conferences.

The document, in his view, relinquishes a hard-core position on state involvement in the economy in favour of a flexible position that sees the key issue as being how the state responds to needs of equity and growth, rather than terms of ownership. That document is the cornerstone of policy.

"The ANC's department of economic planning,

By REG RUMNEY
ECONOMIST Terence Moll has launched possibly the most astirring criticism yet of the Reserve Bank's present monetary policy — dubbing the policy a "Stalsjacket" on the economy.

Moll's criticism — delivered during a speech at a one-day seminar to launch the publication of *State & Market in Post-Apartheid South Africa*, edited by eminent economists Merle Lipton and Charles Simkins — drew a sharp response from Standard Bank chief economist Nico Czynionka.

Moll's criticism came in the updating of a paper he presented on Macro-Economic Policy in *Turbulent Times*. He concluded that the economic future holds out not the popularly supposed danger of macro-economic populism, but rather one of economic stagnation.

"The chances of populist agendas leading to disaster are smaller, but could still materialise," he said. This was largely due to the stubborn focus on inflation by the Reserve Bank.

Moll's paper reviews macro-economic policy in and before the 1980s. He characterises the period before the '80s as conservative Keynesianism, in the '80s, the policy was one of "pragmatic monetarism" associated with the then Reserve Bank governor, Gerhard de Kock.

Up to and during the De Kock era, he finds inflation was moderate and predictable, current account management was fair, management of the capital account was weak.

The economy grew slowly during the 1970s and sluggishly during the 1980s, largely due to turbulent world conditions and the constraints of apartheid. Moll believes, however, that the management of the macro-economy during those

for the state to up its contribution to GDP as a year. At all times we need to be mindful of the macro-economic balance."

Besides overall spending, Manuel echoes calls for shifts in allocation within the Budget. In the last Budget, R3,7-million was devoted to the Special Defence Account, primarily for weapons acquisition. He contrasts the boasts by Denel, a beneficiary of this account, about its low-level satellite with the widespread housing shortage.

The thrust of his observations about future economic policy are that the state must shoulder the burden of a policy integrating macro-economic,

'Stalsjacket' ripped apart

years was not as bad as it is supposed.

Growth could have been worse, contrary to popular belief, the capital-labour ratio was acceptable. However, exchange-rate policy did not support a long-term industrial-exports strategy. The dubious composition of state spending during the '80s means the ill effects of pot-holed roads and too few phone lines will be felt in years to come.

At the end of the 1980s, Chris Stals' ascension to Reserve Bank governor, said Moll, heralded an era of "principled monetarism", of high real interest rate and keeping the rand strong. "The theme is 'fiscal discipline will lead to joy eventually' — but when?" he asked, noting the four-year recession now seems permanent.

He accused Stals of "hugely exaggerating the cost of inflation", pointing out that much more will be needed to cause the economy to boom than conquering inflation. Investment will not grow dramatically because of the way aggregate demand has been crushed. And he expressed concern about exchange-rate policy.

The Normative Economic Model, he said, is a supply-side document that falls into the "Stals-jacket" and disregards exports.

The effect of four years of recession, exacerbated by Stals' policies, are lower inflation, export problems, lower demand and investment, a weakened labour movement and a weaker

ply be separated out. He insists there must be more control of government spending, including the setting up of a fiscal commission. Now committees in each government department decide on spending without an overall strategic plan.

As outlined by Manuel, then, the ANC approach is no succour for those who believe in a smaller, less powerful state and the primacy of free markets. Neither is he talking of pinning hopes on growth through inward-looking redistribution, or relinquishing overall control of economic policy to any grouping.

government financial position, he said.

For the new government this means.

- Few immediate resources to respond to pressures for government spending.
- The first priority will be to get the deficit before borrowing in shape
- Low investment levels

In summary, Moll said it was a recipe for persistent economic stagnation and disaster.

Czynionka disagreed strongly with what he said was Moll's assertion that inflation was not a problem in the '70s and '80s. "From expansion point to expansion point, it hit ever-higher peaks." If no action had been taken, there was the real danger of hyper-inflation. Moreover, the ever-growing demands of the state had to be counter-balanced by tight monetary policy or inflation would have been even higher.

Czynionka added that international pressures demanded a regime of real interest rates at all times. If the Reserve Bank had not adopted this policy, he said, South Africa would have run into serious balance-of-payments problems.

Capital outflows would have been greater if interest rates had not been kept high, he said, and referred to the arbitrage element of interest rates, with trade finance constraining interest-rate policy.

Exchange rates, he opined, had not been actively managed. The bank had allowed the market to determine exchange rates, and had never leaned against the wind.

Moll, an economist at Old Mutual, stressed that he was speaking in his personal capacity. The only real establishment criticism of Reserve Bank policy, however, has come from the Old Mutual-Nedcor grouping.

ness, sorgum beer, has been on the decline for the past 20 years. Although sales increased in the year, this was due to depressed incomes in the black market, which downgraded from malt beer. NSB capitalised on this, heavily marketing its new, flavoured brews.

Sceptics also point to the fact that in 1995 NSB will lose its sole sorgum trading right outside kwaZulu, opening up competition from SAB's sorgum interests and kwaZulu's Amebele brewery.

If the acrimonious build-up to the launch of NSB's beer is anything to go by, the real battle will be brutal. There have already been allegations of industrial espionage, sabotage and poaching. "It's going to be a dirty fight," warns Senekal Mouton Kitshoff beverages analyst Chris Gilmour.

Working against NSB, reckons Gilmour, will be the difficulty of switching from sorgum, where quality can often be inconsistent, to the clear-beer market, where consumers are fussy about consistency. This may, however, be overcome with the help of the NSB's more experienced foreign partners.

Distribution will also be a problem, since SAB has spent decades and millions of rands developing a highly sophisticated distribution system. But Luthayi says this will be taken care of by the NSB's existing network of half a million distributors, most of whom are in the informal market.

The advent of deregulation, when beer will become available in supermarkets, will find SAB already well entrenched in the form of its subsidiary, OK Bazaar, the country's second-biggest retailer.

One of the NSB's best-kept secrets is which market segment it plans to enter. SAB has garnered every segment, from cheap beer to imported premium. It has also worked hard at establishing brand loyalty through social investment.

While some observers reckon NSB may have to take on Castle and Lion lagers if it is to gain the 30 percent market share it is aiming for, others say this will be "suicidal".

"I'd be really surprised if they did that," says SAB public-affairs manager Adrian Botha. "These are very mainstream brands and their breweries will not have the capacity. I would expect them to try the niche brands like Hansa." One thing is certain, though: the consumer will for the first time in years have a choice and will benefit from price cuts.

Rights meeting ends in split

Guardian / W in W Mail

(252)

Ian Traynor in Vienna

THE largest international human rights conference in decades ended last week after a bruising battle over whether new United Nations agencies should be created and empowered to enforce observance of rights worldwide.

After a lengthy and acrimonious row, pitting the West against a group of hardline Asian and Arab nations, the issue was shelved by passing it to the UN general assembly.

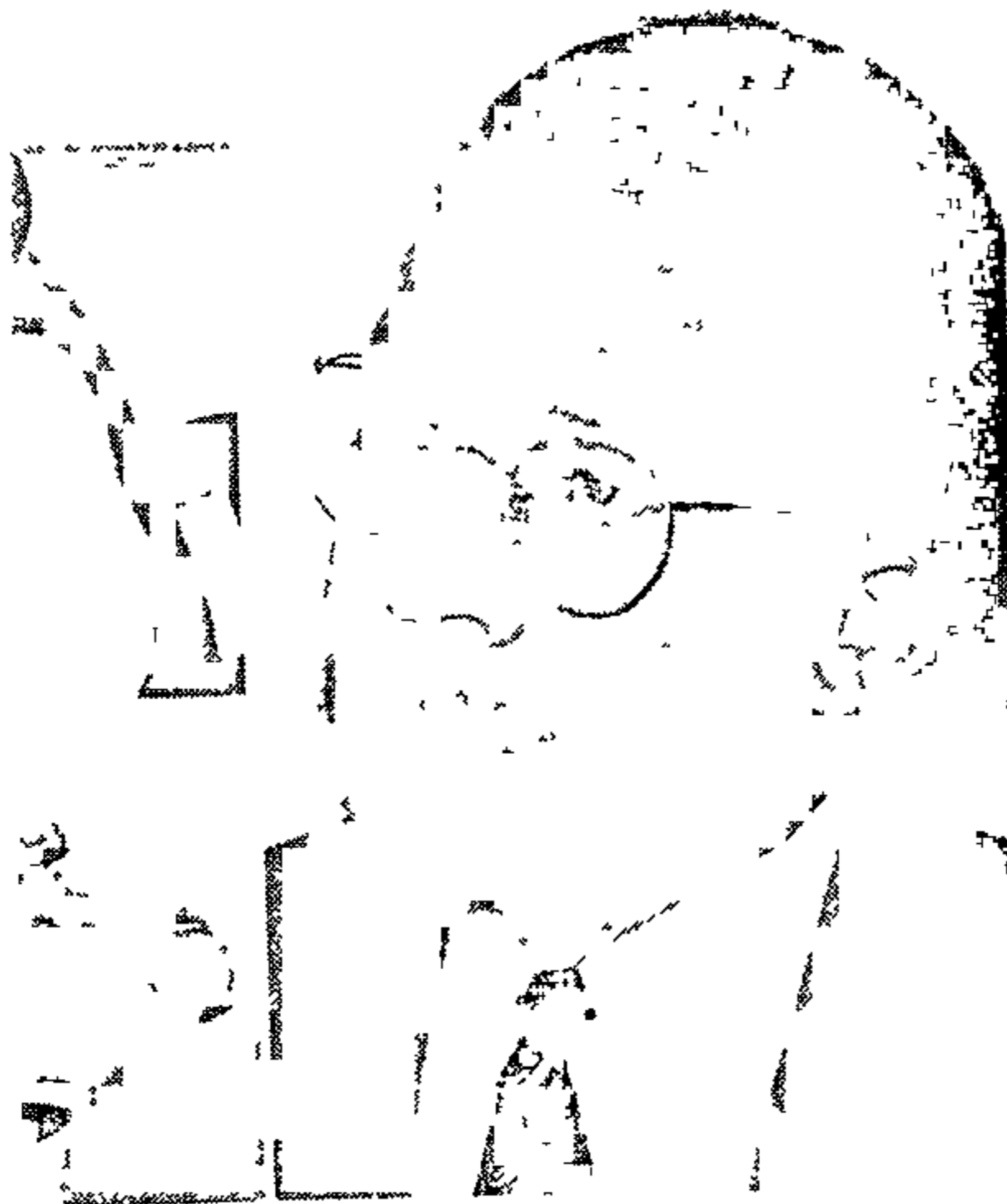
Western delegates insisted that, taking into account the difficulties of

achieving consensus at a meeting of 170 countries, the final declaration marked a step forward in seeking to move human rights higher up the international agenda. But leading lobby groups said that the high hopes vested in the conference had been dashed.

The conference secured progress on various contentious issues by strongly attacking violence against women, endorsing rights of indigenous people and children, and reaffirming that rights are universal despite Arab and Asian attempts to stress factors of culture, region and tradition.

27-817193





nded a Community Development Foundation seminar at the of the armed struggle in the transitional period and post-MP Johan Vilonel, left, Philip Powell of Inkatha and Phil na is on the right. Picture ROBERT BOTHA

Biday 21/193
**Rising unemployment
 'strains fund's resources'**

GERALD REILLY

PRETORIA — Increasing unemployment and the consequent unprecedented payout volumes from the Unemployment Insurance Fund (UIF) has placed an enormous strain on the fund's resources

It is understood that, at a meeting of the UIF Board last week, recommendations to bolster its finances and slow the drain were made to Manpower Minister Leon Wessels

Sources said the fund was draining away at a rate of about R45m a month. In May, payouts totalled R162m from R119m in the same month last year, while income declined to R109m from R112m

At this time last year, the fund's resources amounted to just over R1bn. Since the beginning of the year, this had been reduced by more

than R200m

The sources said the options available to strengthen the fund included raising worker and employer subscriptions, currently 0,9% of a worker's earnings, and scaling down benefits

Other options included raising the threshold at which payments were compulsory to above the current income level of R55 000 and greater government support

Currently 6,8-million employees and 180 000 employers subscribe

The number of applications for benefits in May totalled 71 000, up 6 000 from last May, while the number of beneficiaries totalled 233 000 (210 000)

Subscription income now failed to cover payouts

Biday 21/193
Population predictions

ADRIAN HADLAND

PRETORIA — SA's population would increase by more than 40% within 20 years, Unisa's Bureau of Market Research has predicted

In a report released yesterday, it estimated that the total population of SA, including the TBVC states, would rise from 38-million currently to more than 54-million by 2011

The growth would have a major impact on the composition of the population and could signal an appreciable improvement in black living standards, the report said

While the proportion of the economically active population (between 15 and 64 years) was expected to expand considerably, the number of dependents would drop

In 1991 there were 80 economically dependent blacks for every 100 eco-

nomically active. This figure would fall to 58 dependents per 100 by 2011.

"Provided the jobs are available, this decline in the dependency ratio will bring about an appreciable improvement in black living standards," the report said

All population groups would experience a decline in fertility and mortality and would age accordingly.

Up to 90% of the population increase would occur in the black sector, with annual increases in the total population peaking in 1996-2001 before beginning to taper off

In all population groups, the growth rate would decelerate over the 20-year period, the report said.

Biday 21/193
Inkatha complains about SADF

DURBAN — The Inkatha Freedom Party has called on the Goldstone commission to investigate alleged assaults by security force members of its supporters at Mpushini, in the Umbumbulu district outside Durban.

Inkatha said yesterday it had received widespread complaints of assaults and harassment — allegedly by SADF soldiers carrying out weapons searches — from residents in Mpushini

The Natal/KwaZulu regional dis-

pute resolution committee said it would look into the allegations immediately (252)

A Goldstone commission spokesman said he had not received an official complaint by Inkatha or a request for the assaults to be investigated by yesterday afternoon

A Durban SADF liaison officer said she had become aware of the complaints only yesterday and would respond later — Sapa.

Biday 21/193
Week's toll in SA is 67 lives

JONATHAN DAVIS

POLITICAL violence nationwide claimed 67 lives and left 20 people injured in the week ending Tuesday, the Human Rights Commission said in its weekly report released yesterday. 21/193

The death toll was lower than the previous week's, when 78 deaths and 55 injuries were reported.

Most of the past week's violence occurred in the PWV region, with 29 deaths, and included massacres in Sebokeng, where 12 people were killed, and in Evaton, where six people were shot dead.

Violence-related deaths in Natal were down to 26 from the previous week's 46. The report said the focus of violence had shifted from the Midlands to the south coast, and 13 people were killed at Murchison on June 20.

Eight people died in the western Cape, one was killed in the eastern Cape, and two people died in an attack at Khutsong in the western Transvaal.

Two members of the SAP were killed during the period, the report said. A member of the crime intelligence service was shot dead in Katlehong, and another policeman died in Crossroads.

Slow going in AK-47 amnesty

Staff Reporter

ONLY one AK-47 has been handed to Western Cape police in the past two months under the amnesty against so-called "weapons of war". A police spokesman said the rifle was the most commonly used weapon in both township violence and attacks on police (252)

The amnesty expires at the end of July

Another indemnity on handing police unlicensed firearms — which expired on June 30 — has netted 340 rifles, 79 pistols and 51 revolvers in the Western Cape. CT 3/7/93

Era ends in SA judicial history

By MARTIN
NTSOELENGOE

THE Palace of Justice in Pretoria will soon close its doors on 104 years of South African judicial history, and the new chapters will be written in a R44,7-million building a stone's throw away

But the ghosts of the past can rest in peace for a while longer. The Palace will be used in tandem with the new Supreme Court until the transfer is complete.

The Registrar, G Prinsloo, says the new court became necessary as the Palace of Justice had become too small.

The new brick building has 29 courtrooms, 38 judges' chambers, 75 offices and eight criminal courts.

The Registrar recalled two cases that attracted great local and international attention.

One was the infamous "panga-man" Phneas Tshitandizi, who was hanged after being tried there. Tshitandizi shocked SA with his panga attacks on amorous couples necking in parked cars. His modus operandi was to hack the man to death, then rape the woman. He was finally tracked down by a team of detectives led by Captain Fred van Niekerk.

The other sensational case was that of

Daisy de Melker, the first woman to be hanged in SA who was also sentenced to death in the Palace of Justice. She poisoned her husband and claimed his insurance money.

Sir John Kotze was the first judge to preside over hearings at the Palace. At 27, he was SA's youngest judge, and served on the bench for 50 years.

Independent judiciary

His fight for independence of the judiciary from the Transvaal republic government brought him into conflict with President Paul Kruger who removed him from the bench, but he was reinstated after the first Anglo-Boer War.

A well-known case handled by Sir John was the trial of Alios Hugo Nellmapius, who appealed against his conviction for theft and was pardoned by Kruger before the appeal was heard. Kotze ordered Nellmapius's immediate re-arrest and the appeal was heard.

Nellmapius won his appeal, but the judiciary was applauded for taking a stand against the government.

The dispute between Sir John and Kruger deepened when Sir John told Sir Henry de Villiers, who was then advocate judge of the Cape Colony, that Kruger had not yet met demands for an independent judiciary.

Sir John was followed by another Free State advocate, Reinhold Gregorowski, who presided over the terror trial of Lionel Phillips and 63 others of the Reform Committee in 1896.

Four of the the accused were sentenced to death, which outraged the country. Gregorowski was dismissed, but was re-instated in 1913 and served as judge up to 1922.

The last judge of the Transvaal Republic was AS van Leeuwen.

After the British occupation none of the Transvaal republican judges were retained.

The first Chief Justice of the Transvaal in the new order was Sir James Rose-Innes, who resigned from the Cape Cabinet to accept the position in 1902.

Rose-Innes remained Chief Justice until 1910, when he became the first Chief Justice of the Union of SA.

The eight years under his leadership were the most illustrious period of the Transvaal Supreme Court and Innes is regarded as the greatest of all South African judges.

Other greats of the judiciary include Jacob de Villiers, BA Tindall, JW Wessels, L Greenberg, OD Schreiner, JM Murray, and WH Ramsbottom.

Volksfront, AWB clash likely

Biday 21/1/93

DIRK VAN EEDEN

SPARKS are expected to fly between AWB leader Eugene Terre'Blanche and top office-holders of the Afrikaner Volksfront when they meet today to discuss the storming of the World Trade Centre in Kempton Park a week ago

The Volksfront leaders are expected to tell Terre'Blanche to fall in line with the discipline set down by the organisation's directorate

They are also expected to tell him that AWB members will not be allowed to attend future Volksfront rallies clad in their distinctive camouflage uniforms.

This will be the second time the Volksfront executive committee has discussed the World Trade Centre incident, allegedly led by Terre'Blanche and members of his personal guard, the Ystergarde

Even though Terre'Blanche is a member of the committee, he did not personally attend the first meeting, which was held on Tuesday

Sources close to the Volksfront said yesterday that today's meeting was expected to be "extremely tough".

After the first meeting, CP leader and Volksfront chairman Ferdi Hartzenberg said a second meeting had to be called to "discuss certain issues with certain elements within the Volksfront".

The two organisations will hold their own separate media conferences after the meeting.

According to the invitation to the AWB conference, the relationship between the AWB and the Volksfront, the events at the World Trade Centre last Friday, and possible future actions are to be discussed

The sources said this was a sure sign that the AWB's continued membership of the Volksfront was not certain.

Volksfront directorate chairman Gen Constand Viljoen has already condemned the forced entry into the centre, calling it "unfortunate and undisciplined"

The continued AWB membership of the Volksfront had also come under pressure from within the AWB, the sources said.

Koppies agreement

THE ANC consumer boycott of Koppies and the blockade of the town by right-wing Action Committee members were called off late on Wednesday night after a marathon meeting between the parties

The ANC, Koppies Action Committee, regional peace committee and the Koppies Town Council said they were all thrilled with the outcome

The parties agreed to lift all consumer boycotts, stayaways and counter actions immediately

They also agreed that the local peace committee should be reinstated and restructured and in future special procedures should precede boycotts, stayaways or marches

As a result of the agreement an ANC march planned for yesterday went ahead after it had been banned on Wednesday.

About 3 000 people marched from Kwakwetsi to the Koppies showgrounds and the local branch of the ANC Women's League handed a memorandum to the police

Police said the march had been peaceful, but that arsonists marred the event, when fire was set to an old barn and tyres. — Sapa

Eikenhof killing suspects appear in court

JONATHAN DAVIS

FOUR people suspected of the AK-47 attack in March on motorists at Eikenhof, south of Johannesburg, appeared in the Meyerton Magistrate's Court yesterday.

The case was remanded until August 2 to allow the attorney-general to determine under what charges they should be prosecuted, state prosecutor Susan van Deventer said

Paulus Molakwane, 21, was released on bail of R3 000 and David Masalemane, 39, on bail of R200. Moses Thebogo Ramafikeng, 23, was unable to attend the hearing and was remanded in absentia. A 16-year-

old youth was released into the custody of his parents.

The four, said to be ANC members, are suspected of the attack in which Sandra Mitchley, 35, her son Shaun Nel, 14, and Clare Silbauer, 13, all of Eikenhof, were killed

Three other suspects arrested in connection with the shooting — Siphwe James Bholo, 24, Samuel Siphso "Fish" Gavin, 29, and Piti Boy Ndwene, 19 — will appear in the Vereeniging Circuit Court on Monday

Goldstone papers over cracks — Holomisa

TRANSKEI military leader Maj-Gen Bantu Holomisa has launched a scathing attack on the Goldstone commission for allegedly ignoring evidence of security force complicity in political violence

Addressing a two-day conference in Harare on "Sustainable Peace and Stability in SA", he claimed the commission could not command the support and respect of the black majority because of the manner in which it had treated evidence of military intelligence funding and training of Inkatha volunteers

"Goldstone is merely papering over the cracks. The commission is a sham instrument to bluff and delude black South Africans and the interna-

tional community into believing that President F W de Klerk is perturbed at the slaughter of blacks when in reality his security forces foment the violence."

According to a copy of his speech made available in Johannesburg, Holomisa said De Klerk had publicly admitted security force members were involved in violence

Revelations of security force complicity in the so-called black-on-black violence and the continued public display of weapons and provocative acts by white right-wingers had the potential to trigger off a race war in SA.

Discussing the reorganisation and restructuring of the SADF, Holomisa said it was imperative that a transitional executive council be estab-

lished immediately to exercise full control over all armed forces.

The integration of the TBVC armies, Umkhonto we Sizwe and Apla with the SADF would restore the SADF's credibility and legitimise it as a national defence force.

However, Holomisa warned homeland governments and the liberation movements not to accede to the integration of their forces before an acceptable political settlement had been achieved

He said current bilateral negotiations on this issue between the SA government, the homelands and the ANC should be terminated and the matter referred to the multiparty negotiating forum instead. — Sapa

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Two cops charged with cell death

A MANGAUNG man, Michael Tafane, died in the Glen police station cells after he was allegedly assaulted with an empty cooldrink bottle, a Bloemfontein magistrate heard this week. *Cifend*

Lance Sgt Dreyer van Niekerk, 29, and Const Morhoa Jacob Pule, 32, both of the Internal Stability Unit, pleaded not guilty when they appeared before J H Wiehan on a charge of culpable homicide. *(52) 4/7/93*

Chief state pathologist Prof Johannes Olivier testified that physical force was used in three places on Tafane's head. The impact caused the brain to swell. The court also heard that if Tafane had received medical treatment earlier, his injuries would not have contributed to his death. *(52)*

Burnt by 'people's court'

Staff Reporter

Star 5/1/73

Police are investigating the burning of a Vaal Triangle man after Sharpeville residents set him alight yesterday after a "people's court" found him guilty of murder.

The man, whose identity has not yet been established, was admitted to the Sebokeng Hospital with burn wounds.

Police said the people of Sharpeville established their own court and found the man guilty of a murder. They sentenced him and set him alight. The police appreciated the co-operation of the community in the handing over of suspects to them. It was illegal, however, to establish private courts, and people should not take the law into their own hands.

(252)

Star 6/7/93

ET won't be 'intimidated' by Goldstone

Staff Reporter

252

AWB leader Eugene TerreBlanche has declared that he will not testify before tomorrow's Goldstone Commission probe into the recent right-wing action at Kempton Park's World Trade Centre.

In a statement yesterday, the AWB said TerreBlanche had been notified of the request to testify, but had told the commission's secretary, Glen Cuthbertson that he would "not allow himself to be intimidated or threatened (and) will therefore not testify before the commission".

A spokesman for the Goldstone Commission said no one could be subpoenaed to appear before the commission.

Companies can call on ombudsman's aid

Biday 7/7/93

PRETORIA — Companies which felt they had been treated unfairly at the hands of government departments or agencies should contact the offices of ombudsman Judge P J van der Walt, the judge said yesterday.

In applying for licences, tenders, permits or benefits from the export incentive scheme, some companies had experienced actions by state representatives which could be considered prejudicial to their interests, Van der Walt said (252)

But too few company managers, or members of the public, were aware of the services offered by the ombudsman's office since it was established in November 1991.

According to the legislation, if any person had reasonable grounds to suspect public moneys were being dealt with in a dishonest manner, or that maladministration or unlawful enrichment were taking place by state officials, a complaint could be forwarded to the ombudsman.

ADRIAN HADLAND

These complaints should be accompanied by affidavits or affirmed declarations.

Since 1991, more than 2 000 files had been opened covering a range of areas from town planning and workmen's compensation to housing subsidies and prison conditions, Van der Walt said.

The past year had seen an average increase in complaints of 10%, which now totalled about 100 a month.

"We have a dual function: to see that the public is properly dealt with by the administration and to see that the administration is not unfairly criticised," Van der Walt said.

An important advance this year was the institution of complaints officers in all government departments. The ombudsman should be an avenue of last resort, and should resolve rather than begin issues, he said.

Policemen to be sentenced for murder

Biday 7/7/93

TWO Vosloorus policemen who murdered an Alexandra Taxi Association member in 1991 face sentencing in the Rand Supreme Court today.

Tobias Lucky Xulu, 30, and Peter Makoto Modiba, 30, were convicted by Judge R van Schalkwyk, sitting with two assessors, of abducting and murdering Ndoda Mthembu on June 29 1991

Both were acquitted of kidnapping

SUSAN RUSSELL

another association member, Themba Thembinkosi Mthembu

During argument yesterday, State counsel J Hayes asked the court to impose the death sentence (257)

Hayes said the pair had been hired to commit the murder and had also been policemen paid by the community when they committed the crime.

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RUSSELL

as security. se at court yesterday

NEWS IN BRIEF

Military pilots die in crash

A TRANSKEI Defence Force transport aircraft crashed near Umtata shortly after noon yesterday, killing an SA Air Force and a TDF pilot.

Acting TDF commander Brig Makabongwe Mtshinga said one of the plane's engines caught fire and it crashed in field near the TDF Air Wing base. The pilots were on a routine training flight.

Buthlezi meets right-wingers

INKATHA Freedom Party leader Mangosuthu Buthelezi held private talks in Ulundi yesterday with Afrikaner Volksfront leaders, generals Constand Viljoen, Kobus Visser and Tieme Groenewald, and afterwards described the discussions as "therapeutic" (258)

Viljoen said they discussed common threats and the continued existence of the Afrikaner and Zulu nations.

AWB accused released

AWB members Marthinus Erasmus, 27, and Johannes Olewagen, 32, charged with the murder of a black man and the attempted murder of another, were released on their own recognisances yesterday and warned to reappear in the Rustenburg Magistrate's Court on Friday. They are alleged to have thrown two men — whom they suspected of stealing pigeons — from a speeding bakkie. (259)

Court may appoint counsel

NEWS Five hour 1

Biko case is closed

Sowetan 7/7/93

(52)

POLICE will not reopen investigations into the 1977 death in detention of Black Consciousness leader Mr Steve Biko following hints of security police involvement in the death.

Police spokesman Major Ruben Bloomberg said yesterday "The docket is now closed."

Former Port Elizabeth security police chief Colonel Harold Snyman told the reopened inquest into the June 1985 murders of activist Mr Matthew Goniwe and three others he would not answer any questions relating to the Biko case as he might incriminate himself.

"You feel you may incriminate yourself if you tell the truth about Biko?" counsel for the Goniwe family Mr George Bizos asked. "That is correct," Snyman answered. Black Consciousness leader Biko died after being detained by Port Elizabeth security police in September 1977. Bloomberg said if more solid evidence came to light the Biko investigation might be reopened.

Echa *(32)* *(25)*

focus on human rights

Source: 8/1/93

HUMAN RIGHTS ABUSES throughout the world worsened during 1992, with governments sanctioning torture and murder of opponents in at least 161 countries, the latest report by Amnesty International has revealed

Released in London this morning, the 354-page report details large-scale abuses of prisoners, political opponents, women and children

AI found that prisoners of conscience were held in at least 62 countries in 1992, with 110 governments using torture in prisons and police stations

Forty-five governments used political killings to eliminate opponents and alleged trouble makers, AI says Europe, usually the least written about, features as one of the hot spots of atrocities, with the wars in the central areas responsible for most of the casualties

Africa, seeing a concerted movement towards democracy, has also been responsible for appalling violations of human rights, with defenceless men, women and children brutally killed by government forces in places such as South Africa, Angola, Chad, Sierra Leone, Sudan and Zaire

In many of these countries, opposition groups such as Unita in Angola and Renamo in Mozambique, also committed deliberate killings and torture

Serious concern

AI also expressed "serious concern about refugee protection in many countries in Europe, (which are) exacerbated by agreements affecting asylum seekers adopted by the European Community in 1992"

Many refugees have been targets of murder and abuse in several European countries and Germany in particular

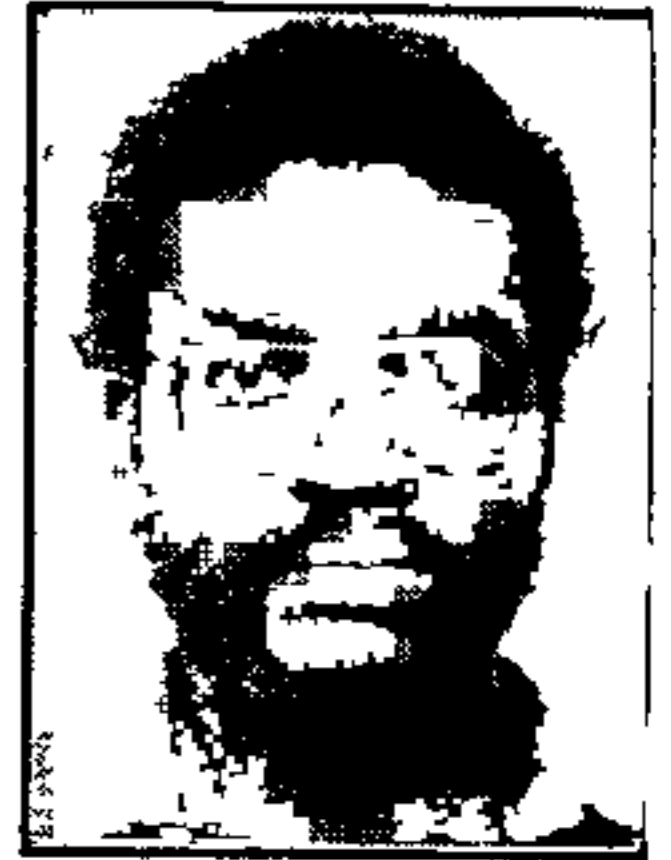
AI expressed concern at the revelation of collusion between British troops stationed in Northern Ireland and loyalist forces fighting against Irish forces demanding the reintegration of the northern enclave into mainland Ireland

The USA came in for a hard hammering for deporting Haitian refugees or asylum seekers without a hearing following the coup that brought down the civilian government of Jean Bertrand Aristide Also, the USA was responsible for 37 executions during 1992, the highest figure since 1977

The main thrust of the report is its disillusionment with the state of human rights throughout the world The report says governments adopt a hypocritical stance on human rights, turning a blind eye to abuses at home or those committed by friends, while shouting condemnations about those perpetrated by foes

"Government reaction to dissent or opposition at home was equally hypocritical While publicly proclaiming their commitment to hu-

Amnesty International's latest report reflects poorly on Africa, where defenceless men, women and children were brutally killed by government forces in many countries, including South Africa, says investigations editor **Mathatha Tsedu:**



(252)
man rights, rulers in every region of the world resorted to violent repression

"Opposition groups also committed horrifying abuses on innocent bystanders, including torture, deliberate and arbitrary killings and hostage-taking," AI says

The following are a few statistics in the report

- Sixty two countries were holding prisoners of conscience, with another 32 possibly also involved Total number of such prisoners was 4 400

- In all 300 000 political prisoners were held without charge in 60 countries

- Over 1 500 political prisoners were jailed after "unfair trials" in 30 countries

- Detainees were tortured in cells or secret detention centres in over 110 countries, while 500 people died during or as a result of such torture in 48 countries South Africa accounted for over a fifth of this figure

- Forty five countries were found to be guilty of using extra judicial executions of opponents, specific ethnic groupings or people living in opposition held territories SA security forces have also been blamed for this

- Nine hundred and fifty people "disappeared" without trace in 25 countries after being detained

- One thousand seven hundred and eight prisoners were officially executed in 35 countries while 2 697 others were sentenced to death in 62 countries Rape by security forces on women was recorded in at least 45 countries Children's rights were violated in 35 others, while indigenous communities were targeted for violations of human rights in 40 countries

Amnesty decries the failure of the recent United Nations World Conference on Human Rights held in Geneva to "demonstrate the political will needed to improve the lot of countless millions of victims"

It is perhaps significant that the South African Government, having been invited to participate, declined to face the world on its own record of human rights

For indeed South Africa comes in for hard-hitting criticism in the report, which says that security forces have continued to show a reluctance to stop the violence and have in some cases fanned the conflict for the political gain of the

present regime Prisoners and detainees were constantly tortured and 121 people died in detention in suspicious circumstances in this country, the report found

In the wider context of South Africa, the report states "Throughout the year new evidence of covert security force involvement in killings and other unlawful acts against opposition organisations came to light

"The evidence implicated senior officers in the security forces and Government Ministers

"However, the Government enacted an amnesty law in November, effectively providing immunity from prosecution for human rights violators," the report states

The Nationalist regime, the report found, had reacted the same way after the Goldstone Commission found military intelligence responsible for planning political destabilisation of government opponents Twenty three military officers were retired early for crimes of illicit political activity that could include murder None was charged

Running away

Coming at a time when hundreds of people of Katilehong are huddled in the Natal spruit Hospital running away from a war that no one seems to understand and one in which the might of the security forces is not being particularly brought to bear on, it raises several questions

How, one may ask, would this travesty of justice and human rights be classified? As black-on-black violence? As ethnic cleansing? As political wrangling in preparation for elections? As instigated carnage by rightwingers to start a war in the black community? Or simply as a war of the poor who are squabbling over scarce resources? Or even further, a result of scheming by the forces of evil to start a war that can be used to debilitate the resolve of the oppressed black majority to fight for their freedom?

The possibilities seem endless but for those who have lost their loved ones in the carnage, those who have lost their properties, their homes and their all, human rights are an abstract thing

And so, as the country changes and moves into the much-vaunted democratic era, for ordinary people, as Amnesty has found, nothing much has changed Not only here but all over the world

AWB hid arms in prams - submission

Sowetan 8/7/93

Sowetan Correspondent

MEMBERS of the AWB formed a shield around the armoured vehicle which smashed through the glass front of the World Trade Centre 13 days ago — pointing to a conspiracy to attack the building, the South African Police told the Goldstone Commission yesterday

Mr Denis Fine, SC, representing the SAP on the first day of a preliminary inquiry into events of June 25 at the centre, further submitted that weapons were possibly concealed in children's prams and under coats before the rightwingers went inside the building

Summons served

AWB leader Mr Eugene Terre'Blanche failed to appear before the commission, chaired by Mr Justice Richard Goldstone, despite a summons served on him on Monday

Goldstone asked the police to open a docket against Terre'Blanche, investigate a possible charge against him for failing to appear and to urgently place the docket before the Transvaal Attorney-General

Terre'Blanche on Monday said he would not be "intimidated or threatened" by the commission and that he would refuse to respond to the summons

The inquiry yesterday heard the versions from the SAP, the Afrikaner Volksfront and the multiparty security force employed to protect delegates at the multiparty talks

Prevented possible bloodshed

Fine said the police had acted in a manner which prevented possible bloodshed. The protesters were heavily armed and the situation was volatile

Dr Theuns Eloff, heading the multiparty negotiations administration, told the commission it was clear that once demonstrators were inside the building, neither of their leaders General Constand Viljoen or Dr Ferdi Hartzenberg had any control over the situation. Only Terre'Blanche seemed to wield any control

The SAP was outnumbered once the demonstrators had entered the World Trade Centre premises, and the unarmed multiparty security forces were not equipped to deal with the situation, Eloff said. The hearing continues today

Terre'Blanche refusal to be probed

PRETORIA — Judge Richard Goldstone yesterday ordered the police to investigate AWB leader Eugene Terre'Blanche's refusal to testify before his commission.

The Goldstone commission's preliminary inquiry into the right wing's forceful occupation of the World Trade Centre on June 25 began yesterday. (252)

Goldstone pointed out that refusal to testify before the commission was a criminal offence carrying a maximum penalty of R4 000 or a year's imprisonment.

Terre'Blanche, however, remained unrepentant last night and said he would not be intimidated. (SAP)

"I have committed no criminal offence

DIRK VAN EEDEN

It is unthinkable that they can expect of me to give evidence before a commission now when my followers have to appear in court about the incident next week.

"The matter is sub judice and anything I would say would bring these people in discredit. If I have to choose between right and wrong, I will choose right. I will not allow myself to be intimidated," he said.

At a public meeting in Kimberley on Tuesday, Terre'Blanche said Goldstone would have to send police with a Casspir armoured vehicle to pick him up. "They

To Page 2

Terre'Blanche

From Page 1

can take me there but I will not testify," he said. (SAP) (252)

In a statement read to the commission by his lawyer, protest organiser Herman Vercuel said the fact that President F W de Klerk had asked the Goldstone commission to investigate the events was a breach of an agreement reached by rightwing leaders and government negotiators on the day of the protest. It had been agreed that an independent commission, other than the Goldstone commission, would investigate the incident. (SAP) (252)

"In this light the commission is seen as a political instrument aimed at discrediting and victimising our peace-loving nation which is trying to attain an own country."

He also pointed out that the commission was held in low esteem by "Boere-Afrikaners" because it had failed to do anything about violence. "Boere-Afrikaners" experienced the commission as hostile to their ideals.

In a joint statement CP leader Ferdi Hartzenberg and Volksfront chairman Gen Constand Viljoen said the occupation could have been prevented if the protesters had been allowed to gather on the lawns outside the centre. It had been clear that the

area at the gates was too small to accommodate the crowds.

They again emphasised that they did not plan the occupation of the centre and did not know about plans to do so.

Multiparty negotiations administration head Theuns Eloff said it had been clear that police were outnumbered and outgunned and the protest would have turned into a bloodbath if police had used force. He criticised police commanding officers, saying "At a number of occasions it was not clear who was in command."

Sapa reports that the SAP yesterday asked the Goldstone commission to recommend urgently that legislation be enacted, with heavy penalties, to prohibit the possession of dangerous weapons at public demonstrations.

SAP legal counsel Dennis Fine suggested that for the offence of carrying a weapon at a public demonstration where the carrying of firearms had been outlawed, a severe jail sentence without the option of a fine should be introduced.

He also told the commission that policemen were unable to take appropriate action at the World Trade Centre because of confusion caused by the camouflage uniforms worn by police and the protesters.

'Serious human rights violations in SA'

The Argus Foreign Service

LONDON — Serious human rights violations have continued in many African countries, with thousands of people killed by government forces and many thousands more behind bars without charge or trial

And, says Amnesty International in its report on human rights in 1992, South Africa was no exception

In a detailed examination of Africa's record, the organisation lists the Ivory Coast, Malawi, Ethiopia, Sierra Leone,

Cameroon, Sudan, Angola, Somalia, Zaire, Chad, South Africa, Niger, Burundi and neighbouring Rwanda as the major offenders

Of the situation in South Africa, Amnesty said "1992 saw the continuance of a pattern of covert involvement by the security forces in the many politically motivated killings in the country

"Some of those killed were victims of attacks on black train commuters or on African National Congress-supporting

(252)
communities by armed men, believed to be operating with police acquiescence. Others, including key figures in the ANC, the SA Communist Party and trade unions, were assassinated by death squads made up of or backed by elements of the security forces."

ARG 8/193
Amnesty said 1992 was "an appalling year" for human rights abuses in Europe, especially in Bosnia-Herzegovina, with the Serbs being the chief culprits and the Muslims the main victims

Human rights: SA slammed

Star 8/17/93

By Alan Robinson
Star Bureau

LONDON — Serious human rights violations have continued in many African countries, with thousands of people killed by government forces and many thousands more behind bars without charge or trial (252)

And, says Amnesty International in its report on human rights in 1992, South Africa was no exception

In an angry response the Ministry of Law and Order described the report as one of "total bias" with some of its findings "completely ludicrous"

The ministry was particularly angry at the "downplaying of the murders of hundreds of policemen"

In a detailed examination of Africa's record, the organisation lists Ivory Coast, Malawi,

Ethiopia, Sierra Leone, Cameroon, Sudan, Angola, Somalia, Zaire, Chad, South Africa, Niger, Burundi and Rwanda as the major offenders

Of the situation in South Africa, Amnesty said "The year 1992 saw the continuance of a pattern of covert involvement by the security forces in the many politically motivated killings in the country

"Some of those killed were victims of attacks on black train commuters or on African National Congress-supporting communities by armed men, believed to be operating with police acquiescence.

"Others, including key figures in the ANC, the SA Communist Party and trade unions, were assassinated by 'death squads' made up of or backed by elements of the security forces"

Amnesty said further "In Africa, despite continuing moves towards multiparty democracy, human rights viola-

tions persisted on an appalling scale with thousands of defenceless men, women and children brutally killed by government forces

"Not only governments were responsible for human rights abuses

"In several countries, including Angola and Sudan, opposition groups also committed deliberate and arbitrary killings and torture"

Amnesty International said 1992 was an appalling year for human rights abuses in Europe

In many countries, including Bulgaria, France, Germany, Italy, Portugal, Romania, Spain, the United Kingdom and Turkey, "human rights saw setbacks rather than improvements"

● Amnesty was out of touch with the situation in South Africa and biased in its perception of the causes of violence in the country, according to the Ministry of Law and Order, Sapa

reports.

"Amnesty International has shown its total bias by virtually ignoring the true cause of the violence in South Africa, namely political rivalry between the African National Congress and Inkatha Freedom Party," the ministry said.

The ministry said Amnesty "completely downplays the murder of hundreds of policemen

"(It) fails to recognise that the South African Police and security forces are themselves the victims of this violence

"In addition, it is completely ludicrous to portray the victims of political violence as being the work of either the police or the Government"

The ministry said the report also "completely ignores the fact that policemen who have committed crimes of violence have been prosecuted by members of the SAP themselves and brought to justice"

Weapons may have been concealed in prams - SAP

AWB 'attack plot'

By Helen Grange

Star 8/7/93

Afrikaner Weerstandsbeweging members formed a shield around the Viper armoured vehicle, which smashed through the glass front of the World Trade Centre 13 days ago - pointing to a conspiracy to attack the building, the SAP told the Goldstone Commission yesterday.

Denis Fine, SC, representing the SAP at the first day of a preliminary inquiry into events on June 25 at the World Trade Centre, further submitted that weapons were possibly concealed in children's prams and under coats prior to being brandished once the rightwingers were inside the building.

AWB leader Eugene TerreBlanche refused to appear at the inquiry, chaired by Mr Justice Goldstone, despite a summons served on him on Monday (252)

Mr Justice Goldstone asked the police to open a docket on TerreBlanche and investigate a possible charge against him for failure to appear, and to urgently place the docket before the Transvaal Attorney-General.

Bloodshed

TerreBlanche said on Monday that he would not be "intimidated or threatened" by the commission into appearing, and would refuse to respond to the summons. He may now face a fine of up to R4 000 or one year's imprisonment or both.

The inquiry yesterday heard the versions of the SAP, the Afrikaner Volkfront (which organised the demonstration) and the multiparty security force employed to protect delegates at the multiparty negotiations.

Fine insisted that the police, contrary to criticisms levelled against them, had acted in a manner which prevented possible bloodshed. "If arrests had taken place or shots fired during the course of the demonstration, it was the belief of the SAP that violence would escalate, and deaths of many would have occurred."

The protesters were heavily armed and the situation was volatile, he said.

To date, the police had arrested and charged 66 people following the incident, some of whom had been subsequently released, he added.

The SAP asked the Goldstone Commission to recommend urgently that legislation be enacted, with heavy penalties, to prohibit the possession of dangerous weapons at public demonstrations.

Fine suggested that for the offence of carrying a weapon

● To Page 3

AWB 'conspiracy to attack Trade Centre'

● From Page 1

at a public demonstration where the carrying of firearms had been outlawed, a severe jail sentence without the option of a fine should be introduced.

Andre Van Wyk, SC, giving the versions of Afrikaner Volksfront leader General Constand Viljoen and CP leader Ferdi Hartzenberg (an executive member of the AVF), submitted that both men had tried on several occasions to stop the protesters from moving toward the World

Trade Centre building. They had had no knowledge of any preplanned attempts to enter the building and believed this was a spontaneous act by the protesters.

They felt, however, that the Government decision not to allow the 10 000-strong group of protesters to gather on the large tract of land south of the building and instead to confine them to a small triangle of land adjacent to the highway, had substantially exacerbated tensions. "If the demonstrators

had been allowed to gather on the terrain south of the centre, these events would not have occurred," Van Wyk said.

Dr Theuns Eloff, heading the multiparty negotiations administration, told the commission it was clear that once demonstrators were inside the building, neither Viljoen nor Hartzenberg had any control over the situation. Only TerreBlanche seemed to wield any control.

The SAP was outraged once the demonstrators had entered the premises, and the unarmed multiparty security forces were not equipped to deal with the situation, Eloff said. The demonstrators, some with Uzzi shotguns, had caused extensive damage to property. Coffee urns had been turned over and spilt water had damaged computer printers, while papers, attaché cases, and spectacles were stolen. Mr Justice Goldstone asked the parties to present him with recommendations at the end of the hearing on steps to be taken. The hearing continues today.

to report was "a separate one from his new call-up, the spokesman said. However, De Beer said when he spoke

said it was still policy to prosecute those who failed to report for their call-ups or who refused to serve in the SADF.

Trade Centre damage estimated at R700 000

PRETORIA — Damage estimated at more than R700 000 was caused when right-wingers stormed the World Trade Centre venue for multiparty negotiations on June 25, it was disclosed yesterday

In a preliminary assessment, World Trade Centre proprietors World Trade Mart submitted in Pretoria to the Goldstone commission inquiring into the incident that damage suffered to the entrance alone was estimated at R250 000

Damage to other features ranged between R2 500 and R115 000. The total amount put forward by the owners was estimated at R708 300.

In another submission to the commission yesterday, the Afrikaner Volksfront called on the commission to suspend its inquiry into events on June 25.

Counsel for the Volksfront Andre van Wyk submitted that an initial agreement between government officials and the Volksfront was that a separate board of inquiry would be appointed

He said his clients recommended the commission suspend its inquiry so that the matter could be taken up with government.

His clients called on the commission to focus its attention on "bigger and more important" issues such as the violence that had recently claimed hundreds of lives

ERICA JANKOWITZ reports that the Weekly Mail Television offices in Yeoville, Johannesburg, were visited yesterday by police looking for video footage of the right-wing occupation of the World Trade Centre

Police said yesterday a search warrant had been issued to obtain evidence for the right-wingers' trial. However, the offices had not been searched as staff said the video tape would be handed to police today

Communities demand land

MARIANNE MERTEN

NATAL community representatives called for the return of their title deeds by August 8 in a meeting with Regional and Land Affairs Department representative Johan van Dam in Ladysmith on Wednesday

The Association for Rural Advancement said yesterday the communities of Charlestown, Roosboom, Stoffelton, Tembalihle, Matiwane's Kop, Cornfields and Steincoalspruit wanted the deeds returned and mineral rights restored

Full compensation should be given if the land had been sold or the mineral rights ceded. Infrastructure "demolished because of government's apartheid policies" should be restored

Representatives said they were sceptical about the new title deed legislation passed by Parliament last month because of government's track record

Van Dam said he would reply by August 8

... reflected the overall ... such as currencies — were hearing exhaus-

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ANC slams Goldstone

W/mail 917-1577/93.
By FAROUK CHOTHIA

THE African National Congress in northern Natal said it was unlikely to make further submissions to the Goldstone Commission of Inquiry as it had failed to investigate violence in the strife-torn region.

In a hard-hitting attack, ANC regional secretary Senzo Mchunu said the regional executive committee and its grassroots members had become very disillusioned with the commission.

"If we go and take statements from people, they ask us: 'What has happened to statement one, two and three that we gave you?' We have concluded that the commission is useless as far as northern Natal is concerned."

The chairman of the region, Aaron Ndlovu, added "It's not worth maintaining ties with Mr Justice Richard Goldstone. He started with good intentions but he has been overwhelmed by the weight of the exercise. He has become completely paralysed."

The University of Natal-based violence monitor Mary de Haas said she understood the ANC's frustrations. "When it comes to Transkei and to Apla, Goldstone is quick to act. When it comes to northern Natal, nothing happens."

In response, Judge Goldstone said: "The commission has in no way been less concerned about violence in northern Natal than elsewhere in South Africa."

Ndlovu was also scathing in his criticism of the commission's special investigation unit in Natal, headed by Major Frank Dutton — even though it has earned the respect of ANC militants like Harry Gwala.

Goldstone said that Dutton's unit — which is assisted by European Community police experts and four attorneys — had "ceaselessly" investigated the many incidents of violence referred to it.

mission 'must focus on violence' ● Cops hop

Police made error — counsel

Sowetan 9/7/93

■ **RIGHTWING PROTEST** Failure to act in

World Trade Centre invasion:

By Josias Charle and Own Correspondent

THERE was an error of judgment on the part of the police who failed to act when thousands of rightwingers stormed the World Trade Centre on June 25 this year. (252)

This was said by Mr Barry Roux, counsel for the police in the preliminary Goldstone Commission hearing that is being held in Pretoria.

Roux said the police had been made to understand, at a meeting held between the organisers

and senior police officers a few days before the protest action, that it would be peaceful and that a memorandum would be handed to the negotiators. (344) (251)

"Police could not act against the rightwingers either by firing tearsmoke or by firing warning shots as this would have led to a bloodbath. "However, I can submit that there was an error of judgment on the part of the police as they were hopelessly outnumbered by the protesters. They trusted the organisers and believed that they would honour their word that the action would be peaceful," Roux said.

Biko case ²⁵²

is closed

w/mcaul 9/7-1577/93
By LOUISE FLANAGAN

POLICE will not be re-opening investigations into the 1977 death in detention of Black Consciousness leader Steve Biko following hints of security police involvement in his death. Police spokesman Major Ruben Bloomberg said: "The docket is now closed."

Former Port Elizabeth security police chief Colonel Harold Snyman, mentioned in a previous inquest as one of Biko's interrogators, told the re-opened inquest into the June 1985 murders of activist Matthew Goniwe and three others that he would not answer questions relating to the Biko case as he might incriminate himself.

Bloomberg said if more solid evidence came to light, the Biko investigation might be re-opened. — Ecna

Concern over court South 10/7 - 14/7/93 press restrictions

EDITORS across South Africa have expressed concern over bans imposed on the press.

Their statement coincided with final steps by SOUTH to contest an interdict won by Plessey-Tellumat on June 16 blocking publication of a story about the company. (2123)

The Conference of Editors noted "with concern" recent cases of the courts granting interdicts to companies to prevent newspapers publishing material to which the public is entitled.

It reaffirmed its belief "in a free flow of information and opinion, and in a society in which pre-publication restrictions are enforced only in exceptional circumstances." (252)

● Mewusa, the trade union organising at Plessey Tellumat, has been accused of intimidation by the company, which claims the union is trying to get two women involved in a sexual harassment case to provide details.

The company threatened to "reconsider the privileges afforded to Mewusa."

Hani chaos: demos blamed

A GOLDSTONE Commission investigation into events following the assassination of Chris Hani has concluded that damage to property, injury and deaths resulted mainly from inadequate marshalling, marchers deviating from agreed routes and break-away groups "engaging in looting and destruction".

The commission, which reported to the State President yesterday, said "the abnormal circumstances" surrounding the assassination and the funeral and

JOHN PERLMAN
Chief Reporter

(252)

"the enormous number of people involved" had also contributed

The report concluded that the policy of "low-profile policing" had meant that when "participants got out of hand the police were not able to reach the trouble spots in order to limit the damage"

Workshop

The report, the product of a three-day workshop which included police, the African National Congress and its allies, the SADF, Inkatha and the city councils of Pretoria and Johannesburg, made a number of recommendations

It was agreed that march organisers "over-

estimated their ability to adequately control the demonstrators" and police should in future not "put themselves in a position in which they cannot adequately protect life and property".

There should be one marshal to every ten participants and communication equipment such as loud-hailers must be available. Joint operating centres, manned by march organisers, observers and the police, should be set up. Organisers of marches on which damage occurs "which could reasonably have been prevented" would bear civil liability for the damages

The Goldstone Commission workshop did not consider the killings at the FNB Stadium on the day of the funeral, nor the shootings at the Protea police station in Soweto, as these were both the subject of judicial procedures

Star 10/7/93

We got it wrong, say the police

~~251~~ 252
HELEN GRANGE

THE SAP has accepted it made a "possible error of judgment" in accepting rightwingers' assurances that their demonstration at the World Trade Centre on June 25 would be peaceful.

Conceding they were outnumbered by the rightwingers, who broke through the glass front of the World Trade Centre with an armoured vehicle, police told this week's Goldstone Commission preliminary inquiry into the incident that in accepting the rightwingers' assurances, they had been "bona fide misled".

Denis Fine SC, representing the SAP, insisted that police had

acted in a responsible manner once the premises were invaded. Had any arrests been made or shots fired, many might have been injured or killed, he said.

"It was the considered view of the SAP that the number of policemen and vehicles deployed at the scene of the demonstration was sufficient, and in making this assessment, the SAP took into account the assurances of a peaceful demonstration."

There were 595 policemen deployed at the World Trade Centre,

70 arrived after the building had been invaded.

ANC representative Azhar Cachalia said "They say they were misled and made a possible error of judgment . . . It was a serious dereliction of duty and pointed to such monumental incompetence as to leave one speechless."

"Evidence from Dr Theuns Eloff (heading the multiparty negotiations administration) is that there was no evidence of 500 or 600 policemen. Inside the World Trade Centre, the police were out of control. They were completely vulnerable and at the full mercy of those occupying the building."

Lawyers intervene to enforce peace

CIPress 11.193

(244) (252)

By FRED KHUMALO

IN a bid to end the mud slinging between leaders of political parties, the National Association of Democratic Lawyers (Nadel) is to review the National Peace Accord (NPA) and help give it teeth by punishing leaders who transgress its provisions

Nadel has invited top leaders of organisations

who are signatories to the NPA to a major peace conference on August 5, 6 and 7 at the Royal Hotel in Durban, where the NPA will be appraised with the aim of giving it punitive powers

Delegates will scrutinise the NPA's weaknesses and strengths, and suggest measures to ensure the signatories honour the provisions of the NPA.



WANTED MAN ... Police have issued a warrant of arrest for estate agent Siphon Dlamini.

'Helpful' estate agent, house deposits missing

CIPress 11/7/43

LAST month Johannesburg estate agent Siphon Dlamini reported his boss, Joseph Mushi, to the police for allegedly stealing R200 000 in housing deposits from the trust account of estate agency Property Dynamics

This week police issued a warrant of arrest for Dlamini because he is suspected of doing the same

After blowing the whistle on Mushi, alias Joey More, Dlamini and other Property Dynamics staff opened up their own agency, Property Trust, in Jeppe Street, Johannesburg

Dlamini assisted clients who had lost money to Mushi to lay charges with the police and claim their money back from the Estate Agents' Board (252)

Now John Vorster Square police are looking for Dlamini and want to arrest him on charges of fraud and theft (127)

He is alleged to have stolen money from Property Trust's trust account. The amount involved has not yet been calculated as Dlamini has apparently

disappeared.

He did not arrive for work this week and police were looking for him at his family home in Witbank.

Angry clients were waiting for Dlamini at the company's offices and demanding that staff pay back their deposits. Dlamini had sole signing powers on the trust account and staff could not tell clients what had happened to their money

"The clients were so angry. We nearly lost our lives," said one staff member who did not want to be named

Staff confirmed with various banks that money which was supposed to have been paid for properties had not been paid, and that some amounts had been withdrawn from the trust account, but apparently not handed over to sellers (53)

Clients who have complaints about Property Trust can speak to the investigating officer, Det Sgt Segale at John Vorster Square, on (011) 497-7419.

By JENNIFER GRIFFIN

CONTROVERSY has arisen over the new family courts due to be introduced later this year.

Some lawyers claim the family courts could increase costs for black divorcees, which are at present heard in the magistrates' courts in the townships. However, Dr Francis Bosman, who heads the Division of Family Advocates in the Department of Justice, said the new courts would lead to cheaper divorce costs for all South Africans, regardless of race.

But some black attorneys are concerned that costs may increase for blacks, who now receive relatively

STIVERS (21/11/93) Controversy over family courts (252)

quick and inexpensive divorces in the townships. attached to the magistrates' courts in the townships.

"It's expensive in the Supreme Court. It's simple in the divorce court," said Pat Mkhize, a former attorney who now mediates community conflict resolution.

At present whites must apply to the Supreme Court if they want a divorce. Legal fees often skyrocket because people must pay both an attorney and an advocate to prepare their case. A divorce can cost over R20 000 and as much as R100 000.

According to Keith Kunene, a Johannesburg attorney, an average divorce in a black divorce court costs about R1 200.

"The scale is very, very low," said Mr Kunene. He did not believe the cost of divorces would escalate in the family court. Most psychologists and attorneys welcome the idea of a family court.

Judge hears how AWB stormed talks citadel

S.I. Times 11/7/93

By RAY HARTLEY: Political Reporter

A PRELIMINARY hearing of the Goldstone commission this week heard details of the AWB's plan to occupy the negotiating chamber at the World Trade Centre on June 25.

The commission heard that some of the right-wing protesters had broken agreements reached between police and the Afrikaner Volksfront (AVF), which prohibited the carrying of firearms and demonstrations inside the grounds of the centre.

It was unclear whether the group had planned the invasion in advance or on the spur of the moment, but deliberate efforts were made to conceal the entry into the grounds of a paramilitary Viper vehicle, the commission heard.

Shield

Police counsel Denis Fine told the commission AWB members in a red vehicle had broken into the grounds by blocking a security control gate with the vehicle.

The members then acted as a shield around the Viper as it entered the grounds along with thousands of protesters, he said.

Lawyer At van Wyk, acting for AVF leader General Constand Viljoen and CP leader Ferdi Hartzenberg, told the commission the two leaders had tried in vain to confine the protesters to a lawn away from the entrance to the centre.

Uniformed members of the AWB had ignored their pleas and proceeded with the vehicle around the left flank of the protesters and towards the entrance. The protesters followed.

The Viper then broke through the glass entrance

panels of the building, and between 200 and 300 armed AWB members entered and moved towards the negotiating chamber.

The commander of the multi-party security force at the centre, Captain Etienne van Eck, testified that security officers retreated to take up positions outside the negotiation chamber, but they were forced aside by the advancing AWB members.

Mr Fine told the commission the protesters were able to break through a police cordon after police decided there would be a bloodbath if they tried to disarm the protesters.

He said the SAP decided the best option would be to

take photographs of the demonstrators, and to arrest and prosecute the culprits later (252)

Mr Fine told the commission that demonstrators had smuggled rifles and shotguns into the grounds ahead of the invasion.

The ANC's legal representative Azhar Cachalia said police had been aware from 7am on the morning of the invasion that members of the AWB planned to ignore the agreement not to carry weapons, but that no action had been taken.

Mr Cachalia said that during the disruption, there was no sign of the full contingent of over 600 police who were supposed to

guard the centre.

He accused the police of "monumental incompetence", but added that there was no evidence of collusion between the police and the right wing.

Illegal

The ANC supported a police suggestion that firearms and the wearing of paramilitary uniforms should be prohibited at public demonstrations, said Mr Cachalia.

He said the Prohibition of Disguises Act made the wearing of balaclavas by some rightwingers illegal.

Commission chairman Justice Richard Goldstone is expected to decide this week whether or not to convene a full inquiry into the invasion.

Police probe ET

~~(252)~~
POLICE were still investigating AWB leader Eugene Terre Blanche's failure to respond to a summons to testify before the Goldstone inquiry into the right-wing invasion of the World Trade Centre, police said yesterday. *SI Times*

A spokesman said investigators wanted to obtain a statement from Mr Terre Blanche before handing the docket to the attorney-general. *(252)*

Mr Justice Goldstone has asked the police to open a docket after Mr Terre Blanche failed to attend a preliminary hearing. *11/19/93*

Decisions cannot be forced on Inkatha

BIDAY 12/11/93

DURBAN — There could be no way forward at the negotiations without agreement by the Inkatha Freedom Party and the KwaZulu government, Inkatha president Mangosuthu Buthelezi told a rally yesterday.

He said government and the ANC would never succeed in "forcing decisions down our throats", and warned that Inkatha would mobilise massive public support to prevent any such attempt.

Buthelezi was addressing about 30 000 Zulus at an Imbizo — a traditional gathering called by the Zulu king — at Kings Park Stadium.

He repeated his charge that the ANC and government were in cahoots at the negotiation forum, saying KwaZulu had walked out last week in rejection of a unitary state and constituent assembly.

But the KwaZulu government was still committed to negotiations, said Buthelezi. "The only way forward is to stake our claim at the national level and to persist in our attempts to secure national support."

The Inkatha leader again claimed government and the ANC were attempting to "destroy" KwaZulu but warned that "Kwa-

Zulu stands as a colossus in the path of those who want to force the unitary state formula on SA"

He reiterated Inkatha and the KwaZulu government's demand for a federal form of state, saying that this was not linked to personal or sectarian power ambitions or "because we are afraid of the political world out there"

Inkatha and the KwaZulu government favoured federalism because it would better address socio-economic problems, such as poverty and hunger.

"Heterogeneity in society must be respected. The communist dream of making one united socialist state of SA will never be realised."

Buthelezi was addressing one of two Imbizos called by King Goodwill Zwelithini. Another takes place at Johannesburg's FNB Stadium next weekend.

Organisers have stressed the Imbizos are not Inkatha-arranged gatherings but Zulu cultural meetings. This has been strongly contested by the ANC in Natal, which has accused Buthelezi of using King Zwelithini for his own political ends.

Probe into local govt ethics almost done

BIDAY 12/11/93

ADRIAN HADLAND

PRETORIA — The Krugel commission into local government ethics is to hold a further session before submitting its report to Transvaal Administrator Danie Hough. Commission chairman Willem Krugel said the final session, scheduled for Monday July 19 in Johannesburg, was to allow mainly for the comments and written testimonies of non-governmental organisations and members of the public. The commission's central brief is to in-

vestigate whether it is proper or not for a serving town councillor to be involved in property developments within his own council's area of jurisdiction. It had been alleged that a conflict of interests could make councillors vulnerable to corruption.

The Krugel report is expected to have important ramifications concerning local government. (252)

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Probe into local govt ethics almost done

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ADRIAN HADLAND

Churches' task force to help returned exiles

JONATHAN DAVIS

THE SA Council of Churches (SACC) is to create a special task force to address the plight of returning exiles, abandoned after the collapse of the National Co-ordination Committee for the Repatriation of SA Exiles (NCCR) in April.

The SACC national conference in Midrand decided on Friday to mandate a national task force, to be convened under the council's justice and social ministries department, to draw together "all stakeholders" to solve the crisis faced by returned exiles.

The NCCR was dissolved on April 1 after several cases of fraud were uncovered within the organisation's administration.

SACC general secretary Frank Chikane said the task force would consist of clergy who, with other interested groups, would develop a programme of assistance for returned exiles.

These groups would include the UN High Commission for Refugees (UNHCR), which had been co-operating with the NCCR to assist in the repatriation of refugees. The UNHCR and the SACC had undertaken emergency operations to assist returnees since April.

Chikane said the task force would continue with many of the emergency operations, including the running of reception centres for returned exiles, and the provision of a legal protection programme.

He said the task force would also continue to make the SACC's national network of fieldworkers available to the UNHCR to help trace returnees who had not received their grants.

UNHCR representatives were not available for comment at the weekend.

The conference heard that many returned exiles around the country were unemployed and living in poverty. Some were in reception centres without any form of assistance. Delegates were concerned they might be lured into crime, or into committing acts of violence on behalf of political parties.

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Woman tells of attack by mob

B. Day 13/7/93

(252)

PRETORIA — A witness before the Goldstone commission committee investigating attacks on the police gave a horrifying account yesterday of how she and two policemen were beaten, stoned, shot and left for dead by a mob in Sebokeng last year.

The woman, identified only as Ms B, told the committee she had accompanied constables Steve Kona and M Se-fatsa in their car to Sebokeng on the night of July 10 when they had seen a mob searching a minibus.

The mob had attempted to stop their car, but Kona had accelerated past them. The policemen were dressed in civilian clothes and riding in their own vehicle. Kona had tried to drive around a trench in the road but the car had collided with a fence.

The owner of the premises had invited the three into his house to obtain personal details when people in the mob forced their way in.

When they overheard that the men were policemen they beat them before dragging them outside.

"They demanded their firearms. Once outside they were beaten up, thrown to the ground and stoned.

"They beat me, stoned me and kicked me," she said.

The men had dragged them to a strip of open veld and stoned them.

All three were buried under stones but their attackers had realised she was still alive. They shot her twice, between the shoulders and in the buttocks, with what appeared to be a homemade gun.

About 30 minutes after the mob had left them for dead, Ms B crawled out from beneath the stones. "I could still hear the two policemen gasping."

She ran from house to house, bleeding and begging for assistance.

"I ran to several houses but no occupant would give me refuge as they feared for their lives."

"I ran throughout the night till the early hours of the morning when a woman came to my rescue."

Her rescuer had washed her wounds and driven her to her parents' home.

Ms B spent two months in hospital.

She said she had two bullets in her body and still suffered from headaches, nausea and blackouts.

The policemen's bodies were found in the field the next morning. Their burnt-out car was found nearby.

Ms B said she would be unable to identify their attackers because they had worn balaclavas.

Eight people were arrested in connection with the attack, one of them an ANC Youth League member. Charges against them were withdrawn because of a lack of evidence. — Sapa.

Inquiry on Star 13/7/93 rights of attorneys

By Shirley Woodgate

Submissions on the issue of attorneys' rights to appear in Supreme Courts will be heard from September 6 by Mr Justice A J Milne, who was appointed in June by the State President as a one-man Commission of Inquiry.

The Association of Law Societies has backed the granting of rights of audience to some 8 000 attorneys countrywide, claiming the main benefit for the public would be a drop in legal costs.

But the General Bar Council which represents 1 250 advocates who presently have exclusive rights to court appearances, will defend the status quo.

(252) Agreement

Chairman Brian Southwood said attorneys' claims that their right to appear in the higher court would cut costs and streamline procedures was yet to be proved.

Both professions were trying to reach an agreement which would be in the best interests of justice, he said.

Johannesburg Attorneys' Association chairman Johan Preller has claimed South Africa is one of only a few countries still using the monopolistic British legal system which restricted attorneys to lower courts.

A constitutional state means radical changes in the laws of the land, writes Peter Leon

Stein 18/1/68

Legal revolution looms ahead

(252)

IT IS precisely because unbridled authoritarianism resulted from the minority government's reliance on the notion that any law — no matter how capricious, unreasonable or discriminatory — was unassailable once passed by Parliament, that we now search for a rule-of-law state

Today, there is universal recognition in South Africa that the practices of the past cannot and must not happen again. In my opinion, that is why all major parties at Kempton Park have recognised the urgent need to create a constitutional state

The modern rule-of-law state or *Rechtsstaat* was created in the ashes of post-war Europe. In West Germany, itself, the *Grundgesetz* or Basic Law contained the essential elements of most constitutional states

First, there is the existence of a rigid, written constitution as supreme law and the replacement of the sovereignty of parliament by the sovereignty of law. A justiciable Bill of Rights is an integral part of the constitution

Second, there is the prohibition of the enactment of laws which conflict with the values enshrined in the constitution.

Third, there is the constitutional entrenchment of the separation of powers of the executive, legislative and judicial arms of government and the conferring of wide powers of judicial review on an independent judiciary

Finally, there is the requirement that state action be predictable, certain and proportional to the object pursued and the prohibition of retrospective legislation

The concept of an entrenched constitution as a higher law, coupled with judicial review of legislation, is tantamount to a legal revolution. It imports into the legal system an overriding requirement of justification, under which every law and every decision can be assessed and, if found defective, can be judicially nullified

Once this new legal order is introduced to South Africa next year by the transitional govern-

ment, its effect on the legal system will be nothing short of revolutionary.

Just as the apartheid state was characterised by uncertain, imprecise, vaguely drafted and often retrospective legislation, which conferred wide and arbitrary powers on officialdom, the legislature of the constitutional state will be obliged to legislate certainly, precisely, clearly and prospectively

A controversial issue in this context is the question of second generation rights — or social and economic rights — in a Bill of Rights

Some parties, not least the ANC, argue that this is an essential condition of a functioning democracy. What is the use of liberty, so the argument goes, if there is starvation? Second generation rights, concerned as they are with food, shelter, education and health care, impose a positive duty on the State, which may even be coercive

It is precisely because these

rights are so politically and ideologically charged that many distinguished constitutional lawyers have rejected them. Their inclusion in a constitution can be attacked on grounds of vagueness, conceptual incoherence and impracticability.

South Africa's Third Republic is, nonetheless, likely to contain elements of these rights, partly as an attempt to address socio-economic deprivation. This has the potential to plunge the judiciary into great controversy in ultimately deciding, for example, the appropriate budget allocations for social services

In my view, a Bill of Rights which places the redistribution of resources above personal liberty threatens not just the integrity of the legal process but that of the constitutional state itself. This is because a Bill of Rights which is not ideologically neutral may turn judges into politicians

A Bill of Rights which enables, rather than restrains, State power and which promotes collective over individual rights may under-

mine the very civil liberties which it seeks to promote

The Third Republic's constituent assembly and its transitional government of national unity will be required to legislate and rule in a manner which is entirely divorced from our unhappy past

Gone will be the days when the regulations were produced by bureaucrats overnight, without consultation, and published in Friday's Government Gazette

Vanished, too, will be the era when legislation was enacted after the pretence of consultation with industry, perfunctory review by a joint committee of Parliament and an equally cursory second-reading debate

The transitional government will, from its inception next year, be required to purge the statute book of legislation which is constitutionally offensive — or face greatly empowered judicial wrath

Legislation and executive action in our new constitutional state will, in addition to having to be

clear and certain, also have to be uniform, prospective and non-discriminatory. In all probability there will be provision for pre-legislative review of legislation, much like the procedure employed by France's *Conseil d'Etat*

The poet W H Auden wrote somewhat cynically in 1940 "Law is neither wrong nor right/Law is only crimes/Punished by places and times/Law is the clothes men wear/Any time, anywhere/Law is Good Morning and Good Night"

Auden's view of law captures the apartheid state expedient, transient and ultimately self-serving. By contrast, the constitutional state — provided that it is properly founded on liberal democratic principles — will help us to re-establish a civil society

● Peter Leon is an attorney and co-author of the Democratic Party's Bill of Rights. This is an edited version of a paper read at Webber Wentzel's 15th anniversary conference

Woman recalls mob horror in Sebokeng

By Abdul Milazi

A Sebokeng woman yesterday told a Goldstone Commission committee in Pretoria how she was shot twice and stoned by a mob during an attack in which two policemen were killed in July last year (252)

The woman, who was only identified as Miss B, told the committee investigating attacks on policemen that she had accepted a lift from Constable Steve Kona and Constable M Sefatsa to Sebokeng on the night of July 10 last year.

They came upon a mob searching a minibus. When the mob tried to stop the vehicle, Constable Kona accelerated, but they collided with a nearby fence.

The owner of the premises had invited the three people into his house so that personal details could be exchanged, when the mob forced its way into the house.

The mob became aggressive and started to beat the two policemen when they realised who they were.

They dragged them outside where they demanded their firearms before them stoning them.

The mob had then fetched "B" from the house and also stoned her. The two policemen were buried in stones and were bleeding profusely, she said.

When some members in the mob realised she was still alive, they shot her between her shoulders and in the buttocks.

After the mob had left them for dead, a woman rescued her and took her to her parent's home.

"B" said she spent two months in hospital recovering from her wounds and still suffered from headaches and blackouts as a result of the stoning.

The lacerated and bruised bodies of the two policemen were found in an open field next to their burnt-out vehicle the following morning. Both men had fractured skulls.

Eight people were arrested in connection with the attack, one of them a card-carrying member of the African National Congress Youth League. But they were later released after charges against them were withdrawn in court because of a lack of evidence.

Investigating officer Constable Samuel Makhwanyane told the commission he had been unable to get incriminating evidence connecting the eight to the attack because none of the residents in the area, including the people who had exchanged details with the policemen following the damage done to their fence, were willing to make a statement to the police.

The hearing continues today.

Masked informer tells of call to kill policemen

BISDAY 14.7.93

PRETORIA — A masked police informer told the Goldstone commission yesterday that former SACP chief Chris Hanu had urged Sebokeng residents last year to kill policemen (252)

The informer, who was giving evidence before the commission's investigation into attacks on policemen, was wearing a balaclava, sunglasses and gloves. He alleged that Hanu had told a meeting of 400 people in June that "whenever a policeman appears he should be attacked, disarmed and killed".

ANC legal adviser Brendan Barry said the informer was mistaken or was deliberately trying to mislead the commission.

More than 80 policemen, including several senior officers from the Vaal, had testified before the commission, Barry said. Having been asked repeatedly for information of this nature, none had mentioned this meeting in a Sebokeng cinema.

Barry said the informer's police handler and the chairman of the meeting would be called before the commission.

While it could be confirmed that Hanu had spoken at a meeting in a Sebokeng cinema in June last year, "at no stage during the course of that meeting did Hanu utter those words or anything like them".

The informer said he had begun inform-

ADRIAN HADLAND

ing police in 1991 and as an active member of the ANC, its youth league and the SACP, he had been privy to meetings.

The Vaal Triangle ANC Youth League's violence committee, of which he was a member, had decided last year to reintroduce the armed struggle and to target policemen, he said. This was supported by the area's civic associations.

Police were "very soft targets" as they mingled socially with township residents and their firearms and uniforms were useful for self-defence purposes, he said.

Police had been targeted because they were "the source of all the wanton killing in the townships" and they defended apartheid, he said.

The informer described how a soldier was shot dead from a tree top in a Vaal Triangle township in June last year, Sapa reports.

He said that on the night of June 19 a man, whose name was known to him but could not be given, climbed to the top of a tree and opened fire when security force vehicles approached. A soldier was killed.

He said he later told his police handler about the incident, but to his knowledge the man had not been arrested.

Date set for KwaZulu Police probe

BISDAY 14.7.93

ADRIAN HADLAND

PRETORIA — The Goldstone commission would begin its investigation into the KwaZulu Police on July 28, it announced yesterday.

A commission statement said several alleged incidents of public violence and intimidation involving these policemen would be examined. (252)

These included murders committed in KwaMakhuta in March 1990 and the failure by police to rearrest

two suspects; the lack of progress in a KwaMashu case in which uniformed police officers were alleged to have shot and killed a resident; and an inquest magistrate's finding in 1990 that KwaZulu police officers had falsified evidence and should be charged with murder and defeating the ends of justice.

The murder of ANC Mid-

lands leader Reggie Hadebe in October 1992 would also be examined, the statement added.

The investigation would start with a public hearing on July 28 at the Westville Civic Centre.

GAVIN DU VENAGE reports that Inkatha Freedom Party spokesman Walter Felgate said yesterday the investigation was a result of "ANC propaganda".

He accused the commission of examining only cases that had received widespread publicity, while ignoring less newsworthy killings.

Felgate said if the commission was to be objective in its aims, it should also investigate other armed forces such as the SADF and Umkhonto we Sizwe.

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Informers implicates Hani

By Abdul Milazi

The late South African Communist Party general secretary Chris Hani had ordered the killing of policemen in the Vaal Triangle, a hooded police informer told the Goldstone Commission in Pretoria yesterday.

Testifying before the committee investigating attacks on policemen, the balaclava-clad informer, identified only as Mr Z, said Hani had ordered the attacks on policemen during a meeting at the Eldorado Cinema in Sebokeng in June last year.

Z said Hani had told the 400 youths at the meeting that "whenever a policeman is seen in the townships, he should be attacked, disarmed and killed and the weapon should be given to members

of the community".

He said Hani had accused the police of involvement in the township violence and said it was important that ANC and SACP members should arm themselves so they could defend their communities. (252)

Z, who said he was a card-carrying member of the ANC, ANC Youth League and the SACP, gave accounts of several other meetings organised by local ANCYL senior members where the killing of policemen was discussed.

Z further claimed that an MK commander had told a group of six youths, including himself, on June 17 last year of plans to kill policemen and to drive others out of the townships and burn their properties.

He said he was later told by senior members of the Vaal Civic Association that the organisation had sanctioned the plans mentioned by the MK commander.

As a result, an SADF member was killed on June 19, in what Z said was the first operation to carry out the alleged plans. (251)

During cross-examination, counsel for the ANC Brendan Barry told Z that senior policemen working in the Vaal area and who had appeared before the Goldstone Commission had failed to relate incidents which implicated senior political leaders.

Barry said the informer was either mistaken or was making up the information.

He said if the informer had told his handlers about the meeting, as he claimed

he had, the information would have been presented to the commission by the police officials.

Barry further told the commission that he had contacted the ANC when the hearing adjourned for lunch, and the organisation had confirmed that Hani had addressed the meeting at the cinema.

But, he said, the organisation denied Hani had made such statements during or after the meeting.

He said Z had contradicted himself when he testified about alleged plans of the Vaal Civic Association to kill policemen.

Z said he might have made a mistake and he could not remember clearly when he received the information.

The hearing continues.

IV, Thursday, July 16 1993

Mob 'threatened to burn us'

PRETORIA — A police sergeant told the Goldstone commission yesterday how he and a colleague were bundled into the boot of their car by a mob, which threatened to burn them alive inside the vehicle.

Sgt Joseph Mbongo was testifying before Gert Steyn, chairman of a committee of the commission established to investigate attacks on policemen (252)

On May 27 last year, he drove to Sebokeng with constables D A Mokoena and K L Mokoena in search of a murder suspect

They found the main road leading to Sebokeng police station barricaded. The car was stoned by a mob, which suddenly appeared on the scene

Const K L Mokoena jumped out of the car and disappeared, Const D A Mokoena was injured in the stoning

Mbongo said he stopped the car in a backyard and tried to help the injured constable

A woman invited the policemen into her home, but the same mob arrived at the scene and again stoned the car.

Before the woman could open the door, he and the injured constable hid their firearms and IDs under a mattress. The crowd demanded the vehicle's keys.

"We were searched and, when nothing was found on us, we were given the keys back and told we could leave

"But before we could leave, a man emerged from the house with our firearms and ID cards, and after being questioned, we were bundled into the boot of our car

They said they were going to burn us in the car," Mbongo said

Mbongo and the injured policeman managed to escape

Meanwhile, the SACP has denied a police informer's evidence to the Goldstone commission that murdered communist leader Chris Ham had called for the killing of policemen. — Sapa

'Black' court appearance

MARIANNE MERTEN

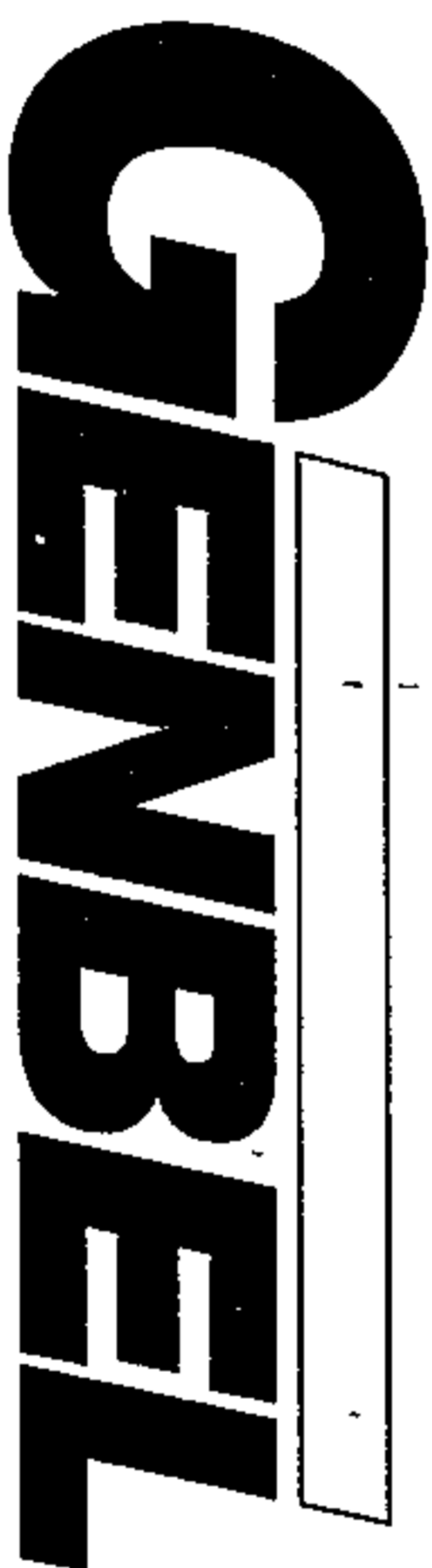
THE founder of the extreme right-wing Resistance Against Communism movement, Eddy von Malitz, blackened his face, hair and hands and wore a woollen cap for his appearance in the Johannesburg Magistrate's Court yesterday.

It has been reported this is in protest at what the organisation says are lighter sentences handed down to blacks. (252)

He was one of four right-wingers who appeared on charges of public violence related to the right-wing occupation of the World Trade Centre on June 25

The case against Lawrence Brown, 29; Guillaume Loots, 40; Johannes van der Linde, 41, and Von Malitz, 43, was postponed until August 18. They were not asked to plead and were released on bail

Earlier yesterday, at the court entrance, Von Malitz was asked to hand in a shotgun he carried under a piece of material. And, outside the courtroom, he was asked by a police officer to remove his woollen cap once inside the court. The magistrate did not comment on his appearance.



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Mob tried to burn police

Star 15/7/93

Staff Reporter

A police sergeant yesterday told the Goldstone Commission how he and a colleague escaped death after a mob took their firearms, bundled them into the boot of their car and threatened to burn them alive in the vehicle.

Sergeant Joseph Mbongo was testifying before the commission held in Pretoria to investigate attacks on policemen.

Mbongo said he and two colleagues, D A Mokoena and K L Mokoena, were looking for a suspect in Sebokeng when they were forced to stop their car at a barricade of rocks.

A group of youths appeared from both sides of the street, and started pelting their car with stones. K L Mokoena, who was hit on the head, got out of the car to seek help on foot. Mbongo turned the car around and headed back in the

direction they had come from, with the youths on their heels.

He drove the car into the yard of a nearby house and the two policemen were allowed inside after they lied to the woman who opened the door that they had been visiting relatives in the area.

Mob

The same mob arrived at the house soon after the men had sought refuge and demanded the door be opened, threatening to burn down the house.

Before the woman could open the door, Mbongo and the injured constable hid their service firearms and appointment certificates under a mattress.

Mbongo said the crowd demanded the keys of their vehicle and wanted to know who they were.

"After we identified ourselves as visitors from Krugersdorp,

we were searched and, when nothing was found on us, we were given the keys back and told we could leave.

"But before we could leave, an elderly man emerged from the house with our firearms and appointment cards. The mob then bundled us into the boot of our car and said they were going to burn us in the car," Mbongo said.

"The mob took our guns and drove us in our car to a spot where we were told we would be burnt alive," he said.

However, the two policemen escaped by jumping through the broken back window of the car, Mbongo said.

Sergeant William Kobela, who also appeared before the commission yesterday, said four policemen were robbed of their firearms in the Vaal Triangle between June and December last year. Meanwhile, the Vaal branch of the ANC Youth League cate-

gorically denied that slain SACP chief Chris Hami ordered the killing of policemen at an ANCYL meeting in the area.

ANCYL chairman Maurice More was reacting to Tuesday's testimony by a balacava-clad police informer that Hami had ordered attacks on policemen during a meeting at Sebokeng's Eldorado Cinema in June last year.

Discredit

More, who helped organise the meeting, said yesterday that the testimony was nothing more than a campaign to discredit Hami after his death.

"That meeting was called to address internal organisational problems only," he said.

The SACP yesterday called the police informer's testimony "an outright lie" and accused the South African Police of "using the Goldstone Commission as a propaganda platform".

C activist's death is recalled

I watched my son die, says mother

Soweto 15/7/93

ANC ACTIVIST Inquest magistrate

told how ANC Youth League member:

By Tsale Makam

THE MOTHER OF AN ANC activist yesterday told the Johannesburg Inquest Court how she watched her son die before her eyes after police had allegedly refused her permission to seek help for him

Mr Vuyam Mabaxa (33), a member of the ANC Youth League, was shot dead in Diepkloof, Soweto, on October 13 1991.

Testifying before Mr CJ de Lange, Mrs Eslinah Mabaxa told the court her son, who had been shot by police, was still alive when she arrived at the scene. She said she tried to get help for him but police at the scene prevented her from doing so.

Mrs Mabaxa said her son was lying on his back when she arrived at the scene. "His chest was heaving up and down as

he tried to lift himself up I rushed to him and tried to lift him up but police stopped me," she said.

The policeman who shot Mabaxa, Constable Piet Botha, on Tuesday testified he had shot the activist in self-defence after the dead man had fired two shots at him. (252)

Prevent liability

Botha said he got to Mabaxa about 10 seconds after he had fallen but the ANC activist, already had no pulse and was not breathing.

Captain Namardadesath Matadin, who also testified yesterday, told the court no one was allowed to "even touch the body in such cases even if the person is still alive."

He said this was to prevent liability in cases where the injured person died as a result of "mishandling" by laymen trying to help.



Slovo moves into No 2 poll spot behind Mandela

Business Day 16/7/93

SACP chairman Joe Slovo has emerged as the second most popular political leader among metropolitan blacks in the latest Markinor Gallup poll

Survey results released yesterday showed that Slovo's support nearly doubled from 15% in May last year to 27% in the latest poll, which was conducted among 800 whites and 1 000 blacks during April and May

ANC president Nelson Mandela retained his lead as the most popular choice among blacks, with support for him as a first choice increasing from 65% to 70%. White support for Mandela also increased from 1% in May 1992 to 3%

The poll also indicated that support for the ANC among metropolitan blacks had declined marginally during the past year. About 68% of black respondents said they would vote for the ANC in forthcoming elections, compared with the 75% recorded in May last year.

However, the ANC remained the

most popular organisation among metropolitan blacks, with 76% of respondents naming the movement as either their first or second electoral choice

The ANC's nearest competitors were the PAC, whose support had remained constant at 22%, and the SACP, which showed a marked increase from 11% in May 1992 to 22% in the present survey.

The Azanian People's Organisation, which polled 4% among metropolitan blacks last year, also gained in the latest poll to reach 7%

The NP, which had 10% support among blacks, continued to lose ground among whites. Only 43% indicated support for the NP, compared with 67% in May and 49% in November last year.

Support for the Inkatha Freedom Party remained more or less constant among blacks at 5% and among whites at 17%.

The CP showed a similar trend, with its support among whites nationally pegged at 26%.

The DP's support declined from 33% to 22% for whites and from 6% to 3% among blacks

On the popularity of SA's leaders, Markinor deputy MD Christine Woessner said "It seems that for metropolitan blacks, the gap left by Chris Ham has, at least for the time being, been filled by Joe Slovo"

The latest results also showed that President F W de Klerk continued to lose support among white respondents. The 72% of whites who gave him the nod as their first choice in last May's poll had dropped to 46%. His rating among blacks had dropped from 13% to 4%

Support for Inkatha leader Mangosuthu Buthelezi remained constant at 4% among blacks and 25% with whites.

"Half of the whites and blacks sampled in the latest poll believed relations between whites and blacks had deteriorated

However, more than half the respondents polled were confident of a happy future for all races — Sapa.

Interdict against arms trial

WITWATERSRAND Attorney-General Klaus von Lieres und Wilkau has been temporarily interdicted by a Rand Supreme Court judge from proceeding with the trial on arms-related charges of two PAC members and their mother as they have all applied for indemnity from prosecution

Themba and Vusi Hlatswayo and their mother Elsie brought an urgent application before Judge T D Cloete for an order halting the criminal case against them in the Krugersdorp Regional Court pending the finalisation of their indemnity application

The State said it intended opposing their application. The case was postponed until August 3 for argument.

Meanwhile the judge has interdicted Von Lieres from proceeding with the criminal case until the outcome of the Hlatswayos' application

The judge also said the interdict would fall away if the indemnity application was finalised before the case was heard next month

Themba Hlatswayo said in an affidavit that he, his brother and mother were charged with the possession of a

SUSAN RUSSELL

firearm and explosives in March last year. They appeared in the Krugersdorp Regional Court in this respect on about four occasions between March and August last year.

He said that at a court appearance last August lawyers acting for his family and the prosecutor agreed the case against them would be postponed until their indemnity application, made in September, had been processed

"At our appearance in March 1993 the outcome of our indemnity applications was still awaited by our attorney," Hlatswayo said.

"The prosecutor then advised my attorney of record that the administration of justice could not be indefinitely delayed and that the trial must proceed

"This unilateral decision to proceed with the trial by the prosecutor was in breach of the agreement between the State and my legal representatives"

Eikenhof IDs 'unprocedural'

STEPHEN COPLAN

DEFENCE counsel in the Eikenhof murder trial yesterday accused police of not following set guidelines at two identification parades in which their clients were identified

Sgt Gerhardus Peens of the Vanderbijlpark Murder and Robbery Squad also denied suggestions on Wednesday by defence counsel that two of the accused — Boy Titi Ndweni, 19, and Siphwe James Bholo, 24, — had been forced to sign false statements

The Heidelberg Circuit Court heard that Det W/O Petrus Beideveld of the Brixton Murder and Robbery Squad had not informed Bholo and co-accused Siphwe "Fish" Gavin, 22, of their right to legal representation or to have a photograph taken of the identification parade on March 25

Adv J Oosthuizen, appearing for Bholo, alleged that his client and Gavin had been brought into the identification parade room before the other men in the line-up, and that the other men in the line-up were older

association from September 2

T Police torturers dodge their dirty deeds

By PAUL STOBBER and STEPHEN LAUFER

AS the African National Congress awaits the findings of the third inquiry into abuses in its detention camps, the state's own torturers — the security policemen who systematically terrorised apartheid's opponents for four decades — have not yet been forced to confront their past.

Few have been forced to take responsibility for their misdeeds in a court of law.

Official silence on their activities stands in stark contrast to the situation in eastern Europe since the fall of communism, where torturers and secret policemen have been called to public account in several ways. State files have been opened to the public, making it possible for victims to confront their tormentors and, in some cases, to take court action. Many of these confrontations have been broadcast in the media.

Many of South Africa's early torturers are retired, living comfortably on state pensions; others are still active in the police force. These men used torture not only to extract information but also as a deterrent: their reputation made many think twice before becoming involved in underground — or even legal — activities against apartheid.

From the mid-1960s to the late 1980s, torture allegations were a routine feature of political trials across the country. Detainees' detailed accounts of what they suffered have been published by South African human rights organisations as well as by the United Nations and Amnesty International.

There can be little doubt that many victims died at the hands of their torturers, or committed suicide as an escape. The Human Rights Commission has on its records at least 90 deaths in detention since 1963. Official explanations include "falling while taking a shower", "injuries received while slipping on a piece of soap", "fainting and falling against a desk" and "injuries sustained while falling down some stairs".

In a wide range of discussions with generations of torture victims, it emerged that:

- There is agreement that as many police torturers as possible should be named publicly, if for no other reason than to prevent them from ever holding office again.

- Physical and psychological torture are part of the same process. The physical abuse meted out was aimed at breaking the detainees psychologically.

- Detainees tortured many years ago still speak about their experiences as if they happened yesterday — if they are prepared to speak about them at all.

- As the torturers refined their skills, so their victims became more experienced in resisting interrogation.

- If the use of torture was not official policy of the security police, it was routine. Senior police officers knew detainees were being tortured and in some cases even took part themselves. Some interrogators bragged that they had been sent to France, Algeria and Portugal to study torture techniques.

The South African Police has yet to acknowledge that some of its members have been involved in the widespread and systematic abuse of detainees. The SAP's response to requests for information about the officers accused of torture makes it clear that it has no intention of subjecting them to public scrutiny.

Asked about their current whereabouts, Lieutenant A Swartz said: "It is not the policy of the SAP to furnish any information regarding the members in your inquiry."

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SABC

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"An astonishing chronicle"

face to face

Inquest Sowetan 16/7/93 postponed

THE inquest in the Johannesburg Magistrate's Court into the death of ANC Youth League member Mr. Vuyani Mabaxa was postponed yesterday to October 13.

Mabaxa (33) was shot dead by police in Diepkloof, Soweto, on October 13 1992.

Constable Piet Botha told the inquest at a previous hearing that he had fired at Mabaxa in self-defence after Mabaxa had shot at him — *Sowetan Reporter*

(252)

Policeman testifies on Sebokeng attack

By Abdul Milazi

The Goldstone Commission yesterday heard how two youths wielding AK-47 rifles, attacked policemen who were investigating allegations of shooting in Sebokeng's Zone 7 on April 26 last year

252
Testifying before the commission investigating attacks on policemen, Constable P S Chaka said he and 27 colleagues were investigating shooting allegations against Victor "Khethisi" Kheswa's gang when they were attacked.

Chaka said he had been informed about the alleged shoot-

ings by an anonymous caller at about 10 am

He said that on arrival in the area, they were met by about 100 youths, two of whom opened fire on them with AK-47 rifles.

Chaka said police returned fire, killing one of the attackers. A young girl was also killed in the crossfire.

He said his house was attacked and burnt later that day. Chaka said he was, however, not certain who the attackers were.

Chaka told the commission he had since moved to Vanderbil-

park
The hearing continues.

BENCHMARKS

Guest columnist **PAUL BENJAMIN**
looks at the law, the lawyers
and the courts

Auditing the democrats

W/Mark 16/7-22/7/93. (252)

AS South Africa approaches its first democratic elections, clarity as to what is meant by democracy will be vital to the process of adequate voter education.

An impressive project administered by a team at the Essex Human Rights Centre might prove extremely useful. Its object is "to produce authoritative landmark studies against which the condition of democracy and political freedoms in the United Kingdom can be measured over time, and so enable the public to judge whether this country is becoming more or less democratic and free".

The centre suggests that there are two fundamental requirements for the existence of democracy: first, popular control of decision-making within the political sphere and elsewhere in society. This requirement necessitates control over decision-makers.

Second, there is the requirement of political equality — that is, the equal capacity to self-determination, an equal right of all citizens to influence the collective decisions of society.

From this it can be concluded that democracy is not an all-or-nothing concept. The centre thus argues that there is a need to develop specific and measurable indices which, with systematic and impartial procedures, test conditions for democracy. It has constructed five major issues that come within the scope of its audit: competitive elections; accountability and public scrutiny of government institutions; levels of government; citizenship rights; and the role of civil society.

Two examples will have to suffice here as being illustrative of the audit — namely, elections and citizenship rights.

The check list for a democratic election encompasses:

- How far is appointment to the legislature and government office determined by popular election, open competition, universal suffrage, secret ballot?

- How independent of government and/or party control are the elections, procedures for voting and the registration process, and how free from intimidation or bribery is the election itself?

- How effective a range of choice and information does the electoral and party system allow voters? Is there fair and equal access for all parties and candidates to mass media and other means of communication?

- To what extent do the voters carry equal weight, and how far is there equal opportunity to stand for public office?

- What proportion of the electorate votes, and how close does the composition of parliament and the programme of the government reflect the choices made by the electorate?

Similar questions are asked to ascertain the democratic nature of citizenship:

- How clearly does the law define civil and political rights and liberties of the citizen, and how effectively are they protected?

- How secure are citizens in the exercise of their rights and liberties, and how far is their equal enjoyment of them constrained by social, economic or other factors?

- How well developed are voluntary associations for the advancement and monitoring of citizens' rights, and how free from state harassment are they?

- How effective are procedures for informing citizens of their rights and for educating future citizens in the exercise of them?

- How free from arbitrary discrimination are the criteria for admission of refugees or immigrants to live in the country, and how readily can those admitted obtain equal rights and citizenship?

The adoption of these tests can assist individual South Africans to determine the democratic content of the programmes of the various parties competing for election. Nearly all the 26 parties at the negotiating forum claim to be democrats. It would be interesting to note how many pass a democratic audit.

AWB siege: Goldstone *Sowetan 16/7/93* lambasts cops

Sowetan Correspondent

LAST month's rightwing invasion of the World Trade Centre succeeded because the police were "completely ineffective" in their response, amounting to a "dereliction of duty", the Goldstone Commission has found.

In its final report into the incident following a two-day preliminary inquiry chaired by Mr Justice Richard Goldstone, the commission said the SAP should fully investigate police deployment on the day, which gave the impression that no one was in clear command.

"Not to have had an unambiguous, strong and visible show of force, at least at the entrance to the World Trade Centre on the morning of June 25, can only be regarded as a dereliction of duty on the part of those officers of the SAP responsible for the absence thereof.

"The perpetrators met with no effective resistance at all," the report, released yesterday, said. (252)

Reacting to the report last night, Law and Order Minister Hernus Kriel made an assurance that a "comprehensive and incisive investigation" would be held into all aspects of the SAP's response to the invasion.

"Bearing in mind the public interest, I am already considering the nature and structure of this comprehensive investigation," he said.

The commission condemned the behaviour of the AWB invaders and said they had conducted themselves as "hooligans". They had committed assaults, were guilty of filthy verbal abuse and wantonly damaged property.

In view of this behaviour, the commission felt that no authority, including the security forces, local authorities and magistrates, could rely on assurances given to them by the AWB leadership.

"Every possible effort must be taken to ensure that there is no repetition of such conduct," the report added.

The commission said it fully agreed with the SAP that the conduct of AWB members in breaking through the WTC with an armoured vehicle was "anything but spontaneous".

It said it was possible leaders of the Afrikaner Volksfront were ignorant of the criminal intentions of the AWB. There was no evidence to contradict this.

Goldstone calls for weapons ban

Police blamed for not halting AWB protest

BIDay 16/7/93

DIRK VAN EEDEN

POLICE were guilty of dereliction of duty in not showing a strong and visible force at the World Trade Centre in Kempton Park when armed right-wingers stormed the building last month, Judge Richard Goldstone has found (251) (252)

In a Goldstone commission report released by President F W de Klerk's office yesterday, Goldstone said it was clear that the occupation of the centre was "anything but spontaneous" and the police had had information that a confrontation with the AWB was "inevitable"

"Not to have had an unambiguous, strong and visible show of force, at least at the entrance to the World Trade Centre on the morning of June 25 can only be regarded as a dereliction of duty on the part of those officers of the SAP responsible for the absence thereof. The perpetrators met with no effective resistance at all"

The fact that about 600 policemen had been present indicated that "the manner in which they were deployed and commanded is a matter which requires to be fully investigated by the SAP"

However, Goldstone said the police decision not to use force inside the centre had been sensible. "Had force been used, a bloodbath could well have ensued"

Law and Order Minister Hennis Kriel said last night "the most comprehensive and incisive investigation possible" would be held into all aspects concerning the police in the report

The commission said it was clear the uniformed and armed AWB members had

broken the law and "conducted themselves as hooligans" They were guilty of public violence, assault with intent to do grievous bodily harm, crimen injuria, malicious damage to property and trespass

It welcomed the arrest and charging of some protesters. Anybody who had encouraged the seizure of the building was guilty of the same offences and should be charged, it said

In blocking the entrance to the centre, breaking into the grounds, and in carrying firearms, let alone openly displaying them, the protesters had violated conditions imposed on their demonstration by the Kempton Park town council

Afrikaner Volksfront leaders who organised the protest and AWB leader Eugene Terre'Blanche knew the open carrying of weapons in the area was illegal

But it was possible the Volksfront leaders had been ignorant of the AWB's criminal intentions. The conduct of Volksfront director Gen Constand Viljoen at the time lent strong support to his denial in this regard

Police made "more than an error of judgment" in accepting Volksfront undertakings that the protest would be peaceful

Police had known that the AWB, which had been involved over many months in acts of violence, would take part in the protest, the commission said

The Volksfront and the AWB had made it clear that they were opposed to the negoti-

□ To Page 2

Police

BIDay 16/7/93

□ From Page 1

ating process and the police had information that a "confrontation was inevitable"

"The AWB is an avowedly and openly racist organisation and some of the parties against whom they aim their racist attacks were represented at the highest level at the World Trade Centre." (252)

Goldstone warned the police never again to accept the Volksfront's word that a meeting would be peaceful (251)

Every possible effort had to be made to prevent a repetition of the incident

For more than a year the commission had called for a complete prohibition on the public display of all dangerous weapons. Steps taken so far were insufficient

It agreed with the SAP submission that penalties for the unauthorised carrying of

weapons should be substantially increased

It also recommended that paramilitary uniforms, balaclavas and other face coverings be outlawed at public gatherings

Last night Kriel said urgent attention was being given to the report's recommendations and an "appropriate ban" on the carrying of firearms at marches and public gatherings was being considered

Terre'Blanche was not available to comment

NP information director Jacko Maree called on right-wing leaders such as Viljoen and CP leader Ferdi Hartzenberg to "break with the AWB", as it was not a credible organisation and had embarrassed them

Findings on WTC invasion

Goldstone slams SAP and AWB

Star 16/7/93

By Helen Grange

Last month's right-wing invasion of the World Trade Centre (WTC) succeeded because the police were "completely ineffective" in their response, amounting to a "derehction of duty", the Goldstone Commission has found. (252)

In its final report released yesterday after a two-day preliminary inquiry chaired by Mr Justice Richard Goldstone into the incident, the commission said the SAP should fully investigate their deployment of policemen on the day

"Not to have had an unambiguous, strong and visible show of force, at least at the entrance to the WTC on the

morning of June 25 can only be regarded as a derehction of duty on the part of those officers of the SAP responsible for the absence thereof

"The perpetrators met with no effective resistance at all," the report said.

Reacting last night to the report, Law and Order Minister Hernus Kriel said "the most comprehensive and incisive investigation possible" would be held into all aspects of the SAP's response to the invasion

"Bearing in mind the public interest, I am already considering the nature and structure of this comprehensive investigation," he said.

The commission condemned the behaviour of the AWB invaders. It said they conducted themselves as "hooligans". They had committed assaults, were guilty

of filthy verbal abuse and wantonly damaged property

In view of this behaviour, the commission felt that no authority, including the security forces, local authorities and magistrates, could rely on assurances given to them by the AWB leadership.

"Every possible effort must be taken to ensure that there is no repetition of such conduct," the report added.

The commission fully agreed with the SAP that the conduct of AWB members in breaking through the WTC front with a Viper armoured vehicle was "anything but spontaneous".

The commission said it was possible that leaders of the Afrikaner Volksfront, who were not members of the AWB, had been ignorant of the criminal intentions of the AWB. There was no evidence to contradict this.

The police had "committed more than an error of judgment" on the day (the SAP conceded this at the inquiry), considering they knew the following facts.

- The AWB had been involved over many months in acts of violence, particularly in Ventersdorp in 1992
- A source had intimated to the SAP that confrontation was inevitable.
- The Afrikaner Volksfront, and in particular the AWB, had made no secret of their strong opposition to events

● To Page 3

The Goldstone Commission's recommendations are:

- The carrying or display of all dangerous weapons and especially firearms at a public meeting or demonstration should be made an offence providing for severe penalties. The appropriate penalty should be left to the discretion of the courts.
- Legislation should be tightened to provide stricter control over bodyguards who are allowed to wear uniforms and carry weapons.
- The wearing at public gatherings or meetings of disguises or any form of face covering should be made an offence and severe penalties should be provided.
- Public authorities and the SAP should not, in future, rely on assurances as to the conduct of AWB members. Appropriate precautions should be taken in respect of all public gatherings and meetings at which such persons are likely to be present.

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News

P.T.O.

Goldstone slams SAP and AWB

● From Page 1

Star 16/7/93

which had unfolded at the WTC
● AWB leader Eugene Terre-Blanche had made it clear that AWB members would carry firearms, albeit concealed.

● Leaders of most of the political parties would be assembled at the WTC.

● Information had been received that 10 000 to 15 000 people might participate (252)

● Relatively insignificant security was provided by the Multi-Party Security Force.

● The AWB is avowedly and openly a racist organisation and some of the parties against whom they aim their attacks were represented at the highest level at the WTC

● The nationally and internationally publicised multiparty negotiations at the WTC was an obvious target of the AVF and especially its militants

However, the decision by police not to use force inside the WTC had been sensible.

"Had force been used a blood-bath could well have ensued."

It noted that, with very few exceptions, the parties to the Interim Agreement on Mass Marches and Demonstrations — being the SAP, ANC alliance and the IFP — had kept to the spirit of the agreement

Other organisations should be encouraged to become parties to the agreement pending the promulgation of appropriate legislation on mass action.

The commission said the legislation allowing bodyguards to wear uniforms and carry firearms was too vague. Para-military uniforms at public political meetings should be outlawed

Kriel said last night that an appropriate ban on the carrying of firearms at marches and public gatherings was being urgently considered.

14 Voter education

IN THE PAST three weeks we have been examining affirmative action — why it came into being and specific types of affirmative action that have been implemented in other parts of the world

Affirmative action refers mainly to opening up opportunities for groups which have been discriminated against, in employment, schools, universities, and so on

However, before people can take up these new opportunities, they need to be in a position to do so.

For example, if a family is so poor that all their children have to work without ever going to school, it does not help them at all that schools have been opened to them and school fees lowered for their benefit.

In South Africa, economic imbalances have created a tremendous divide between the living standards of the average white and black South African

This question was addressed at a conference on 'Reconciliation and Democratisation' in Namibia last year. The conference was organised by the African European Institute which seeks to promote economic development, social justice, and peace in Southern Africa

Among the speakers at the conference was Professor Bas De Gaay Fortman, a member of the Association of European Parliamentarians for (southern) Africa as well as a member of the World Council of Churches. He spoke about 'Economic Justice as a Component of Reconciliation'

Fortman began his delivery with an old Dutch story about a beggar and a nobleman. While passing the nobleman's land the beggar asks him "Whose land is it?"

"It is mine," is the answer

"And how did you get it?" the beggar continues to ask

"Well, I inherited it from my father"

"And how did he get it?"

"Well, he inherited it from my grandfather," is the answer

"And he?"

"From my great-grandfather", is the answer

"And he?"

They continue like this until they come to a great-great-great-grandfather who lived in the Middle Ages. Here the nobleman has to reply. "He fought for it"

"Ah", says the beggar, "Shall we fight for it again?"

Fortman comments that "as long as he does not enjoy a minimal



RETURN TO THE LAND: Land claims in a democratic South Africa will be based on entitlement — justice for people who have been deprived

Laws alone don't make justice

South 1717 - 217193

252

access to resources, the beggar is not prepared to accept the nobleman's claims to the land. As long as some people are so deprived that they are unable to reconcile themselves to the status quo, polarisation and violence may follow. Economic or social justice has to do with acceptance of the claims of the poor and promotion of socio-economic equality."

Fortnam mentions two different concepts of justice. One is an old Roman Law, the concept of *Justicia*, which is based on negative freedom: freedom from. The other is the Old Testament concept of *Tsedaka* based on positive freedom: freedom to.

He says that the concept of social justice goes much further than either of the above because it accepts necessity as a source of law. "In other words, needs create rights. This introduces the need for some kind of entitlement system. Entitlement is the possibility of making

legitimate claims — claims based on rights"

Fortnam differentiates between three systems of entitlement.

● The first is institutional entitlement. This relates to entitlement through tribes, clans, villages, political parties, trade unions, employment firms.

● Direct resource-based entitlement flows out of ownership of something, for example, "my own labour, my own land, my own skills, my own knowledge, my own shop"

People engage in arrangements involving rights and obligations with others on the basis of this kind of entitlement.

● State-arranged entitlement is the third form. Access to health care, education, police protection, and so on, is mostly arranged by the state, which can also implement policies of redistribution.

"Poverty is a matter of inadequate sources of entitlement. An unequal distribution of power is, however,

rarely corrected from above. It can be rectified only through emancipation of the poor themselves, in other words, 'development from below', Fortnam said.

"Civil and political rights — the 'basic freedoms' — imply a restraint on state power, while economic and social rights require the state to take affirmative action."

Fortnam says while legislative and judicial action is important for the realisation of human rights, the most crucial aspect of achieving them is conscientisation.

"The basis of human rights is in the heart of people. Human rights are, above all, a culture."

Fortnam says that civil and political rights are inseparable from economic, social and cultural rights.

"For people with an empty stomach freedom of expression is not very meaningful. But what is the significance of a right to food when starving people are not permitted to say that they are hungry?"

Police probe is likely into AWB invasion

By RAY HARTLEY
Political Reporter

LAW and Order Minister Hennus Kriel is expected to announce an inquiry, possibly headed by a retired judge, this week to investigate police conduct at the World Trade Centre during the June 25 right-wing invasion.

A ministry source said Mr Kriel was furious at the police failure to halt the advance of AWB members who crashed through glass doors at the centre in an armoured vehicle.

The source said Mr Kriel was determined to hold an investigation with more credibility than past internal police inquiries.

Mr Justice Richard Goldstone said in the report of the Goldstone commission inquiry into the invasion that police officers in charge of security forces on the day were guilty of "a dereliction of duty". Law and Order spokesman Captain Craig Kotze said police would be "more pragmatic in future and would not take the organisers of demonstrations at their word".

He said Mr Kriel was investigating the banning of firearms and dangerous weapons at political demonstrations.

Mr Justice Goldstone said the deployment and commanding of around 600 policemen to protect the centre needed to be fully investigated.

Delegates to the World Trade Centre represented the future of South Africa "Every possible effort must be taken to ensure that there is no repetition of such conduct," the judge said.

The decision by police not to use force inside the centre was "a sensible one in the circumstances" and had averted a bloodbath.

The judge singled out the AWB as being primarily responsible for organising the invasion of the multi-party negotiating chamber, which caused R700 000 damage.

He said the AWB members had behaved like "hooligans" and deviously planned the occupation of the centre. He called for stricter penalties on the unauthorised carrying and displaying of dangerous weapons at public demonstrations, and said the wearing of "disguises or any form of face covering" should be made an offence with severe penalties.

"The commission is of the view that the wearing of any paramilitary uniforms at public political meetings be outlawed," Mr Justice Goldstone said.

NP accused of bribery to woo voters

By RAY HARTLEY
Political Reporter

STARTLING allegations that the NP was using taxpayers' money to woo black voters and had attempted to bribe DP members into supporting the party by offering them money and cars emerged this week.

Sport and Welfare Minister Abe Williams offered government welfare payouts to improve-

ished coloured voters in the Western Cape in a letter printed on official NP stationery.

And DP Youth chairman Cohn Douglas has alleged that two DP members had been approached by NP officials and offered perks in exchange for their loyalty to the NP.

Mr Williams's letter called on people earning less than R600 a month to apply for assistance of between R64 and R216 a month from the House of Representatives at the Saxonsa town hall on May 11.

"The needy (unemployed and poor) can apply for community help on Tuesday, May 11, at the Saxonsa hall."

"The department's offices in Atlantis will also be open. This arrangement has been made to be of

assistance to more people," Mr Williams said in the letter, which was not dated.

Mr Williams was recently embroiled in controversy after documents showed he had authorised the payment of R9 000 for an NP tea party attended by Mrs Marike de Klerk in Atlantis. 1817193

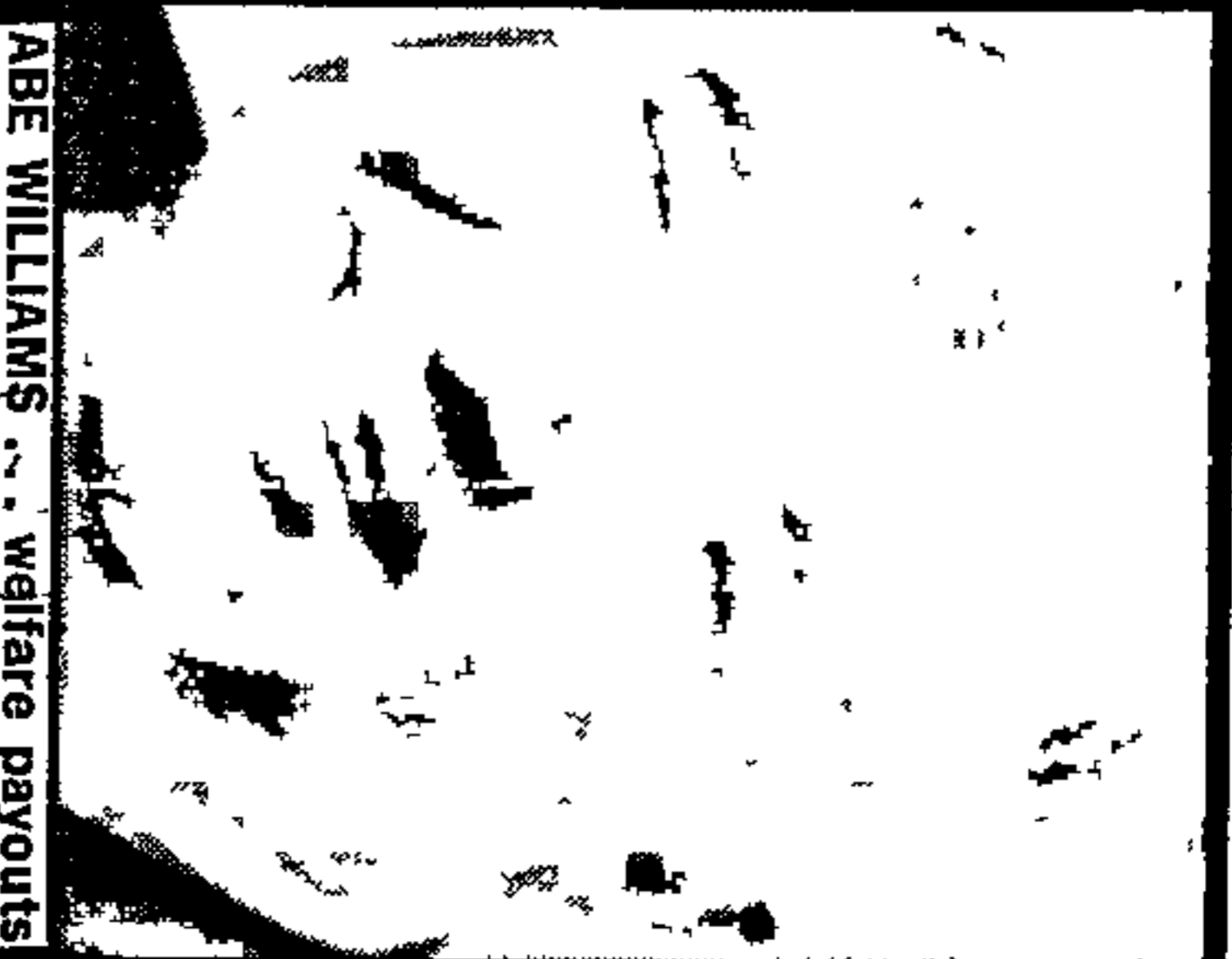
The money came from the House of Representatives' budget, though the tea party was an NP event.

Transparent

Mr Williams could not be contacted for comment on the latest incident.

DP justice spokesman Tony Leon described Mr Williams's letter as "out and out political bribery" and called for a full investigation into NP abuse of taxpayers' money to win votes.

"Mr Williams wouldn't know an ethical dispute if



ABE WILLIAMS... welfare payouts

it fell on his lap. He's an offensive pork-barrel politician," Mr Leon said.

Southern Transvaal DP Youth executive member Sandile Dube said he had been approached by an NP official who tried to persuade him to join the NP. "He said money talks louder than words," Mr Dube said.

He said the official, a Mr Booyens, who made the approach 10 days ago, had offered him a top post in the NP in the area.

A DP Youth activist in Carolina, Mr Siphso Xaba, was offered a car on condition that he join and work for the NP, Mr Douglas said.

"The transparent attempts by the NP to buy black DP members speaks of their inability to be a viable political force in a post-apartheid SA."

"They also demonstrate that little has changed in NP tactics," he said.

Big money coming your way

see page 15

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GOLDSTONE RAIDS HOME OF MYSTERY NEO-NAZI LEADER



THIS is Koos Vermeulen, the mysterious neo-Nazi leader of the World Preservatist Movement whose Pretoria home was raided by the Goldstone commission on Friday night.

SAP head of crime investigation and prevention Major General Piet du Toit said the Commissioner of Police, General Johan van der Merwe, asked the commission's Transvaal investigation team to conduct the raid after the attorney-general said the police did not have sufficient grounds for a warrant to search Mr Vermeulen's home.

On Monday, Mr Vermeulen claimed that Victor Kheswa, who died in police custody last weekend while being questioned about his alleged role in a number of Vaal massacres, was a member of his organisation.

Other supporters of WPM and confidantes of Mr Vermeulen include Janus Waluz, alleged killer of SACP leader Chris Hani, and his alleged co-conspirators, Conservative Party leaders Clive and Gaye Derby Lewis.

General du Toit said police questioned Mr Vermeulen about Mr Kheswa at his home on Wednesday, after which Mr Vermeulen submitted a sworn affidavit that Mr Kheswa had not belonged to his organisation (252).

"General van der Merwe was not satisfied and the matter was discussed with the attorney-general on Thursday afternoon with a

By NICK OLIVARI and CHARLENE SMITH

view to obtaining a search warrant.

"The attorney-general said there were insufficient grounds for a search warrant and, in view of this, General van der Merwe approached the Goldstone commission."

Judge Richard Goldstone said from Durban that the raid did not fall into the ambit of existing Goldstone commission investigations. He confirmed that documents and records had been removed from Mr Vermeulen's home, 1817 193.

Mr Vermeulen's international links include the Ku Klux Klan, the National Front and neo-Nazi groups in Eastern Europe.

The walls of his home, on a plot outside Pretoria, are fortified. Geese patrol the grounds and dogs are kept indoors. There is an underground bunker.

When the Sunday Times visited his home on Friday evening,

Mr Vermeulen arrived on the back of a bakkie. He was in a crouching position and his pistol was drawn. He leapt off, said he was granting no interviews to the press and claimed he had two murders to investigate.

It is believed Vermeulen was referring to a neighbour, Miss Caroline Hunter, 26, who was found dead in her car on Friday.

Police believe Miss Hunter was killed on Thursday night. Her body was discovered by her boyfriend, Mr Luke Loraine-Grews, at 2pm the next day. Miss Hunter died from two bullets to the chest. Police believe they were AK-47 rounds.

Police are investigating a possible link to the murder of a woman in Donkerhoek four months ago and other AK-47 attacks in the area.

Next week the Goldstone commission will consider whether it will take further action in relation to the Vermeulen raid.

Picture: GRAHAM WILLIAMS

The life and death of the SMILING MONSTER

SEE PAGE 8

a's birthday

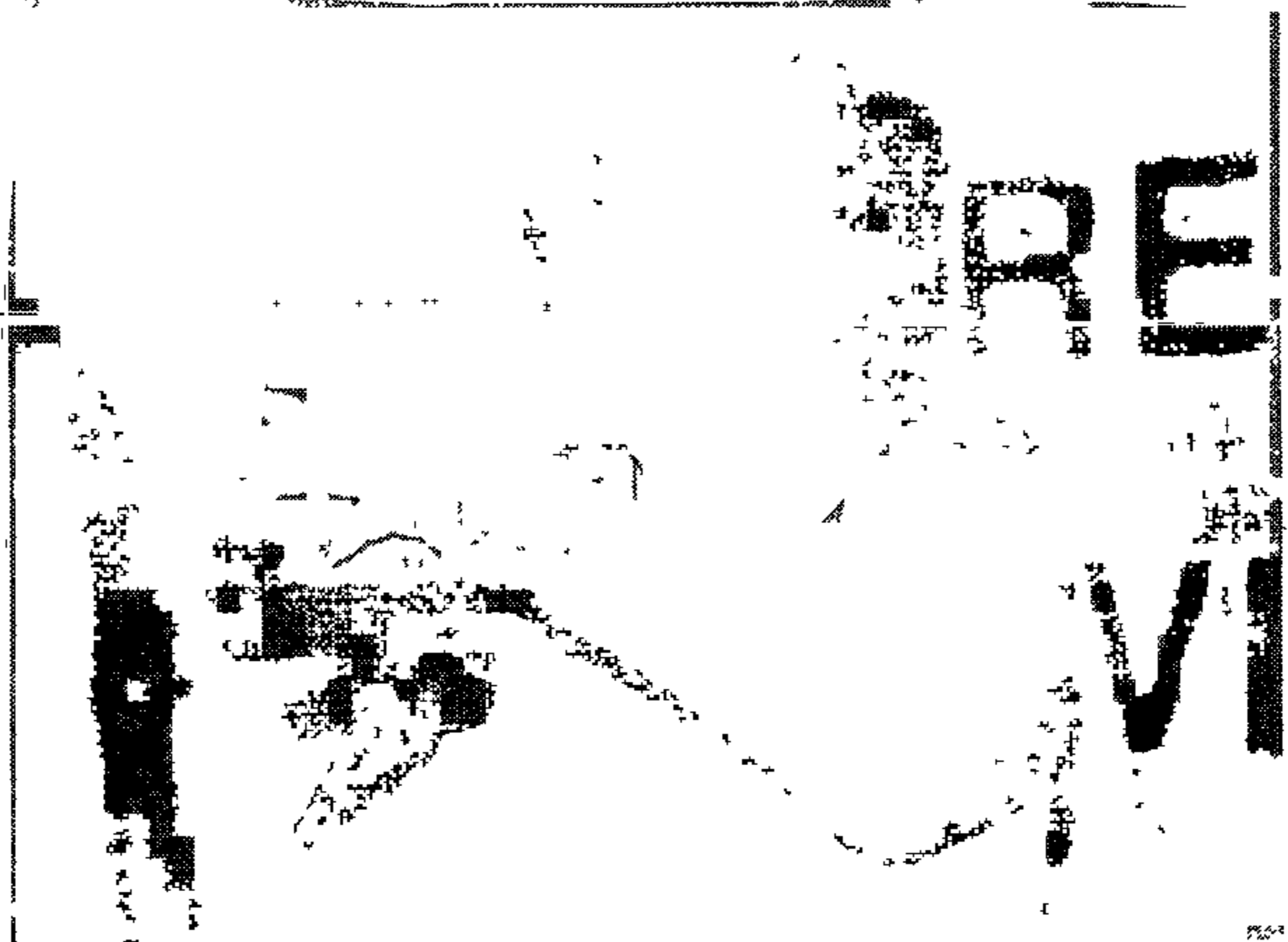
Mandela's estranged wife, was not present, and his sons, Zinzi Hlongwane and Zembali-Mandela, are overseas, as are his grandchildren were

international affairs director Mbeki was master of ceremony and Mr Mandela was the only

SEE PAGE 145

3 Times (Bus)
Gone bust for R10 000 (252)
18/7/93

AVERAGE debt of R10 000 was enough to lead to more than 32 000 commercial judgments in the first six months of 1993, 25% more on last year, according to figures supplied by the Information Trust Corporation. There were 240 000 judgments worth an aggregate R1.5-million against individuals over the same period, only 6% higher than in the first six months of 1992.



ANC NEC member Albie Sachs speaking on the development of a human rights culture at the End Conscription Campaign's Peace Festival in Johannesburg yesterday. Picture GARTH LUMLEY

Debate on Bill of Rights is 'crucial'

MARIANNE MERTEN

A BILL of Rights should become part of ordinary people's lives and of a future educational culture, ANC national executive member Albie Sachs said yesterday.

At the End Conscription Campaign's (ECC) Peace Festival in Johannesburg, Sachs said the human rights debate should be opened up to include representations from, among others, women, gays and the disabled.

It was crucial to decide whether a Bill of Rights was interpreted by "a branch of the white, male-dominated, conservative judiciary" or a new court with a constitution and thinking that were non-racial and nonsexist.

The anti-apartheid movement had developed a body of people with the skills, sensitivity and seriousness to make good judges, he said. *Bill Day*

Parliament should be involved in human rights protection in education, health and resource allocation. It had no role to play when it came to human rights considerations such as ending torture, Sachs said. *(252)*

Two draft bills were being discussed, one was part of the constituent assembly's constitutional principles and the other dealt with fundamental rights and freedoms during transition. *(19/7/93)*

Sachs described the second document as a stop-gap measure. It only formulated an equality clause and did not forbid specific types of discrimination.

This did not appeal to South Africans who had experienced discrimination.

The omission of freedom of expression and the right of conscientious objection from both documents was a serious one, he said.

He paid tribute to the ECC for its peacemaking activities of the past decade.

Police probe is likely into AWB invasion

By RAY HARTLEY
Political Reporter

LAW and Order Minister Hennis Kriel is expected to announce an inquiry, possibly headed by a retired judge, this week to investigate police conduct at the World Trade Centre during the June 25 right-wing invasion. (252)

A ministry source said Mr Kriel was furious at the police failure to halt the advance of AWB members who crashed through glass doors at the centre in an armoured vehicle. (SPL)

The source said Mr Kriel was determined to hold an investigation with more credibility than past internal police inquiries.

Mr Justice Richard Goldstone said in the report of the Goldstone commission inquiry into the invasion that police officers in charge of security forces on the day were guilty of "a dereliction of duty".

Law and Order spokesman Captain Craig Kotzé said police would be "more pragmatic" in future and would not take the organisers of demonstrations at their word.

He said Mr Kriel was investigating the banning of firearms and dangerous weapons at political demonstrations.

Mr Justice Goldstone said the deployment and commanding of around 600 policemen to protect the centre needed to be fully investigated.

Delegates to the World Trade Centre represented the future of South Africa. "Every possible effort must be taken to ensure that there is no repetition of such conduct," the judge said.

The decision by police not to use force inside the centre was "a sensible one in the circumstances" and had averted a bloodbath. (SPL)

The judge singled out the AWB as being primarily responsible for organising the invasion of the multi-party negotiating chamber, which caused R700 000 damage.

He said the AWB members had behaved like "hooligans" and deviously planned the occupation of the centre.

He called for stricter penalties on the unauthorised carrying and displaying of dangerous weapons at public demonstrations, and said the wearing of "disguises or any form of face covering" should be made an offence with severe penalties.

"The commission is of the view that the wearing of any paramilitary uniforms at public political meetings be outlawed," Mr Justice Goldstone said.

Sowetan 20/7/93

AWB slams raid by Goldstone

THE Afrikaner Weerstandsbeweging yesterday condemned the Goldstone Commission's raid on World Preservatist Movement leader Koos Vermeulen's home last week and accused the commission of being a "partisan, pro-ANC vigilante" (252). "This raid has now revealed what awesome powers Goldstone has unilaterally appropriated unto himself," said the AWB in a statement. The commission raided Vermeulen's home on Friday following his statement that "Vaal monster" Khetisi Kheswa was a member of the WPM, an ultra-rightwing organisation formerly known as the World Apartheid Movement. Kheswa was sus-

pected of being involved in a number of killings in the Vaal Triangle and elsewhere. He was arrested by police and died in their custody two weeks ago. The AWB said the raid on Vermeulen's home meant commission chairman Mr Justice Richard Goldstone could raid anyone's home at any time, even if the Attorney-General and the Police Commissioner did not believe there was sufficient reason to do so. Goldstone had become like the "thought police" in George Orwell's novel 1984 — Sapa (252) (252)

Krugel inquiry wraps up hearings

THE Krugel commission of inquiry, which is investigating whether serving city councillors in the Transvaal should be allowed to take part in property development projects, heard its final submissions yesterday.

A full report and recommendations were expected to be made public by the beginning of August, commission chairman Willem Krugel said.

The commission held a brief session in Johannesburg intended mainly for extra-parliamentary groups

6/Day 20/1/93
GAVIN DU VENAGE
yesterday, but most had failed to attend. The Central Witwatersrand Metropolitan Chamber, of which most groups were members, was invited to make a presentation, but had decided not to take part as members were unhappy at the commission's status and that it had been set up without consultation. (252)

Krugel said several groups did give evidence which would be considered.

Sowetan

New turn in murder trial

24-1-93
THE Boipatong massacre trial, in which 32 KwaMadala Hostel dwellers and Inkatha Freedom Party members are facing 45 charges of murder, was yesterday adjourned to Thursday

The case will now be heard in the Pretoria Supreme Court

Mr Justice JM Smit gave no reasons for transferring the trial from the Delmas Circuit Court to Pretoria

The accused are charged with murder, attempted murder, public violence and malicious damage to property arising from an attack on Boipatong residents on June 17 last year (218) (252)

Draft legislation finalised next week

Political Staff

JOHANNESBURG — The third element of a package of draft Bills which will underpin the transition process has been discussed by the negotiating council

The draft legislation is expected to be finalised next week

Aspects of draft legislation on an independent electoral commission were yesterday referred back for a second time to a negotiations technical committee for further consideration.

Other elements of the Bill, including the role of international observers, will be discussed today by the 10-member planning committee before they will be re-

ferred back to the negotiating council for discussion.

Draft bills on an independent media commission and an independent broadcasting authority were discussed on Monday

Negotiators are rushing against time to complete and agree on draft legislation before mid-August in order to pass them in the September parliamentary session

ARG 21/TFB
The negotiating council, which meets today for the last time this week, will discuss draft Bills on the repeal of discriminatory legislation and fundamental human rights during the transition

Former 'hit man' lives quietly on return home

21/7/93

Staff Reporter

SELF-CONFESSED police "hit man" Captain Dirk Coetzee arrived back in South Africa on July 3, ANC spokesman Mr Carl Niehaus said yesterday

His return came four years after he made startling allegations about government death squads and four months after the Department of Justice declared that the former commander of the Vlakplaas "death squad" unit could return without fear of prosecution

Mr Niehaus said Capt Coetzee was keeping a low profile and had only

had a brief outing to watch Northern Transvaal play rugby at Loftus Versfeld on Saturday.

Three years ago, in an interview, Capt Coetzee said he wanted to return to unravel the "mass of police atrocities which go back a long, long time" including the killing of Natal University lecturer Dr Rick Turner

He said the high profile investigation into the Civil Co-operation Bureau (CCB) was a "smokescreen", to distract attention from other police activities which "make the CCB look like a bunch of kids"

Star
**Probe into
ET's refusal
completed**

An investigation into AWB leader Eugene TerreBlanche's refusal to appear before the Goldstone Commission had been completed, police said yesterday. *252*

And their investigation into ANC Youth League leader Peter Mokaba's exhortations to "kill the Boer, kill the farmer" was also nearing an end.

TerreBlanche's dossier will be forwarded to the Transvaal Attorney - General today. Mokaba's would probably follow in about a week. *143*

News

in brief

Sowetan
**Goldstone's
22/7/93
peace plea**

A CALL to arms would do nothing to bring about peace in South Africa, Mr. Justice Richard Goldstone said yesterday (252)

Speaking at a Rotary luncheon where he received the Johannesburg Club's Achiever of the Year Award, the chairman of the Goldstone Commission said "We have to talk about peace, not war. We have to talk about ways of stopping the violence, not new ways of increasing violence."

New factors linked to violence

JUDGE Richard Goldstone yesterday added two new factors to his commission's list of causes of violence in SA, saying political uncertainty and the role of "agents provocateurs" exacerbated the existing climate of violence

Speaking at a Johannesburg Rotary Club lunch, where he was given the club's Achiever of the Year award, Goldstone said these two aspects should be added to the list of causes identified in the commission's second interim report on violence

He repeated the reasons for violence specified in the report, which he said included political competition between political parties, the dehumanising effect of apartheid and socioeconomic factors.

Goldstone said the political uncertainty made it impossible for local

TIM COHEN

Businessmen to make decisions about the future and difficult for overseas investors to contemplate investment.

As much as it would be pleasant and desirable to have extended discussions on constitutional questions, Goldstone said, it was vital the elections took place on the target date of April 27.

The jury was still out on the question of whether a sinister "third force" was playing a role in exacerbating violence in SA. But, Goldstone said, evidence provided to the commission did indicate the existence of "agents provocateurs".

He had sympathy, he said, with those people who had become critical of the national peace accord.

However, he stressed that it was dangerous to depreciate in any way the role of the accord

Recent criticism of the accord and threats by political parties to call their followers to arms could only worsen the situation.

He said all the causes of violence in SA could be solved. And there were new positive signs

He applauded the stance taken by the ANC, at a recent commission hearing, when it criticised its own local-level leaders for insisting that a march should follow a route past a hostel. He applauded, too, the honesty of a Crossroads policeman who recently told one of the commission's hearings that special constables had taken sides in the Crossroads violence

"There is new openness," he said.

BiDay 22/7/93

(252)

Libel appeal jeopardised as

Lamberts Bay



Document on human rights takes shape

Southern 28/1/93

By Ismail Lagardien
Political Correspondent

■ TRANSITIONAL CHARTER Will guarantee basic human rights recognised internationally:

A sum-committee of the Negotiating Council is preparing a document on minority rights which will also take into account indigenous laws.

The Technical Committee on Fundamental Human Rights During the Transition on Wednesday presented its sixth progress report which contains certain rights and freedoms "which are regarded as essential for facilitative of a transition to democracy in South Africa".

The proposed Fundamental Rights During the Transition will apply for a limited period until an elected constituent assembly finalises a new Bill of Rights for the country. (252)

Where they fall short they are "not necessarily to be regarded as an indication of their lesser worth as protected in the future" the report says.

The transitional charter will, nevertheless, guarantee the most basic of human rights as identified internationally. These include

- Equality before the law and protection of the law;
- The right to life and protection of human dignity and from forced labour;
- Freedom of religion, expression, association, movement, unarmed assembly and demonstration, the right to choose a place of residence, and
- Political rights and access to courts and to information

Nongwe 'could have been held'

By BARRY STREEK
Political Staff

CROSSROADS leader Mr Jeffrey Nongwe could have been refused bail after his recent arrest if the attorney-general had authorised this, Justice Ministry spokesman Mr Werner Krull said yesterday.

Alleged mass murderer Mr Henter Ndlovu, an accused on bail in the Borpatong murder trial, who was recently charged with another 50 murders in the

Vaal Triangle, could also have been refused bail.

Mr Krull said provision had been made in the Second Criminal Law Amendment Act for the refusal of bail to people continuously involved in violence and intimidation.

This law would conflict with the Charter for Fundamental Rights, which laid down that only the courts could decide on bail, but was passed in 1992. It was only valid for 12 months,

unless extended by Parliament. It was, however, extended for another 12 months by Parliament on June 24 this year.

The clause was incorporated in line with the provision in the National Peace Accord for special criminal courts to ensure that perpetrators of violence and intimidation would not "unnecessarily" be let out on bail, enabling them to become involved again in violence.

The ANC said on July 13 that Mr Nongwe, who is now on bail, was "greatly feared in Crossroads and that his being held in custody may open the way for a more frank investigation into the violence."

Both National Peace Accord spokeswoman Ms Val Pauquet and Mr Krull said the establishment of special criminal courts, also provided in Chapter 10 of the Accord, had not been implemented.



Interpreter union talks business

Senkai 247 - 28/7/93

By Shadley Nash

A NEW trade union for court interpreters was launched in Port Elizabeth last weekend. ~~(112)~~ ~~(122)~~

The decision to dissolve the Interpreters Association of South Africa (IARSA) and break away from the Public Servants Association was taken at a national congress of the now defunct IARSA. (252)

Resolutions adopted by the new union, the South African Court Interpretation Officers and Allied Workers Union (SACIOAWU), encapsulate a long standing belief that the status of the court inter-

preter should be upgraded.

One resolution calls on the Department of Justice and universities and technikons to introduce diploma and degree courses in "court language interpretations sciences".

Another resolution calls for "uniform regalia" for interpreters and notes they should be known as court interpretation officers.

The move by SACIOAWU to establish itself as a public sector pressure group is in step with moves by other public sector employees who have formed independent trade unions

— ELNEWS

Star 24/11/93
Case against ET builds up

THE Attorney-General of the Transvaal has received a dossier on the possible prosecution of Afrikaner Weerstandsbeweging leader Eugene Terre-Blanche. A case against TerreBlanche is pending after his refusal to testify before the Goldstone Commission inquiry into the invasion of the World Trade Centre. The A-G's office said it was possible more statements would be received — Sapa (252) (3000)

News ii

Sowetan 27/1/93

R70-m spent

A COMMISSION of inquiry into alleged maladministration in the Maritzburg City Council was told yesterday that R70 million had been misdirected over the past 10 years.

Concerned Citizens Association chairman Mr Arthur Lees-Rolf said this had contributed to the R300 million debt the city was carrying (252)

The commission, which is being chaired by former Attorney-General Mr Cecil Rees, will sit again on August 18

NEWS Fresh lead in Cape Town church attack ● Caprivi Strip trainee testifies

Cop says he was told to kill

Sowetan 29/7/88

A KWAZULU policeman told a Goldstone Commission hearing yesterday that he was given an AK-47 rifle and ammunition by Inkatha Freedom Party members and KwaZulu officials.

He was told to kill people creating problems for the IFP in Esikhawini township, near Emprangeni.

The policeman, who may not be identified, said he had been recruited by the IFP in Natal to undergo training by the South African Defence Force in the Caprivi Strip. He returned in 1987 after training with 200 other recruits.

He was giving evidence to a Goldstone hearing in Durban investigating the KZPs alleged involvement in violence in Natal.

The purpose of this training, the policeman said, was to protect members of the South African and KwaZulu governments, he was told. On his return to South Africa he spent nearly a year

recruiting IFP members before joining the KwaZulu police in Esikhawini.

Later members of the KZP confiscated the weapon from the policeman, apparently following intervention from the South African Police (SAP).

Although he was not arrested by his colleagues, despite the severity of the offence (possessing an illegal firearm), the policeman testified that he was afraid of action by the SAP.

He said later disclosures about the confiscation of another incident in which he was shot while patrolling with the KZP, and threatening phone calls to him, led him to fear for his life.

He said he suspected recourse from his mentors and contacted Lieutenant-

Colonel Frank Dutton, a Goldstone Commission investigator, because he wanted protection under the witness protection programme.

The hearing continues. — Sippa

IFP 'gave me AK-47'

Star 29/1/93

DURBAN — A KwaZulu policeman told a Goldstone Commission hearing yesterday that he was given an AK-47 rifle and ammunition by Inkatha Freedom Party members and KwaZulu officials and told to kill people creating problems for the IFP in Esikhawini township, near Empangeni.

The policeman, who may not be identified, said he had been

recruited by the IFP in Natal to undergo training by the South African Defence Force in the Caprivi Strip (252)

The purpose of his training, he was told, was to protect members of the South African and KwaZulu governments

On his return in 1987 he spent nearly a year recruiting IFP members before joining the KwaZulu Police — Sapa

Weapons amnesty yields 'only 15' AK-47s

Staff Reporter

(257) (34)

AS the 60-day amnesty period for handing in "weapons of war" draws to a close, the police admit they are "quite disappointed" to have been given only 15 AK-47s, an Uzi sub-machine gun and two practice grenades

But Captain Louis le Roux of the Weapons Unit said: "Each AK handed in translates into lives saved".

Meanwhile, the African National Congress say they are not surprised public response had been so poor, accusing the government of "piecemeal legislation" and ignoring the problems

of the mountains of weapons in white hands **FRG 29/7/93**

In an attempt to rid society of the "curse of the AK-47" and other weapons of war an amendment to the Arms and Ammunition Act came into operation on June 1.

Under the Act any person found in possession of these weapons faces a mandatory jail sentence of five to 25 years.

A 60-day moratorium was put in place to allow people to hand weapons over without fear of prosecution. The amnesty expires on Saturday.

In a statement yesterday, chief police public relations officer Major General Leon Mellet said that in spite of the amnesty, attacks and murders, "especially with AK-47s", had continued to escalate

Between June 1 and July 27, 633 people were killed in unrest related incidents nationally

"In at least 120 of these incidents AK-47s were used," said General Mellet.

Captain Le Roux said the Weapons Unit was doing its utmost to "rid the streets of AK-47s"

ANC chief spokesman Mr Carl Niehaus said the ANC agreed there should be a decline in the numbers of weapons around

"But we don't believe you can treat the AK-47 in isolation, without considering the problems of the huge arsenals of weapons in white hands

"We are concerned about this piecemeal approach. As long as it prevails, it is not surprising people are not coming forward with weapons

"We would like to see proper legislation passed with regard to the carrying of weapons in public"

Arms amnesty has 3 days left

252

CT 29/7/93

THE St James Church massacre — which pushed up the number of deaths in unrest-related incidents countrywide over the past two months to 664 — has prompted police to warn that the amnesty on having AK-47s and other weapons-of-war expires in three days

SAP national chief liaison officer Major-General Leon Mellet warned yesterday that

persons found in possession of unlicensed automatic rifles and other weapons-of-war after July 31 face a mandatory prison sentence of five to 25 years

“And the minimum sentence will be five years with no option of a fine or parole,” he said

“Amendments to the Arms and Ammunition Act came into effect on June 1, but it was decided to soften the severity of the penalties by allowing a 60-day amnesty during which persons could hand over any unlicensed automatic rifles or other weapons-of-war

Police welcome ANC aid offer

Staff Reporter

POLICE yesterday welcomed the ANC's offer to assist in tracking down the killers involved in the massacre at St James Church in Kenilworth — and said they “would accept” any assistance — even from the PAC

Police public relations chief in the Western Cape, Colonel Raymond Dowd, said the ANC offer to assist in tracking down the perpetrators “is welcomed”

“We welcome the ANC's offer to help. However, it must be kept in mind that no one must take the law into their own hands,” Colonel Dowd said

Colonel Dowd said the police would welcome any assistance they received, even if it came from the PAC

“The police have received many calls from the public offering financial assistance for the reward. However, we have redirected these offers to the mayor's benevolent fund,” Colonel Dowd added

without fear of prosecution

“Some people appreciated the seriousness of the penalties and handed in 15 AK-47s, an Uzi and a couple of practice grenades

“But, during the period of the amnesty we have had 664 people killed in unrest-related incidents

AK-47s being used on 120 occasions”

Gen Mellet said that police confiscation hauls in the past five months had included 348 AK-47 rifles, 32 other automatic rifles, 653kg of explosives, 101 hand-

grenades, 15 mortars and 21 036 rounds of AK-47 ammunition.

“South Africa can no longer tolerate wanton slaying of citizens,” he said, “and it is now time for all peace-loving South Africans to assist the police in restoring peace and stability in our country

“In the light of the fact that only four days remain of the amnesty period, the South African Police wish to urge anybody in possession of AK-47s or other weapons-of-war to hand them in” — Staff Reporter, Sapa

Star 29/7/93

'Polish SAP's image'

Pretoria Correspondent

There is a need to take the SAP to the cleaners to improve its image, ANC PWV chairman Tokyo Sexwale said yesterday.

He was giving evidence to the Goldstone Commission committee inquiring into attacks on policeman. The committee is chaired by Gert Steyn, assisted by Seun Moshidi (252).

Policemen should stop beating people up, and should be more investigative rather than confrontational in their approach, Sexwale said. Some policemen were thugs wearing SAP uniforms, and they should be

rooted out of the force.

He condemned Minister of Law and Order, Hennis Kriel.

He also called for the removal of Law and Order Ministry spokesman Captain Craig Kotze, whose statements he likened to someone carrying lighted matches in a room full of dynamite.

Sexwale said the proliferation of unlicensed firearms was a worrying matter, especially in this period leading up to South Africa's first nonracial elections.

He added that since the suspension of its armed struggle, the ANC had never had a policy of attacking policemen.

Experts to aid probe

Sowetan 30/7/93

Sowetan Correspondent

THREE experts have been called in to help with the investigation of last week's controversial Essenwood Road shooting drama.

The ANC has called in an outside ballistics expert and the Goldstone Commission agreed to two foreign police experts becoming involved (252) (251)

Police on Wednesday recreated the scene of the incident for the benefit of an independent ballistics expert called in by ANC lawyers and Mr Justice Goldstone has announced that the commission had acceded to a request from the regional commissioner of the SAP in Natal, Lieutenant-General Colin Steyn, for two foreign police experts to work with investigators.

These latest developments in the controversial incident — in which police shot and killed five suspected armed robbers — follows accusations and denials of police having acted without provocation. Three of the men killed were members of the Umkhonto we Sizwe.

deputy president visit Botswana

Panel to table results

THE panel appointed by the Goldstone Commission to investigate a wave of corruption, violence and intimidation before and during SA's first multiracial election will present its findings in a report to the Commission chairman, Mr. Justice

Richard Goldstone said the panel's terms of reference included rules of conduct for public meetings, the policing of polling stations and the police's responsibility for violence and intimidation of the type feared during which voting should take place.

It had also been tasked to investigate

- The location of polling stations,
- The conduct and procedures relation

to the counting of votes. Referring to measures during the period following the conclusion of the election and

● The respective roles of the government department, the SA Police and the international community.

Judge Goldstone said panel chairman C. Ruff would be presenting the findings to the commission in Cape Town on Wednesday August 4.

The commission would hear further submissions on August 5, 10 and 13 before presenting its overall findings to State President FW de Klerk. — Sapa

Lackling horrors here, there, everywhere

A South African network of Amnesty International groups aims to focus on global as well as local abuses. By **Alex Dodd**

Wm 307-5/8/93

(252)

STARING into their cornflakes over CNN horror shows has become anaesthetising for many, but there's a group of South Africans who just couldn't stomach it. Their outrage over global human rights abuses catalysed the formation this year of a network of local Amnesty International groups.

The groups, in Johannesburg, Pretoria, East London, Pietermaritzburg, Durban and Cape Town, are still in their infancy, but aim to generate a stronger culture of international human rights awareness here.

"One of the problems Amnesty International faces is that people here want to work on human rights abuses in South Africa," says a founding member of the Johannesburg group, Paul Gready.

Many South African human rights activists argue that there's little point in focusing on the wrongs of President Idriss Déby in Chad when they're witnessing their neighbours' heads being blown off in Katilehong. Amnesty has a ruling which predominantly excludes activists working on human rights violations in their own countries. Although the adoption of local campaigns on certain issues such as the death penalty and human rights education is part of the groups' agenda, local abuses are generally handled by memberships in other countries.

The South African groups will devote themselves to particular cases in, for example, Vietnam or Nicaragua. Though this mandate seems oblique, it "puts a distance between the human rights activist and the human rights situation

they're addressing", says Amnesty activist Mark Sifits, who is a law student at Wits University.

It ensures impartiality, he says, adding that it was this feature which first attracted him to the organisation. "Amnesty sets an international standard which stops different standards being adopted in different countries. It tries to be an international human rights organisation, as opposed to a federation of national organisations all over the world."

"Amnesty views human rights abuses as unacceptable, no matter what. It has no political bias, so it doesn't matter what views you hold."

In the South African context, this means Amnesty is obliged to publish reports on both security force complicity in violence and the African National Congress' torture camps.

"We have a policy of taking on anything from Pinochet in Chile to the Sandanistas in Nicaragua," says Gready. "All countries are worked on, regardless of changing political regimes."

He adds: "The value of a comparative perspective is underestimated."

"Take Chad, for example," says Sifits. "It's an ethnically diverse nation which has had a history of violence. A new government came in in 1990, making all kinds of promises which have not been delivered."

"Déby promised a commission of inquiry into past abuses by the state, with prosecution of the perpetrators. Nobody has been brought to trial or prosecuted. And he soon went back to the old ways. In April this year, the armed forces killed 100 civilians and Déby put it down to 'uncontrollable



Fostering awareness ... Paul Gready and Mark Sifits. Photo LUANNIE CADDD

elements. Now they're working towards multi-party elections — sound familiar?"

Another contentious issue for South Africans is Amnesty's non-violence clause, which is non-negotiable. It will not condone violence in any situation. As a result, it is not willing to view political prisoners who have adopted violence as part of the armed struggle as prisoners of conscience.

"Once you start talking up prisoners who have advocated violence, you hit a minefield," says Gready. "It undermines Amnesty's aspiration towards a humane society and it smacks of double standards: why is some violence acceptable and some not? Also, there is tremendous difficulty in determining what is political and what is criminal violence."

"A series of political decisions would have to be made which would ultimately render Amnesty partial."

"The South African situation is worked on in other ways. People tend to overlook that Amnesty has been working on other stuff here all along. Torture, the death penalty, hit squads — all fall within Amnesty's mandate." Although Amnesty's mandate is fixed on certain issues, it has evolved

in other areas. The most recent changes came out of the 1991 International Council meeting, where it was decided that the organisation had to take a tougher stance on opposition group abuses, such as those in the ANC's detention camps. It was also decided that gay prisoners should be addressed as an explicit category under prisoners of conscience, rather than their cases being tackled through other avenues.

One of the criticisms most often levelled at Amnesty is that it has an imperialist bias — its work is coordinated from its London head office. India has been one of the countries which insists that human rights are an "own affairs" issue. Religiously and culturally, these countries say, there are differences in beliefs about what human rights are.

"Those countries with 'own affairs' rulings on human rights generally don't have very good records," Gready says. "We have membership in over 150 countries and it's true that the majority are in the West."

"But Amnesty does not rank countries by their level of human rights abuse. We don't focus on Third World countries more than others."

It's not easy to eradicate apartheid

Chris Louw

(3044) (252)

w/m 30/7-5/8/93
not be in place before the election campaigns started.

THE technical committee commissioned by South Africa's negotiators to look at the repeal of discriminatory legislation has accepted defeat: apartheid is so pervasive that it cannot be eradicated before the country's first democratic elections.

Instead, the committee has now proposed that a "higher electoral code" be introduced that will override all discriminatory laws impeding election campaigns.

"The ultimate goal should be to get the election results accepted by all participating parties," committee member Professor Gerhard Erasmus said in an interview this week.

The real problem, he said, was that an interim constitution and a bill of fundamental human rights might

The "higher electoral code" — to be made law by parliament if accepted by the negotiating council — will ensure fairness in the run-up to the elections. It will outweigh any discriminatory legislation that may still be in place.

According to Erasmus, it proved an impossible task to identify all discriminatory laws. "Even if most of them are repealed, there is no guarantee that they are all caught in the net."

The problem is complicated by the fact that apartheid was not only entrenched in laws accepted by parliament. It extended to municipal regulations and bylaws which might be misused to discriminate against certain parties.

Court interpreters form new union

Shadley Nash in Port Elizabeth

ZINGILE HENRY NGUNQUTHA became an interpreter in 1969 because he hoped to use the profession as a stepping stone to a career in law.

Now, 24 years later, the 44-year-old father of four is still a lowly paid court interpreter who has "felt the pain" of translating patently unjust laws.

As a member of the recently established South African Court Interpretation Officers and Allied Workers' Union (Sactioawu) his aim is not to change the laws but to improve the lot of the "conduit pipe of the court", the interpreter.

The decision by court interpreters to dissolve the Interpreters Association of the Republic of South Africa (Iarsa) and break away from the Public Servants Association (PSA) was taken at the annual congress of the now defunct Iarsa two weeks ago in Port Elizabeth.

Resolutions adopted at the congress reflect the long-standing belief that the lot of the court interpreter needs to be improved. One

way in which Sactioawu intends doing this is to "persuade" the Department of Justice and some universities and technicians to introduce diploma and degree courses in "court language interpretations science".

"We as interpreters do not get the rightful recognition either by way of treatment or payment from the relevant authorities," Ngunquutha said.

He is supported in this belief by former Iarsa president Timothy Xhamela, who said interpreters felt they were not being recognised because "they have no professional qualifications".

Xhamela said the status and qualifications of the interpreter needed upgrading as they played "a key role in the judicial process".

A former interpreter who now heads the Department of African Languages at Rhodes University, Professor Peter Mtuzi, was more emphatic about the role of the interpreter in the judicial process, saying "South Africa would not have survived without them".

Mtuzi said the role of the interpreter would be crucial in a new South Africa, and more so now that

language policy questions were being dealt with.

"Language does not have to be studied formally in the case of the interpreter but basic linguistic training will be crucial — especially when people want to be addressed in their mother tongue," he said.

Having worked the court beat for eight years between 1961 and 1968, he said interpreters were always viewed as "second class" within the judiciary and the profession was a "cul de sac" for those with ambitions.

In a paper delivered at the annual congress, Benoni-based advocate Tokwane Moloto, who is advising Sactioawu during its transition to a trade union, said there was an "imperative need" to look after the interests of the court interpreter.

"The status of the court interpreter was degraded to that of a spanner boy in the Department of Justice and interpreters were inferior in status to other court officials," he said.

The move to establish the union as a public sector pressure group is in line with moves by other public sector organs such as the police and prison officials' union and the South

252

WJM 20/7-5/8/93

Newly elected secretary, Dumile Siko, an interpreter at the Cape Town Supreme Court, said grievances and "other demands" by Iarsa were given the "cold shoulder" by government.

"The PSA worked within certain parameters and their actions proved they were toothless."

"We needed an organisation that was stronger and more formidable, which will be able to fight for the rights of interpreters and clerks," he said.

Among the resolutions adopted by Sactioawu was that interpreters will now be known as court interpretation officers, that there should be a "uniform regalia", and that steps should be taken to arrange with the Department of Justice that diploma and graduate courses be offered to interpreters.

An interim committee, based in Cape Town, has been established to work on a constitution for the new union which will seek affiliation to the Congress of South African Trade Unions (Cosatu).

"We wanted to be recognised and paid a living wage," Siko said — Pen

'I didn't meet Ciskei govt' — Nongwe

South 317 - 4/8/93

By Sabata Ngcai

CROSSROADS leader Mr Jeffrey Nongwe says he visited the Ciskei squatter camps last week to recruit more members for his Western Cape United Squatters Association (Wecusa).

He vehemently denied he had met the members of Ciskei's ruling Council of State. (252)

Nongwe and his entourage are reported to have held talks with the Ciskei Council of State.

This was revealed in testimony given this week to the Goldstone Commission hearing by Mr Conrad Sandile, a member of Nongwe's delegation to Ciskei.



JEFFREY NONGWE

Sandile is a deputy chairperson of Wecusa and the organisation's

housing director.

Though the Ciskei Council of State could not be reached for comment, the Ciskei consulate in Cape Town confirmed the meeting although it refused to reveal who attended.

Nongwe emphasised he wanted Wecusa to become a national organisation. (252)

He said squatters all over the country were suffering and he had found it necessary to extend the membership of the organisation.

Nongwe said he wanted to make sure that "squatter residents lead a better life".

As to whether he was driving Wecusa to become a political party one day, Nongwe refused to commit and referred the question to the organisation.

The ANC said it had no problems about Nongwe's trip because he travelled to Ciskei as a representative of Wecusa and not the ANC.

A right to life...

Soukri 31/7-4/8/93

By Christelle Terreblanche

AN UNQUALIFIED right to life is one of 32 principles contained in the sixth draft Bill of Rights tabled this week at the World Trade Centre by the technical committee on fundamental rights.

Observers said little comment has been evoked by this clause, which has wide implications for the death penalty and abortion.

If the draft is accepted for the interim process, the death penalty will conflict with it, but it also makes no provision for abortion to be legalised. It is understood that until an elected constitution-making body draws up a final bill, no death penalties will be carried out.

The draft has been referred to a technical committee for final adjustments (252)

Rights that would be contained in a final bill are not necessarily included in this draft.

Too much depends on central government, say delegates

Clearing way for debates

Star 31-1/93

JOHN PERLMAN
Chief Reporter

THE Negotiating Council at the World Trade Centre yesterday continued to try to clear the ground for the tough debates ahead on the draft constitution and a Bill of Rights for the transition — with mixed success.

Debate on the council floor produced some clarity in the complex wranglings over what powers regional governments should have, but consideration of the technical committee's report on the Bill of Rights saw traditional leaders insisting that customary law was not being accorded its due place.

Opposed

Delegates — excluding those from the Inkatha Freedom Party, the KwaZulu government and the Conservative Party — heard debate about how constitutions for the state, provincial and regional governments would be drawn up.

The Afrikaner Volksunie (AVU) and Bophuthatwana government again opposed the idea that the elected legislature of the government — as opposed to appointed regional representatives — should draw up a constitution or even decide it did not need a constitution.

They argued that regional powers still de-



TO THE POINT Bophuthatwana's chief negotiator at the World Trade Centre, Rowan Cronje, gets his views across to a fellow delegate.

pend too much on central government for their granting.

"Regions in this constitution remain a big 'if'," said Coria Kruger of the AVU. Everything, she said, "hangs on the balance" of the central government.

Joe Slovo of the SACP said the ANC and its allies had already made concessions, "a 180-degree turn" on regions

"One aspect from which we cannot depart is that whatever texts are prepared it is still the elected representatives of the people in the region that must decide. We can't bind them in this forum," he said.

Moolman Mentz of the AVU said the constitution of a region should be drawn up by "a body like this one."

Bophuthatwana's

chief negotiator, Rowan Cronje said that while regions were "provided for," they were "dependent on and controlled by central government without a little bit of autonomy to think and do for themselves."

That, he said, was "our central problem."

The council was not looking to make any decisions. This week's discussion was intended to

air views so that the technical committee which drew up the Interim Constitution could produce a second draft.

Even so, Slovo said the debate was "one of the most important discussions we have had."

This whole question of regions goes to the future of our country and the future of our negotiating process."

The document tabled

on "fundamental rights during the transition" — the seventh report of this committee — included several changes made after debate on July 21.

Among them was a detailed description of what constituted discrimination, which would not be allowed "on the grounds of race, gender, ethnic origin, colour, sexual orientation,

age, disability, religion, conscience, creed, culture or language."

The document prompted strong objections from Chief Mwele Nonkonyana of the Cape Traditional Leaders. It also drew criticism on different issues, from the Democratic Party. Nonkonyana said the "whole thing" was based on "Western culture" which was being "imposed over

Challenged

The DP's Tony Leon argued that the Bill of Rights should not just have "vertical application" — where citizens could challenge the State — but also "horizontal," where citizens could challenge each other as well as non-governmental institutions.

The DP also challenged the proposed "interpretation" of the Bill which would seek to promote "the values which underlie a free, open and democratic society based on a principle of equality." Leon said liberty should be included as a principle of equal standing with equality.

"The courts should evaluate where liberty should prevail and where equality should prevail," he said. "I regard this Bill as more important than the constitution."

and above our culture." Traditional leaders' submissions about this had been ignored. The question of "culture and custom to the people of this country is fundamental," he said.

Professor L M du Plessis, convener of the technical committee which drafted the document, said traditional leaders' objections had been addressed by a clause which stated that rights recognised and conferred by indigenous law remained in full force. However, these could not limit any rights entrenched in the document. Nonkonyana said this was contradictory, reflected "an urban bias" and made customary law subordinate to Roman-Dutch law.

P.T.O. 7

On Monday Ciskei ruler Brig Oupa Gqozo will be called to account before an inquest into the death of two of his political enemies. It may be the biggest crisis of his erratic 40-month rule. PATRICK GOODENOUGH of Ecna reports.

Sebe reaches out from grave to haunt Gqozo

CIPress 118193

105 252

WHEN Brig Oupa Gqozo steps into the witness stand on August 2, his lawyers will be holding their breath. The Ciskei military ruler's testimony will have been carefully prepared, but Gqozo is not known for his discretion.

It was a careless tongue that landed him in the dock in the first place.

In the early hours of January 27 1991, Charles Sebe and Onward Guzana drove into Ciskei expecting, by all accounts, to be hailed as heroes by officers who had just ousted Gqozo.

But the men who had approached them in Um-tata a month before with this pleasing proposition had another agenda. Gqozo's covert intelligence unit, led by former SADF officers, lured the two men back home in a plot as cunning as those Charles Sebe himself had woven when he was Ciskei's top policeman in the early 1980s.

Instead of acclaim, the rebels were met at a road-block by a hail of bullets. Guzana died at the scene, and the ever wily Sebe slipped away into the night. Some time later Tese Dwashu, a former chief of a nearby village, notified the Ciskei Defence Force that the wounded fugitive was hiding in a shop behind his house. (He was paid R5 000 for his trouble).

Soldiers led by CDF chief Brig Andrew Jamangile arrived on the scene and called on Sebe to surrender. According



INQUEST ... Brig Oupa Gqozo to appear.

to evidence from soldiers on the scene, he emerged unarmed, and Jamangile told Sgt-Maj Thozamile Veliti, a member of Gqozo's bodyguard, to radio for instructions.

The order came back, the inquest has heard, and Veliti opened fire.

"He was poison," Gqozo crowed later. "We blew him."

The marathon inquest into the two deaths began in the second half of 1991. Ballistic and medical experts were consulted and a score of soldiers testified.

The homeland's former police commissioner, former head of military intelligence, former CDF chief, former head of staff operations and former commander of 1 Ciskei Battalion all gave evidence pointing to a carefully conceived plan to end the real or perceived threat posed by Sebe and Guzana.

Weight was lent to the allegation by Gqozo himself in an interview published six days after the incident. "People loyal to me fooled Charles into

believing he had their support. They wanted to trap him because he had caused the country a lot of misery."

Investigators have faced difficulties.

■ A young soldier died, reportedly in a motor-accident, shortly after giving evidence. A friend alleged Rifleman Mzwék-haya Xotyeni had been threatened and assaulted after testifying.

■ The sister of a witness was assaulted by men demanding to know his whereabouts. Her brother, a lieutenant-colonel, had earlier testified that Gqozo had given direct instructions that Sebe and Guzana be killed.

■ Former police commissioner, Gen Zebulon Makuzeni, claimed Gqozo had initially refused to allow investigating officers to question "certain people" - among them Veliti.

■ An original video-recording taken at the road-block was found to have been destroyed, and the court had to make do with an edited version.

■ Gqozo tried repeatedly to dodge appearing. He submitted three affidavits, saying he was too busy to give evidence, denying having ordered the deaths, and arguing that his order to troops to "search and destroy" did not necessarily mean Sebe should be killed.

Finally he issued two decrees exempting him from having to give evidence in court or quasi-judicial proceedings. Early this year Ciskei's Appeal Court threw them out.

Interim bill must not fail

STIMES 11/8/93

CARMEL RICKARD says the bill of rights being debated at the World Trade Centre has serious flaws

CURIUSER and curiouser The draft interim bill of rights being debated at the World Trade Centre is a creature like none seen before

Successive drafts reflect the difficulties of the technical committee. For example, the parties have given conflicting signals about the bill they want, something brief with only those rights essential for transition, or, since it could be effective for several years, a full bill interim in name only?

The technical committee — from which the country's best constitutional lawyers are notably absent — has also had to accommodate the parties' sometimes conflicting political demands. The result is a mere shopping list of rights, lacking coherent philosophy

Drafting problems promise rich pickings to lawyers. Some clauses will give the judges wide powers in decision-making, other clauses seem based on the fear of giving them very much scope at all

The Democratic Party, however, is worried about more than simple drafting problems

A key concern stems from the important limitation and interpretation clauses, which

speak of a "free, open and democratic society based on the principle of equality"

With this formulation the drafters have clearly decided that liberty must be subordinated to equality. This far-reaching philosophical decision will bind the courts in interpreting the bill. Yet no adequate mechanism has been devised for debating the issue at the World Trade Centre

In well over two hours on Friday representatives had dealt with only the first clause. Even then two major issues had been merely mentioned — the DP's problem with the limitation and interpretation clauses, and the traditional leaders' concern that customary law was being "swamped" by Western legal concepts

These are no mere academic quibbles. The country cannot afford this interim bill of rights to fail. Suspicion of the rights concept still lingers and short-term failure could jeopardise a final bill.

The interim bill should not promise more than it can deliver — which this one does. It should not anticipate decisions of the elected constitution-making assembly, binding the country to a form of democracy in which liberty is downgraded — as

(252)

this one does. It must be clear enough to keep to a minimum delays caused by clarifying ambiguities — another problem predicted for the bill

So what can be done about the draft?

The best suggestion came from the technical committee itself on Friday.

It recommended that the Chief Justice, the Judges President and various lawyers' organisations should all be asked to look at the draft bill of rights and comment on its legal implications

An excellent idea

The input of the judges has been sadly lacking so far. However, the bill should also be sent for comment to the South African Law Commission

With its many years of research, the commission could significantly improve the draft

Thought must also be given to the mechanics of adjudicating the interim bill

Special speedy procedures must be developed, or few if any cases will be complete before the final bill of rights, approved by the constitution-making assembly, replaces the interim bill

For example, if the court gave rulings only instead of detailed judgments, this

would mean quicker decisions and avoid building up a body of jurisprudence based on a soon-to-be-obsolete document

In addition, the court which adjudicates the interim bill should also be temporary. While its members might subsequently form the permanent constitutional court, the break between the two courts needs to be made very clear

Thus the all-important constitutional court will not be tainted with any failure of the interim bill

The technical committee has been hamstrung by competing political demands, and the resulting document bears telling scars

While more than cosmetic surgery is needed on the interim bill, the politicians are in a hurry and want the draft ready as quickly as possible. If an unsatisfactory bill of rights is rushed through, the next best remedy lies in shortening the life of the interim bill

Work by expert constitutional lawyers must start on the final bill as quickly as possible. They should have a draft ready for discussion by the constitution-making assembly almost as soon as it starts its historic first sitting.

Cindi inquest: 'It was an execution'

C/Press 1/8/93

By BERENG MTIMKULU

AN inquest into the death of Soweto shebeen king Amos Cindi this week heard how he was shot in cold blood by cops in December 1989 (252)

Evidence from his wife and a neighbour was that at midnight black and white policemen stormed into the Cindi household in Zola

Cindi was shot dead during the raid. As he lay in a pool of blood, his wife Nonhlanhla Cindi, said she was told by a black cop "This is your Christmas (gift)" The other cops had laughed

Minutes later she was taken to open veld between Naledi and Zola and tortured, the court heard

Nonhlanhla said at about 11 45 am she was woken by the clump of footsteps in their yard. She peeked out and saw four white men and a black man directing their torch beams on her window

Her husband had cautiously opened the door and a "white hand" wrenched him out of the house. The door was shut and Nonhlanhla had tried to wrestle it open

"I then heard about six or five gunshots"

She screamed. Then a black man materialised out of the diningroom demanding Cindi. He was followed by

three black men. They hustled her out, and took her to veld where a rubber tube was put over her face and her private parts were fingered, she said

Neighbour Themba Nkula told the court he was woken by the sound of gunshots from the Cindi home. He peeped out his window and saw two white men and Cindi in his sleeping shorts

Cindi, covered in blood, was pushed into Nkula's yard and Nkula saw him collapse, shudder and lie motionless in a pool of blood. He then saw one of the white men - with gloves on - take out a white cloth and a firearm from his waist. The man wiped the weapon with the cloth

He said another white man carrying a briefcase appeared. He took out a plastic bag, emptied the bullets from the chamber into a bag and placed the bag in the briefcase

He then placed the firearm in the hand of Cindi and took out a camera from the briefcase. The men took photographs of Cindi holding the firearm, Nkula told the court

He said Cindi's wife then appeared with a black man. He heard the man tell her "this was her Christmas" as they looked at Cindi. Then two men in white overalls appeared and took Cindi's body away on a stretcher

Inkatha man given AK to 'plough' with

Capriess 11/8/93

By SIPHO KHUMALO

CONTROVERSY over 200 Inkatha members who were secretly trained by the SADF in the Caprivi strip continues to haunt KwaZulu with revelations this week that the men were trained to kill Inkatha's opponents

This was said in testimony to the Goldstone Commission by a former trainee, who joined the KwaZulu Police after his training (252)

The commission is probing allegations KwaZulu cops have been involved in violence

The man's identity is covered by a witness protection programme. He was referred to as "the constable". (157)

Testifying before Commission chairman advocate Malcolm Wilks, the constable said that while based in Esikhawini near Empangeni he was given an AK-47 rifle by three Inkatha members

He was told that it was to be used to "plough" through the township's

sections H1 and H2

Esikhawini is a hotbed of warfare between Inkatha and ANC supporters

The constable said that in 1986 the "advisor" attached to his Inkatha branch recruited him to join the 200 Inkatha men training in the Caprivi

"I was told that I was being trained to protect the government of South Africa and KwaZulu and to attack people who did not belong to Inkatha and people who did not like KwaZulu"

The constable said that at the camp in the Caprivi there were discussions about what would happen if they were caught with a gun or for shooting someone

"I was told that if I carried out my instructions I was not going to be arrested" (118)

After finishing his training he worked as part of Inkatha's recruitment team in the office of the national organiser in Ulundi (87A)

Pressed by Wilks on

whether it was part of his job to attack people who did not belong to Inkatha, the constable confirmed this. However, he added that he had not had an opportunity to do so

The constable told how 160 of the Caprivi trainees were absorbed into the KZP and the constable had joined in 1987

While stationed in Esikhawini three Inkatha members - Joyful Nyambose, Peter Msane and Daluxolo Luthuli - handed him an AK-47

The three trained with the constable in Caprivi. Luthuli was an MK cadre who fought in the Wankie Operation but later joined Inkatha and is based in Ulundi

Luthuli was a political commissar during the training in Caprivi

"They said that the firearm was going to be ploughing between H1 and H2 sections. I was complying with instructions they could have told me anything and I could have done it," he said

Child witnesses to be treated with kid gloves

Weekend Argus Correspondent

DRASTIC changes in the submission of evidence by child witnesses have been brought about by the implementation of sections of the Criminal Law Amendment Act.

Minister of Justice Mr Kobie Coetsee announced that sections 1, 2 and 3 of the Act had come into effect at a Press conference at the Pretoria Magistrates Court yesterday.

"Young witnesses may, in terms of these amendments, give evidence somewhere other than in court, so that these witnesses are not exposed to an unfamiliar court atmosphere," Mr Coetsee said.

In practice this will mean that child witnesses, assisted by an intermediary, will give evidence via electronic equip-

ment such as closed circuit television in a room next to the courtroom without coming into contact with the accused, his lawyer or the prosecutor.

The child is placed in a comfortable environment, with dolls or toys if necessary, and is observed on a video screen by everyone in court.

According to Mr Coetsee, these measures will ensure that young witnesses in criminal cases are not interfered with or intimidated.

He stressed that the implementation of these measures would not result in the lowering of legal standards, but would rather lead to greater justice in cases where young witnesses were in the past unwilling to give evidence, for fear of revenge, out of ignorance or discomfort.

ARG 11/8/93
The electronic equipment to be used will be installed in 10 supreme courts and 59 magistrates courts across the country, at a cost of R815 000.

New courts are specially being designed to provide for these measures. It is envisaged that a one-way mirror would be installed in order to view young witnesses from the court, which would make the use of video equipment unnecessary.

Only sound equipment need be installed in these new courts.

"The measures should be viewed in conjunction with initiatives such as the implementation of specialist rape and child molestation courts, for example at Wynberg," Mr Coetsee said.

Draft Bill of Rights Star 318193 shot down

Political Correspondent

Negotiators yesterday again deferred debate on the Interim Constitution unveiled in the Negotiating Council last week, turning their attention instead to the draft Bill of Rights which they tore apart (252)

Before debate even began yesterday afternoon on the fundamental rights during the transition, the Democratic Party's Houghton MP and justice spokesman, Tony Leon, issued a statement severely criticising the proposed Bill of Rights, which he said would not guarantee property rights

Leon, who has crossed swords with the technical committee on fundamental human rights since debate on the draft Bill began in the council last week, said the proposed Bill of Rights would extinguish liberty, put private property at risk and create a socialist command economy.

"We warn existing and future property owners that the Bill of Rights, far from guaranteeing rights in property, does the reverse.

"It renders the individual homeowner vulnerable in any international human rights covenant of the Western world," he said

As in the case of the Interim Constitution, various parties and organisations have found aspects of the proposed Bill objectionable.

The ANC and the Pan Africanist Congress, among others, argue that it lacks "horizontality" and would be interpreted by "white-dominated courts"

Traditional leaders say it subordinates them, and the DP says it does not adequately protect property rights

Bill of Rights to be reconsidered

TIM COHEN

NEGOTIATORS decided yesterday that several clauses in the proposed interim Bill of Rights should be reconsidered after the DP and the PAC argued that the Bill did not sufficiently entrench liberty.

DP negotiator Tony Leon said the proposed Bill would extinguish liberty, put private property at risk and create a socialist, command economy. (252)

"We warn existing and future property owners that the Bill of Rights, far from guaranteeing rights in property, does the reverse. It renders the individual homeowner vulnerable in a manner quite unprecedented in any international human rights covenant of the Western world".

The way the Bill was framed suggested that if the liberty of the individual conflicted with governmental bureaucratic attempts to impose an egalitarian society, the latter would prevail and the courts would be powerless to intervene. 3/8/93

A future ANC would be much comforted by the severe limits put on any independent court wishing to inquire into the decisions of a future government, he said.

The NP's attempt to pose as guarantor of individual liberty, a property owning democracy and a free enterprise economy was nothing but a hollow sham, Leon said.

The main contentious issue discussed by negotiators yesterday was whether government administrative decisions should be "reasonable" as well as lawful and pro-

To Page 2

Bill of Rights

Biday 3/8/93

From Page 1

cedurally fair. The exclusion of the concept of "reasonableness" would mean that administrative decisions of government could not be attacked in court on the basis that they were unreasonable. (252)

The Bill's drafters suggested the inclusion of the concept of reasonableness would have far-reaching consequences and therefore did not support its inclusion.

Drafting committee member Zac Yacoob argued that the committee did not intend to close the door on the further development of SA administrative law.

Other rights established by the Bill would deal with many of the problems raised by the objections, he said.

To include the concept of "reasonableness" would open the floodgates to litigation on every government decision.

Leon, supported by the PAC delegation, said that this would "ossify" and render sub standard SA administrative law.

The issue, along with others, was referred to a multiparty committee for further discussion.

No guarantees in bill of rights — Leon

Own Correspondent

JOHANNESBURG — Negotiators decided yesterday that several clauses of the proposed interim bill of rights should be reconsidered after the DP and the PAC argued strenuously that it did not sufficiently entrench liberty.

Mr. Tony Leon of the DP said the proposed bill would extinguish liberty, put private property at risk and create a socialist, command economy.

"We warn existing and future property owners that the bill of rights, far from guaranteeing rights in property, does the reverse. It renders the individual homeowner vulnerable in a manner quite unprecedented in any international human rights covenant of the Western world."

The way the bill was framed suggested that if the liberty of the individual conflicted with governmental bureaucratic attempts to impose an egalitarian society, the latter would

prevail and the courts would be powerless. A future ANC would be much comforted by the severe limits put on any independent court wishing to inquire into the decisions of a future government, he said.

The DP said it was amazed at the NP's meek agreement to these clauses, which could only mean that the NP's attempt to pose as guarantor of individual liberty, a property-owning democracy and a free-enterprise economy was nothing but a sham.

The main contentious issue discussed by negotiators yesterday was whether government administrative decisions should be "reasonable" as well as lawful and procedurally fair.

The exclusion of the concept of "reasonableness" would mean that administrative decisions of government could not be attacked in court on the basis that they were unreasonable. Mr. Leon was supported by the PAC delegation. The issue was referred to a committee for further discussion.

ASA 273K193

Stiff arms penalties as amnesty expires

ONLY 15 AK-47 assault rifles countrywide had been handed in to police by the time the 60-day weapons amnesty expired on Saturday

Now people found in possession of unlicensed automatic weapons and other "weapons of war" face prison sentences of up to 25 years, with a minimum of five years, with no option of a fine or a parole, a police spokesman said in Pretoria yesterday

An Uzi submachine gun and two practice handgrenades were also voluntarily handed in

In the first five months of the year police confiscated 348 AK-47s

193
Aug

Rural communities fight property clause

MARIANNE MERTEN

HUNDREDS of representatives from rural communities countrywide took part in two demonstrations in Johannesburg yesterday to protest against the rushing through of a Bill of Rights property clause in negotiations and continued forced removals.

Several hundred members from about 70 communities demonstrated outside the World Trade Centre in Kempton Park to oppose the inclusion of a property rights clause in the transitional Bill of Rights.

In an open letter to negotiators, protesters demanded the clause be scrapped because property rights were too important to be rushed through the "inaccessible" negotiation process. The matter should be dealt with after the election. Landless communities should be given the opportunity to make submissions so the matter could be fully

discussed in the negotiating forum

During the afternoon, about 50 representatives of the northern Cape's Khosis people protested outside Wits Command in central Johannesburg about SADF attempts to evict them from the Gatlöse Maramane nature reserve.

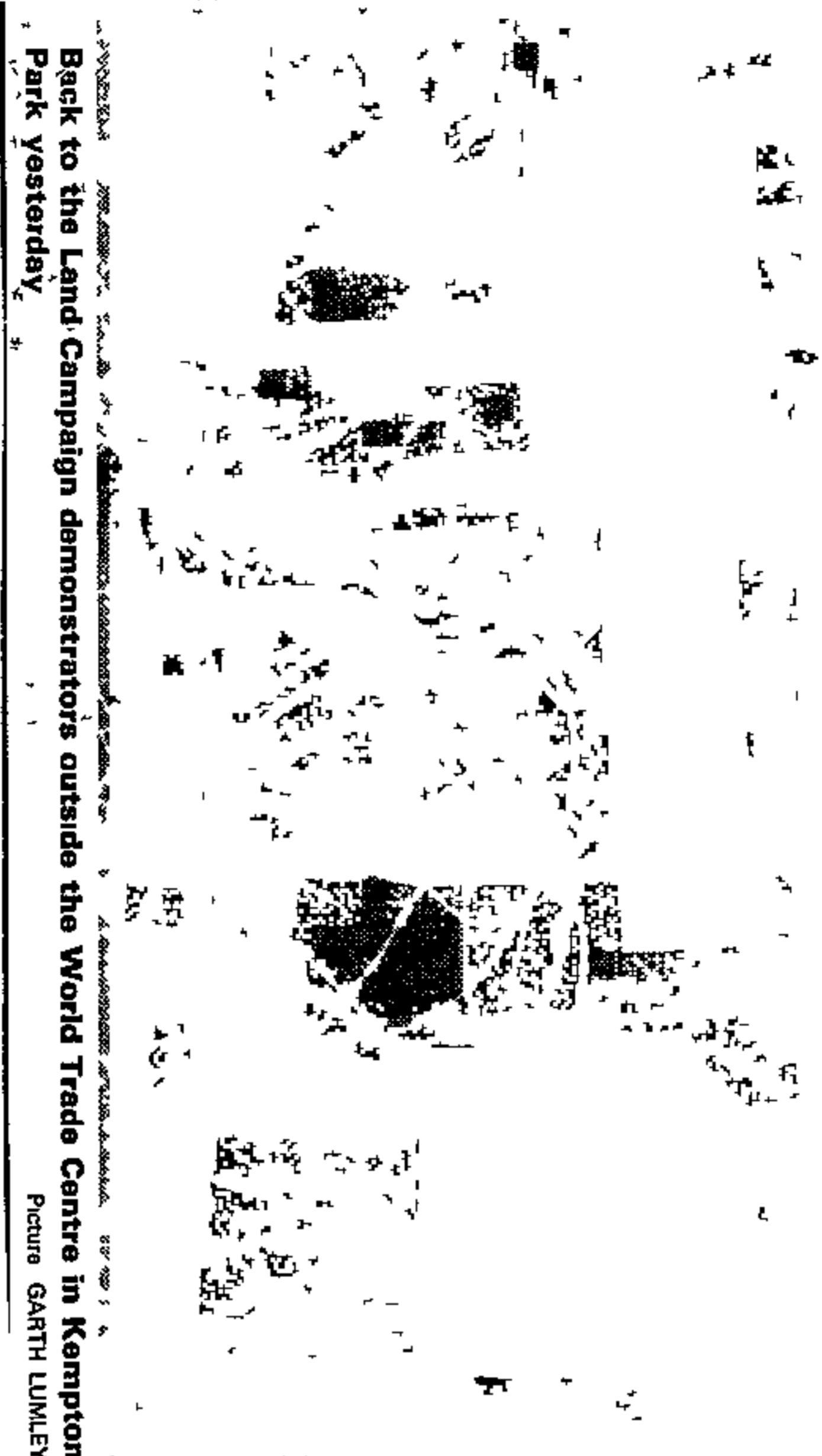
Community leader Joseph Free said the Khosis would not leave although they had received eviction orders about two weeks ago. "We feel that the SADF must leave. They are the enemy."

The National Land Committee said the settlement was located in the middle of the SADF's P W Botha Battle School at Lohatla where they had lived for about five generations

The community had been under threat of removal since May last year. It had submitted its land claim to the Advisory Commission on Land Allocation which had not yet made a decision.

If a recent SADF application to the Kimberley Supreme Court was successful, the 38 families who had remained on the land would be relocated about 30km away at Jenn Haven.

Wits Command spokesman Māy Andreas Jordaan said the protest was "a case of barking up the wrong tree" because Wits Command did not have jurisdiction in the matter. The protest should have been directed at the Northern Cape Command, he said. Both demonstrations were part of the national Back to the Land Campaign coordinated by the National Land Committee to draw attention to the plight of rural people.



Back to the Land Campaign demonstrators outside the World Trade Centre in Kempton Park yesterday.

Picture GARTH LUMLEY

Bill of Rights 'fails to protect home owners'

Political Staff

252 ANC 3/8/93
JOHANNESBURG — Negotiators again deferred debate on the interim constitution unveiled in the negotiating council last week, turning their attention instead to the draft Bill of Rights — which they tore apart.

Before debate even began on the fundamental rights during the transition yesterday afternoon, Democratic Party Houghton MP and justice spokesman Tony Leon issued a statement severely criticising the proposed Bill of Rights, which he said would not guarantee property rights.

Mr. Leon, who has crossed swords with the technical committee on fundamental human rights since debate on the draft Bill began in the council last week, said the proposed Bill of Rights would extinguish liberty, put private property at risk and create a socialist, command economy.

"We warn existing and future property owners that the Bill of

Rights, far from guaranteeing rights in property, does the reverse.

"It renders the individual homeowner vulnerable in any international human rights covenant of the Western world," he said.

As in the case of the interim constitution, various parties and organisations have found aspects of the proposed Bill objectionable.

The ANC and the PAC, among others, argue that it lacks "horizontalty" and would be interpreted by "white-dominated courts". Traditional leaders say it subordinates them, and the DP says it does not adequately protect property rights.

The council also thanked the Commission on the Delimitation of States, Regions and Provinces for its report tabled yesterday, and commended it for its "marvellous work".

Democratic Party national chairman Ken Andrew said the report provided a useful point of departure for further discussion.

Fight for property rights

Own Correspondent

JOHANNESBURG. — DP negotiators at the World Trade Centre in Kempton Park put up a spirited battle yesterday to have unfettered property rights and economic activity entrenched as human rights in South Africa.

And in a rare show of concern for property investors, the SACP argued a clause protecting

people from being evicted be dropped from the draft bill of rights.

The committee drafting the bill proposed that no person be evicted "except by order of a court of law after taking into account all relevant factors, which may include the availability of appropriate alternative accommodation and the lawfulness of the occupation".

SACP negotiator Mr Halton Cheadle said "if this clause remained, there won't be private sector investment in housing". He was supported by the ANC, the government and the DP.

The DP also objected to a part of the draft on free economic activity. DP negotiator Mr Tony Leon argued that the committee gave with one hand and took away with the other.

Not a moment to waste — experts

Star 5/8/93

252

By Michael Morris
Political Correspondent

Banning liquor sales — and political activity — on election day, imposing tough penalties on political intolerance and plans for a multiparty peacekeeping service are among far-reaching proposals made to the Goldstone Commission yesterday by an expert panel.

The panel's 70-page report covers the role of the Independent Electoral Commission, how and when people will vote, the counting of votes and verification of results, managing campaign rallies, marches and demonstrations, and the role of police, monitors and observers.

The focus of the report is on curbing violence and intimidation during the campaign . . . and the thrust is that South Africa cannot afford to waste any more time setting the elec-

toral structures and rules.

The 11-person panel — comprising leading foreign and South African election experts — was appointed by Mr Justice Richard Goldstone in March this year and headed by former Watergate prosecutor and leading US attorney Charles Ruff.

The panel warned yesterday "Time is the enemy."

There was not a moment to waste if the election was to be held on April 27.

Decisions on the election process "cannot await the convening of Parliament (in September)" and the process had to begin immediately. South Africa had also to be unreserved in asking for money, expertise and manpower from abroad.

Most importantly, all political, religious and community leaders had to make it clear they rejected violence by "announcing from every podium and pulpit at every opportunity that violence undermines the rights and endangers the future

of all South Africans".

Mr Justice Goldstone yesterday invited the public to contribute to debate on the proposals at hearings at the Arthur's Seat hotel in Sea Point today and from Wednesday next week. Appointments may also be made for private discussions with the panel on Friday, Monday and Tuesday.

Once this has been completed, the commission will assess the report and make its own recommendations "in the near future" to President De Klerk, the Independent Electoral Commission and political parties.

Mr Justice Goldstone said that the international community had a vital "monitoring and verification" role to play in the campaign.

In some respects, however, South Africa was unique and the commission felt "we could not simply replicate solutions or adopt procedures which may have been successful in other countries".

RIGHTS Fm 6/8/93

Altar of equality

With government and most other parties keeping largely silent, it has not surprisingly fallen to the DP and its spokesman Tony Leon to take up the cudgels over the interim Bill of Rights being debated by the negotiating council

On the table is the human rights technical committee's seventh draft of the Bill, described by Leon as "a disastrous document which could extinguish liberty in the new SA, legalise expropriation of property without compensation, and create a socialist-style command economy with devastating consequences" (252)

The section on property rights reads "Every person shall have the right to acquire, hold and dispose of rights in property

"Expropriation of property by the State shall be permissible in the public interest and shall be subject either to agreed compensation or, failing agreement, to compensation to be determined by a court of law as just and equitable, taking into account all relevant factors, including the use to which the property is being put, the history of its acquisition, its market value, the value of the owner's investment in it and the interests of those affected"

The qualifications are fatal, says Leon. The one on usage will penalise investors and that on history could penalise those who own

Fm 6/8/93

homes that were once expropriated. While aware of the need to compensate those dispossessed under apartheid, the DP says the committee has rejected its proposal to provide guarantees of equitable compensation and a further obligation on government to create a fund and a land claims tribunal.

Sub-section three — the result of one party's submission and supported by the



Leon

committee — goes further "Nothing in this section shall preclude measures aimed at restoring rights in land to or compensating people who have been dispossessed of rights in land as a consequence of racially discriminatory policy, where such restoration or compensation is feasible" (252)

Leon says that far from guaranteeing property rights, the Bill does the reverse "in a manner quite unprecedented in any human rights covenants in the Western world"

The entire Bill, he says, is subject to a limitation and interpretation clause, which prescribes ideologically the type of democracy SA will have "It is a democracy governed by the principle of equality" DP attempts to have the concept of liberty included in the definition have so far been rejected. It suggests that government will prevail in conflicts over individual liberty.

Similarly, the article that appears to guarantee free economic activity, read closely, "in fact gives the green light to a command-style, interventionist economic regime," because it also says "nothing shall preclude" laws aimed at socio-economic improvement (provided they're justifiable in a free, democratic society based on equality) ■

Speed is not the law's strong point

Star 6/8/93

The delay in getting criminal trials completed is one of the major problems facing the legal system. PHILIP ZOIO reports.

REYNOLD BRITTOE and Shadrack Hendriks were arrested in February 1991 on a murder charge. After three unsuccessful bail applications, they were still in custody when brought to trial 18 months later. Their case was expected to run for three weeks, but after two days they were acquitted.

Brittoe's and Hendriks's experience may be an extreme example of a traumatic collision with the South African legal system. Their wasted hours in custody reflect a deep-rooted problem in the administration of justice: the delays in the resolution of trials.

Tardy justice can bring great distress to even the less revered members of society. (252)

"The Vaal Monster", the late Victor Kheswa, appeared in court 26 times before he finally went to trial, two years after his arrest, on a murder charge. He was acquitted in two days.

Falsely accused people can get recourse through civil action if they can prove they had been wrongfully and unlawfully arrested or maliciously prosecuted.

Lawyers for Human Rights (LHR) says, however, that the law allows police wide discretion in arresting and detaining suspects.

Many accused are not fully aware of their rights and cannot afford legal representation, LHR says. The Legal Aid Board, which provides a service to the indigent, offers no assistance in civil actions against the State.

The shortest trials are those in which the accused admit their guilt. Eric Harrison, a financial adviser who stole R10 million in investments from his clients, went to the police last month with a frank account of his misdeeds over the past five years. Two weeks later he began his 14 years in jail.

A trial in which the accused claims his innocence would ide-

ally begin after his third or fourth appearance in court. In his first appearance he would be charged and granted bail. The prosecution and defence would set a trial date the second time the accused came to court. The trial would then begin on the third appearance.

This may happen in *LA Law*, but almost never in South African courts.

Police arrest a person when they are satisfied he is guilty, but they often need months to gather the evidence they need to prove their case.

Trial delays are recognised as a problem by most people who have contact with the legal system, with defence lawyers and State authorities tending to blame each other for wasting time.

The police have been accused of tardiness in their investigations and of failing to bring case files to court and to subpoena witnesses. Prosecutors have been criticised for not putting enough pressure on the police, and for scheduling trials without making the most efficient use of court time. Defence lawyers have been accused on occasions of failing to prepare their cases expeditiously.

Lawyers say the problem has eased over the past year, particularly in Johannesburg. Judges and magistrates have been losing their tolerance for unnecessary delays, and lawyers have been becoming more sensitive to this change in attitude.

With the increase in the crime rate in recent years, congestion of the courts and insufficient State manpower are the other main obstacles to speedy justice.

"Justice delayed is justice denied" says the maxim. The lost time weakens memories and increases the risk of evidence going missing or being destroyed. It also deepens the misery of hundreds of people waiting in prison cells for their cases to be heard. □

A NEW peace keeping force which would include members of all political parties to control violence at election rallies has been proposed by a panel of international experts to the Goldstone Commission.

According to Sapa, the 70-page report opens up the process of policing to participation by party-related forces and would lend an element of credibility and legitimacy to what is now a highly suspect process.

Multi-party peace force proposed

78-118/93

enforcer of apartheid — a reality recognised by the police themselves

Panel Chairman Mr Charles Ruff said it was envisaged the new force would assume control at election rallies or demonstrations where there was a risk of violence.

The creation of the force would also lay the foundation for a new policing organisation in a post-elect-

tion period.

He warned that decisions about details of the election process and the reshaping of policing functions could not await the convening of parliament.

"There is literally not a moment to waste if the election is to be held on April 27, 1994. The process must begin immediately."

It appeared that the extraordinary

nary commitment of time, money and energy necessary to bring about any significant change in the policing structure in the short term should be focused on those parts of the system that posed the greatest concern during the election period, the report stated.

Mr Justice Richard Goldstone said it was hoped the commission's own report, based on the panel's document and the further submissions, would be ready before the end of the month. The report would be debated by interested parties this week and early next week before the commission hears final submissions

KwaZulu Police come under fire

Copies 8/8/92
THE public no longer have confidence in the KwaZulu Police (KZP) as they failed to arrest a member of the force found in possession of an AK-47 in August 1991, and did not investigate other cases to the satisfaction of complainants (252)

This emerged after a three-day Goldstone Commission of Inquiry investigation into the involvement of the KZP in violence and intimidation (107)

Equality for women? No thanks

By CARMEL RICKARD

CAPE traditional leader, Chief M Nonkonyana, got down to basics at the World Trade Centre this week.

Joining the debate on the draft Interim bill of rights, he voiced his disapproval of the bill's non-discrimination provisions. He said he was not interested in the clause because as a traditional leader he did not want equality for women.

The chief's views won little support. However, the difficult question of the relationship between a bill of rights and customary law remains unresolved in the debating chamber.

Several other clauses in the draft bill proved far more contentious during the

discussion on Monday and Tuesday. These included the sections on property, eviction, economic activity and judicial review.

The proposed property clause gives everyone the right to acquire and dispose of property, although the state would be entitled to expropriate "in the public interest".

If the parties cannot agree on the amount of compensation, the courts will decide what is just and equitable, taking into account "all relevant factors". Including how the property is being used, the history of its acquisition, its market value, the value of the owner's investment in it, and the interests of those affected.

The draft goes on to give specific permission for measures aimed at restoring

land rights or compensation to people dispossessed through "any racially discriminatory policy".

Most parties agree that those stripped of their land by apartheid must be compensated. However, delegates could not agree whether this clause outlined the best way of doing it.

Its critics, notably the DP's Tony Leon, said the wording made individual homeowners vulnerable to expropriation. He said if the draft were passed it would terrify homeowners and create "total uncertainty" for investors in housing. In reply, supporters of the clause said it strongly protected the right to own property.

The eviction clause says people may not

be removed from their homes, except on the order of a court. It was one of the most criticised of all the bill's clauses. It even came in for a drubbing from the SACP, which suggested it be scrapped. Critics of the clause claimed it created a charter for rent defaulters, and would discourage investment in housing.

These and other hotly debated sections of the draft bill were referred to smaller committees for further consideration.

The suggestion that the entire draft bill be sent to a number of lawyers' bodies, the Chief Justice and the Judges President, has been referred to the planning committee. Its chairman, the DP's Colin Eglin, said its recommendations, in response to the suggestion would be presented soon.

'Klein Koos' bid rejected

BY HAYLEY SCHONBORN

Boksburg Conservative Party town councillor Jacobus "Klein Koos" van der Merwe, who had applied for political indemnity, was yesterday told by a Johannesburg magistrate his alleged offences fell outside the dates for which indemnity was valid.

Van der Merwe (41) then pleaded guilty to starting a fire at the office of the Receiver of Revenue in Boksburg on January 3, damaging 150 Boksburg stop signs, being in possession of teargas, and receiving a forged R50 note. (252)

He pleaded not guilty to planting a bomb at the Rand Show on April 4 1992, and to possessing explosives and undesirable publications. (312)

However, he admitted telephoning the SABC after the blast, claiming the Wit Wolwe were responsible.

The trial continues today.

Complaints over motor insurance top the list

CHARLOTTE MATHEWS

THE majority of cases handled by the ombudsman for short-term insurance between March 1 1990 and February 28 1993 were for motor insurance, followed by complaints about householders' insurance. *Biday*

According to the ombudsman's 1993 annual report, during the three-year period 37.7% of complaints related to motor insurance, 26.9% to householders' insurance and 19.8% to "other" types of insurance, including travel, furniture removal and boating. The remainder related to houseowners', hospitals' and all risks insurance. *11/18/93*

The ombudsman said the figure of about 600 complaints a year registered in 1992/93 was similar to that for 1991/92 and this volume was likely to be maintained. Of the 600 cases handled during the year, 103 were settled favourably to the insured. This represented about 17% of all cases. *(252)*

Insurance companies that rejected claims because those insured had not paid their monthly premiums on the day due — even if they had done so diligently in the past — were the cause of much dissatisfaction among the public.

The ombudsman said the policy wording on this matter was unambiguous and if the insurer chose to repudiate a claim on these grounds the insured could do nothing.

However, a uniform policy laying down a procedure for presenting a debit order twice, with a penalty imposed where it was not met on the first occasion, "could well do something to improve the image of the short-term insurer"

The ombudsman concluded that on the whole 1992/93 had been "a successful year"

However, he regretted that there were still insurers and brokers who did not react with any degree of immediacy on receipt of letters from the ombudsman.

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News in brief

Sowetan 12/8/93

Misconduct inquiry

A SUB-COMMITTEE of the Goldstone Commission resumes an inquiry today into allegations of misconduct against the South African Police in townships in the volatile Mooi River, Estcourt and Ladysmith districts in Natal earlier this year.

The committee sat in Mooi River in April and May and will reconvene in Durban today. A source involved in the inquiry said the sitting at the Westville Civic Centre would be looking at the "way forward" in respect of policing and preventing violence in the Natal Midlands.

252

Report on polls sent to FW

Sowetan

12/8/93

THE Goldstone Commission is to submit a report by international specialists directly to State President FW de Klerk and the Negotiating Council

The report was drawn up by an 11-member panel appointed by the commission and was chaired by Watergate attorney Chuck Ruff

It recommends the creation of a multiparty peacekeeping service and warns that preparations for the elections must get underway immediately

Judge Richard Goldstone said last week that interested parties would be

given the chance to discuss the report with the panel over the next few days, then make submissions to the commission, which would draw up its own findings (252)

When the commission resumed yesterday afternoon, however, Judge Goldstone said the commission had decided it would make no findings of its own on the panel's report

"Consideration has been given to the fact that the technical committee on elections at the multiparty negotiations at the World Trade Centre is

presently considering its report on various aspects of the elections, including the appointment of the Independent Election Commission," he said

"A number of the parties represented here are participating in the negotiations at the World Trade Centre" (254)

Ruff said yesterday that the report had been revised in the light of the discussions but no substantive changes had been made —

Sapa

Legal scrutiny for SA's future

S1 Times 1518193

252

NEW influences on the draft interim bill of rights could see a number of controversial clauses significantly modified.

Chief among these is a report from prominent advocates, representing the General Council of the Bar. They met last weekend with chairman Wim Trengove, SC, to discuss the bill. Their detailed memorandum on the proposals is now with the technical committee responsible for drawing up the draft.

The memorandum of the council, a body which represents the country's advocates, is the longest and most detailed of the responses to the draft bill so

CARMEL RICKARD reports on the progress of the draft bill of rights

far received by the technical committee. It is also a new voice in the debate, as the organised profession has until now not considered or given its view on the draft bill.

The writers of the council's memorandum say while a bill of rights

embodies political choices, it is still a legal document which the courts must interpret.

Their first concern is that the bill lacks a preamble which sets out the principles on which it was drafted. This is an important omission because it would give the courts a basis on which to interpret the whole document.

Commenting on the role of the courts in adjudicating the bill, the council agrees with the Law Commission that all the ordinary courts — and not only a specialist tribunal — must interpret and protect the rights enshrined in the constitution if a rights culture is to be nurtured.

Integrity

However, members of whichever court is given the final word on constitutional matters must be chosen "for their absolute independence, legal competence and integrity". The success of the new constitution will largely depend on the composition of this court, the skills, vision and integrity of its members, and their ability to give a "coherent, humane and practicable vision" to the bill of rights.

The council criticises the draft for leaving an important question open for the court to decide: whether the bill applies to government bodies only (vertically) or whether it also acts horizontally and binds the rest of society. The council says this is a political problem which cannot be left to the courts; the politicians must make up their minds.

Another issue which worries the council is the vagueness of the clause which sets out when rights contained in the bill can be suspended. They say this is a fundamental issue and

that the proposed wording makes it too easy to put key rights on hold. They make several suggestions which would tighten these proposals and ensure more rights are retained even during an emergency.

On the proposed right to life clause they underline it would probably outlaw the death penalty, abortion and euthanasia. They ask whether this is what the drafters intended.

An issue much debated at the multi-party talks was whether to list categories of people expressly protected against discrimination. The present equality clause lists 13 grounds on which discrimination is particularly forbidden, including age, gender, disability and sexual orientation. The council backs this approach, saying it plays an educational role and removes any uncertainty.

They recommend scrapping one of the most controversial clauses which deals with restrictions on eviction. Although they understand the "laudable objectives" which prompted the clause, they suggest the people it is designed to protect would be better served by ordinary legislation which could be adapted to changing socio-economic circumstances.

Compensation

They also find problems with the equally controversial property clause. The present wording could be interpreted as allowing the state to expropriate land without proper compensation.

Several proposed clauses deal with "second generation rights" and the advocates ask whether the judges can regulate and enforce them. For example, what could a court do

about an individual's right to an environment "not detrimental" to that person's well-being? Or about enforcing children's rights to "basic nutrition and health services"? They acknowledge these are desirable provisions, but argue other arms of government would be more appropriate to enforce them.

They also comment on perhaps one of the most controversial and fundamental philosophical questions now before delegates to the multi-party talks: the relationship of equality and liberty. The draft now speaks of a "free, open and democratic society based on the principle of equality". The debate is over whether this formulation ranks equality higher than liberty and if so, whether this is desirable.

Specify

The council agrees with the drafters that the phrase "free, open and democratic" captures the concept of liberty. But they argue that the phrase also captures the concept of democracy — and cite a decision of Canada's highest court to back up this view.

In their opinion, the clause should either specify both equality and liberty; or else leave out the two words and simply speak of a "free, open and democratic society" since this embodies the concepts of both equality and liberty.

This memorandum will now be considered by the technical committee along with other submissions recently received. An ad hoc committee, appointed from delegates to the negotiating forum, has also met to discuss specific problems with the draft. That body will meet again this week for more discussions before finalising their recommendations.

NOT FOR PUBLICATION
SAP KILLED OWN OPERATIVES

'SAP killed own operatives'

C/Road 1 5/8/193

LOG-BOOKS for an SA Police Jetta which was blown up, in December 1989, killing three security policemen and an alleged informant, showed no entries for three days leading up to the fatal blast.

The log-books were presented as evidence on Friday at the re-opened Gonwe inquest in the PE Supreme Court.

This week PE security policeman and bomb expert May Deon Niewoudt, who has been testifying for the past three days,

was effectively accused by SADF senior counsel Anton Mostert of activating the car bomb which killed three policemen and an informant.

The bomb exploded near PE's Motherwell township on December 14 1989. It was suggested in court that two of the policemen were about to approach the ANC with information on alleged police complicity in the

June 1985 slayings of Matthew Gonwe and three others. The log books submitted as evidence showed that from November 1 to December 11 careful entries were made for the Jetta However, for the next three days no entries on the car's movements were recorded. Niewoudt denied knowing who had access to the car on those days or why no entries were recorded.

During cross-examination by George Bizos, Niewoudt admitted he was part of a team which interrogated black consciousness leader Steve Biko. However, he refused to answer any other questions on the Biko affair, saying this could in-fairly eliminate him.

Earlier in the day Niewoudt was also questioned on his role in the 1985 interrogation of PE youth leader Mkhusele Jack, who claimed Niewoudt had assaulted him.

A statement by Jack taken from an affidavit which he and 42 other detainees made in an application to the PE Supreme Court in 1985 seeking an interdiction to restrain the police from assaulting them - was read to the court.

In the statement Jack claimed that Niewoudt warned him he would suffer a similar fate to Gonwe and the three PE civic leaders. Niewoudt strongly denied the claim.

Niewoudt denied a submission by Bizos that the claim of the 42 was settled out of court because the charges against him by the detainees were true. He will continue giving evidence tomorrow - Eena

SADF likely to come under Goniwe inquest spotlight

By DAWN BARKHUIZEN

THE inquest into the death of Cradock, activist Matthew Goniwe in 1985 could see the spotlight swing from the SAP back to the SADF this week, when former Eastern Province Command staff officer Colonel Lourens du Plessis is expected to take the stand in the Port Elizabeth Supreme Court. Goniwe, Fort Calata

Sparrow Mkhonto and Sicele Mhlawuli were murdered between Port Elizabeth and Cradock.

(262)
This week the inquest focused on security policeman Major Gideon Nieuwoudt and his alleged role in the 1989 car-bombing of three black policemen and an informer who were allegedly about to go public about the murders.

'ANC's torture' report imminent

S/Times 15/8/93

THE long-awaited Motsuenyane commission report on alleged human rights abuses in ANC detention camps is expected to be released within days.

It will be accompanied by a flurry of independent reports from observers at the hearings.

An organisation based in Germany — the International Society for Human Rights — has released its own report in anticipation of the commission findings, ascribing guilt to a number of ANC officials and criticising the way the hearings were conducted.

The ISHR — described by Lawyers for Human Rights national director Brian Currin as "not regarded as part of the bona fide human rights movement" — attended the Motsuenyane commission hearings from mid-

By **CLAIRE ROBERTSON**

May to June 19 this year. This was the ANC's third inquiry into alleged abuses in its prison camps, and the first to be held in public.

The commission, comprised South African businessman Sam Motsuenyane, Zimbabwean barrister David Zamchiya and former US judge Margaret Burnham.

The ISHR concluded

that several aspects of the conduct of the commission were "of grave concern to the ISHR".

However, the ISHR report itself does not wholly coincide with the views of others who observed the hearings.

The report, written by Marc Gordon, a "freelance writer on African affairs" mentions that, although

international and local observers were invited to attend, this was "a very limited exercise".

For example, "we were unaware of the attendance of Lawyers for Human Rights", Mr Gordon notes.

But LHR "was there every single day", Mr Currin said yesterday.

And an account of a witness's testimony differs from that observed by the Sunday Times when it attended the hearing.

LHR is compiling its own report in response to the commission report. It is expected to concur with the ISHR report on one point — that bringing those accused of violations to the witness stand before those who were to make the allegations had even appeared was a serious flaw in the procedure.

This led to the "absurd dismissal" from the witness stand of ANC national executive committee member Jacob Zuma, who "quite legitimately pointed out that he could not answer charges that had not yet been made to the commission", Mr Gordon wrote.

"We felt that was wrong," Mr Currin said — but added that the ISHR comments seemed premature.

The ISHR was concerned that the commission did not visit existing ANC camps in Uganda.

CHEERAP JUSTICE

Everything you ever wanted to know about the Small Claims Court.

Clarens 15/8/93

A while ago Simon Letseka, who comes from Garankuwa, was hired to do some building and plumbing work in Johannesburg. The man who hired him, Ben de Koker, promised to pay Simon R1 250 for the job.

When Simon finished the job, de Koker paid him R850. He said that Simon did not do the job properly - and that was why he was paying Simon R400 less. Simon felt cheated and decided to fight for his money. He took de Koker to the Small Claims Court in Johannesburg and he won!

The Judge in the court listened to both men. He then ordered de Koker to pay R250. When Simon left the court, he was happy. "It is better at least I am getting something. If I had not brought this case to court, I would have got nothing," he said. But not everybody wins in the Small Claims Court.

Montgomery Lukhalo came to court to sue a pensioner, Mrs. E Mgquoko. He said he built her a

kinds of cases to the Small Claims Court. But there are some cases the court cannot hear. For example, you cannot sue the government (the state), ask for a divorce or sue somebody for more than R1 500 in the Small Claims Court.

(252)

SOME EXAMPLES

- Here are some examples of the kinds of cases you can take to the Small Claims Court.
- If you buy a radio from a shop and you find that the radio does not work, you can claim your money back.
 - If somebody assaults you, you can claim damages for the assault.

Court. If you think somebody has done you wrong, the clerk of the court will be able to tell you if you can take the person to court.

TAKING A CASE TO COURT

This is what you must do if you want to use the Small Claims Court.

- 1 Contact the person who has done you wrong. If for example a man owes you money, speak to him, telephone him or write to him and ask him to pay your money.
- 2 If the person will still not give you your money, you can start taking action by writing a letter of demand. In the letter of demand you must say exactly how much money you are owed and what for.
3. Send the letter of demand to the person by registered post. Remember to keep the post office slip to prove that you posted the letter. If you can, make a

court.

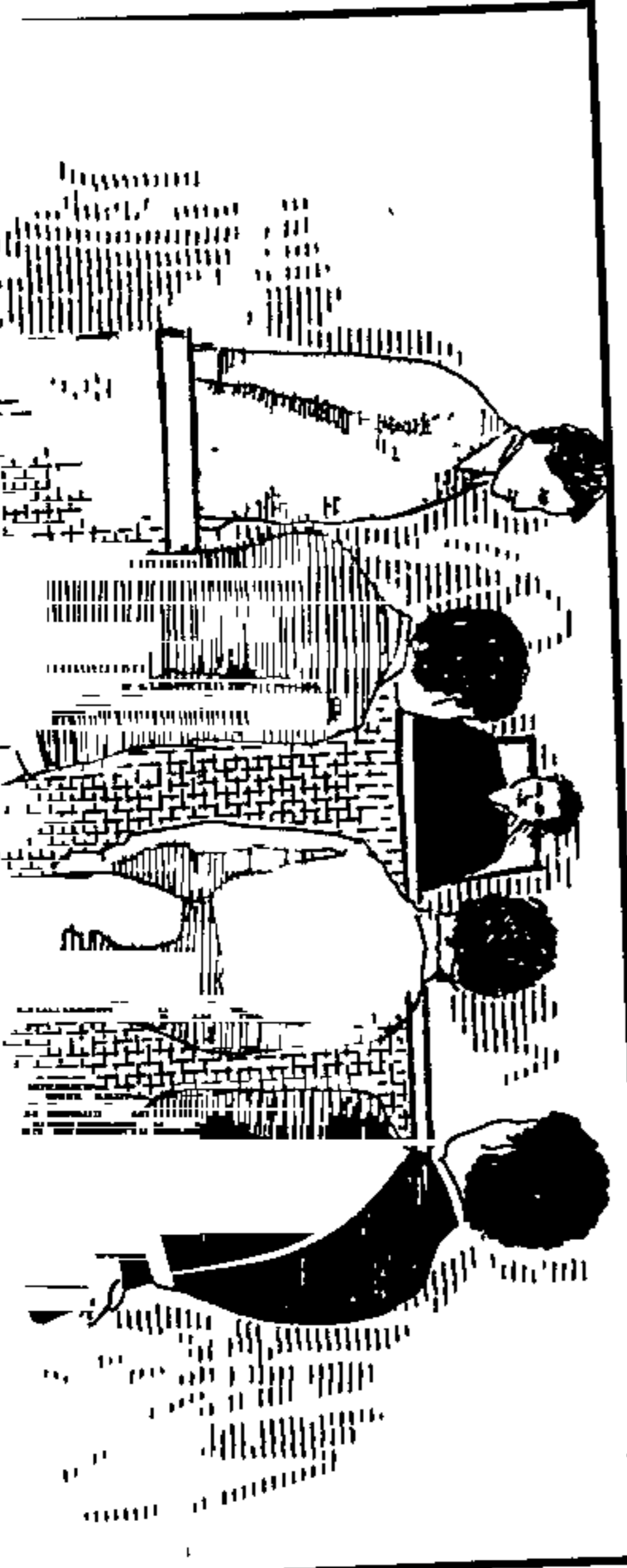
WHAT HAPPENS IN COURT

On the day stated in the summons, a Judge will hear the case.

● When the Judge asks you about your complaint, make your story as short and as simple as you can. The Judge wants to know what you are claiming from the other person. Tell him in your own words why you think the other person should pay you the money that you have claimed. You can refer questions to the other person, but you must ask the Judge to ask them for you. You may not talk directly to the other person.

● If the Judge asks you a question, give a direct and simple answer. Do not think that the Judge is being difficult if he asks you questions. He is asking questions that will help him to understand the case.

● Remember, the Judge does not know you or the other person, so it is not easy for him to decide who is telling the truth. You can help him to see that you are truthful by showing him any papers or documents that prove what you say - for example, a receipt which shows how much you paid for something. You can



in Klipspruit, Soweto. Mrs Montgomery said that Mrs Mgquoko paid him only R300 and that she still owed him R1 000. But Mrs Mgquoko showed the Judge a notebook. In the book she had written that she had paid Montgomery more than R1 600. He had signed the book when he got the money. Montgomery lost the case and Mrs Mgquoko did not have to pay him anything.

CHEAP AND SIMPLE

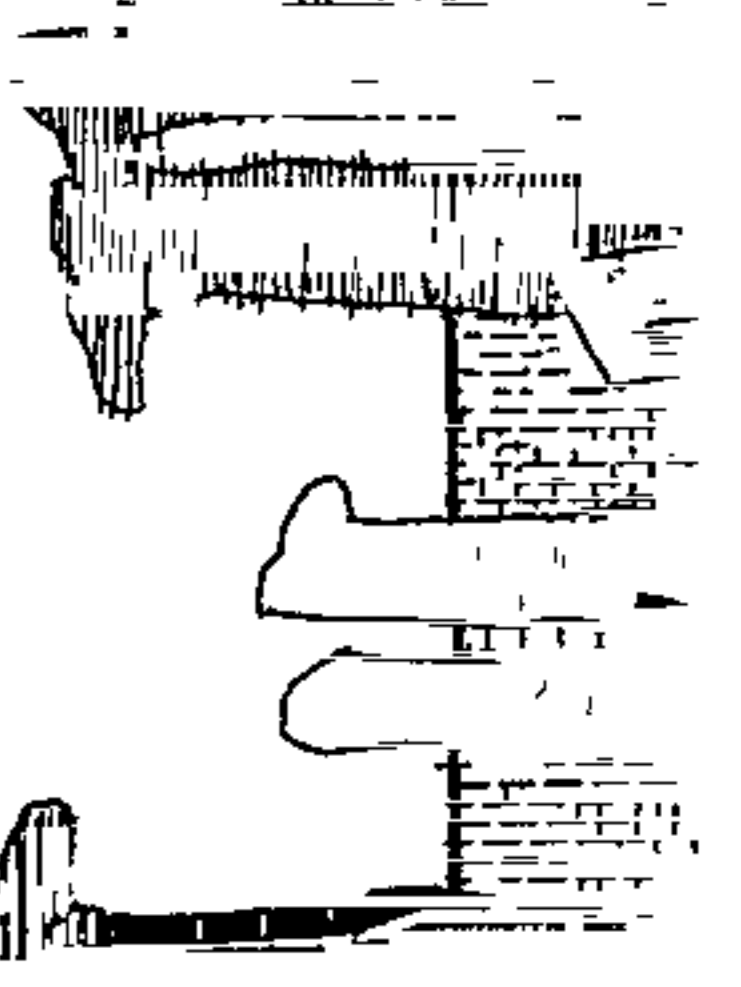
The Small Claims Court has been called "the little people's court" because ordinary working people can go there to fight for their rights. The court is simple and cheap to use. It costs only a small amount of money to take a case to one of these courts. Nobody is allowed to have a lawyer in the Small Claims Court. Each person tells the Judge their side of the story. Then the Judge decides on a fair settlement.

You can take many different

Learn & Teach
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 It's an education!

ON SALE NOW!

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- If you put a deposit on something, and then later find that the shop has sold it to someone else, you can claim your deposit back
- If you sell something and do not get paid, you can claim your money.
- If you lend money or anything else to another person and that person does not give it back, you can claim it back
- If you take something to a shop for repairs and the shop does not repair it properly, then you can claim the money it cost you to have the repairs done properly by somebody else.
- If you are a domestic worker, you can go to the Small Claims Court to demand notice pay from your employer. If your employer fires you without a good reason and without giving you notice pay you have a case. A domestic worker can also go to the Small Claims Court if an employer does not pay her what she was promised
- There are many other problems you can take to the Small Claims Court

- You can ask for an interpreter at the court if you want to speak in any language other than English or Afrikaans
- When the Judge has heard both sides of the story, he will decide on the fairest way to settle the dispute between you and the other person. In most cases he will give this decision there and then. Otherwise, he will send you a letter to tell you what he has decided.
- If the Judge orders the other person to pay you, that person must pay you as soon as possible. If you still do not get your money, you must go to the clerk of the court again. The court will then issue a warrant of execution against the person. That means the sheriff of the court can go and take away something that belongs to that person and sell it at a public auction. You will then get your money.

Dictionary

Damages: money paid to you to cover your medical expenses, pain and suffering.

Witness: somebody who was there when the trouble started between you and the other person.

Dr. Ivy Matsepe-Casaburri, the new head of the SABC board.

Women in

C/Read 15/8/93

THE NEW head of the SABC board, Dr Ivy Matsepe-Casaburri, is a woman of few words. In an interview with her, she said, "I am a workaholic and am prepared to face the challenges of the hot seat. I hope my hair will be getting greyer and that I will be old soon ~~soon~~ Matsepe-Casaburri was born in a small town in the OFS. She would not release the name of the town because she said she wanted to "protect" her family.

She holds a BA degree from Fort Hare university and an MA and PhD in sociology from Rutgers University in New Brunswick, USA.

"As board members we are policy-makers, but we do not implement those policies. Yet it is our duty to see to it that those policies are implemented. The SABC is a national resource and should be used by all the various sectors of the community

"For instance, as political organisations campaign for elections, no organisation should be given more coverage than

another

Another encouraging decision that has been taken is that no organisation will be allowed to pay for election advertising. If this were allowed, those organisations with the most money would have the most coverage," she said. ~~She~~

She said the board would hold a strategic planning session on August 14 and 15 to look at various issues, including the matter of those languages not covered on television.

She added that she thought the SABC was still biased on gender and political issues, and hoped these matters would be addressed

DICTIONARY

Implemented: carried out or put into action.

Strategic planning: when a group of people get together to decide how they will carry out their tasks or how the organisation should operate.

Winnie Mandela — her biography has caused an outcry.

the news

LEGAL threats have been made to stop the selling of a **biography** of Winnie Mandela. She was not involved in the making of the book which makes it an unauthorised biography. It is supposed to contain details of her suspected love affairs while Nelson Mandela was in prison.

Although the book has not yet been launched, it has already caused trouble in legal, publishing and political circles.

According to a report in the black London newspaper *The Weekly Journal*, Emma Gilbey, the author of *The Lady: The Life and Times of Winnie Mandela*, and the publisher Jonathan Cape, have been threatened with legal action if they go ahead with publication of the book

Four unnamed people are said to have objected to the contents of the book and warned Gilbey and Jonathan Cape not to go ahead with its publication.

The ANC is having nothing to do with the book and is also not trying to stop its publication.

ANC spokesman Ronnie

Mamoepa said yesterday that he had received several inquiries concerning the book. He also said that the ANC had had no knowledge of the book before the inquiries started coming in.

Gilbey, a journalist, covered the Winnie Mandela-Stompie Sepei trial for a Johannesburg-based weekly newspaper during her stay in SA.

The book is described as a tragic account of "how a victim of oppression came to abuse the power she wielded".

According to a pre-launch press release on the book, it traces Winnie Mandela's life from Transkei where she grew up, through to her "numerous affairs" and separation from Nelson Mandela.

Mandela and her legal advisor Ismael Ayob could not be reached for comment.

DICTIONARY

Biography: the story of her life.

SUNDAY TIMES, August 15 1993

Legal scrutiny for SA's future

S/Times 15/8/93

252

NEW influences on the draft interim bill of rights could see a number of controversial clauses significantly modified.

Chief among these is a report from prominent advocates, representing the General Council of the Bar. They met last weekend with chairman Wim Trengove, SC, to discuss the bill. Their detailed memorandum on the proposals is now with the technical committee responsible for drawing up the draft.

The memorandum of the council, a body which represents the country's advocates, is the longest and most detailed of the responses to the draft bill so

CARMEL RICKARD reports on the progress of the draft bill of rights

far received by the technical committee. It is also a new voice in the debate, as the organised profession has until now not considered or given its view on the draft bill.

The writers of the council's memorandum say while a bill of rights

embodies political choices, it is still a legal document which the courts must interpret.

Their first concern is that the bill lacks a preamble which sets out the principles on which it was drafted. This is an important omission because it would give the courts a basis on which to interpret the whole document.

Commenting on the role of the courts in adjudicating the bill, the council agrees with the Law Commission that all the ordinary courts — and not only a specialist tribunal — must interpret and protect the rights enshrined in the constitution if a rights culture is to be nurtured.

Integrity

However, members of whichever court is given the final word on constitutional matters must be chosen "for their absolute independence, legal competence and integrity". The success of the new constitution will largely depend on the composition of this court, the skills, vision and integrity of its members, and their ability to give a "coherent, humane and practicable vision" to the bill of rights.

The council criticises the draft for leaving an important question open for the court to decide: whether the bill applies to government bodies only (vertically) or whether it also acts horizontally and binds the rest of society. The council says this is a political problem which cannot be left to the courts; the politicians must make up their minds.

Another issue which worries the council is the vagueness of the clause which sets out when rights contained in the bill can be suspended. They say this is a fundamental issue and

that the proposed wording makes it too easy to put key rights on hold. They make several suggestions which would tighten these proposals and ensure more rights are retained even during an emergency.

On the proposed right to life clause they underline it would probably outlaw the death penalty, abortion and euthanasia. They ask whether this is what the drafters intended.

An issue much debated at the multi-party talks was whether to list categories of people expressly protected against discrimination. The present equality clause lists 13 grounds on which discrimination is particularly forbidden, including age, gender, disability and sexual orientation. The council backs this approach, saying it plays an educational role and removes any uncertainty.

They recommend scrapping one of the most controversial clauses which deals with restrictions on eviction. Although they understand the "laudable objectives" which prompted the clause, they suggest the people it is designed to protect would be better served by ordinary legislation which could be adapted to changing socio-economic circumstances.

Compensation

They also find problems with the equally controversial property clause. The present wording could be interpreted as allowing the state to expropriate land without proper compensation.

Several proposed clauses deal with "second generation rights" and the advocates ask whether the judges can regulate and enforce them. For example, what could a court do

about an individual's right to an environment "not detrimental" to that person's well-being? Or about enforcing children's rights to "basic nutrition and health services"? They acknowledge these are desirable provisions, but argue other arms of government would be more appropriate to enforce them.

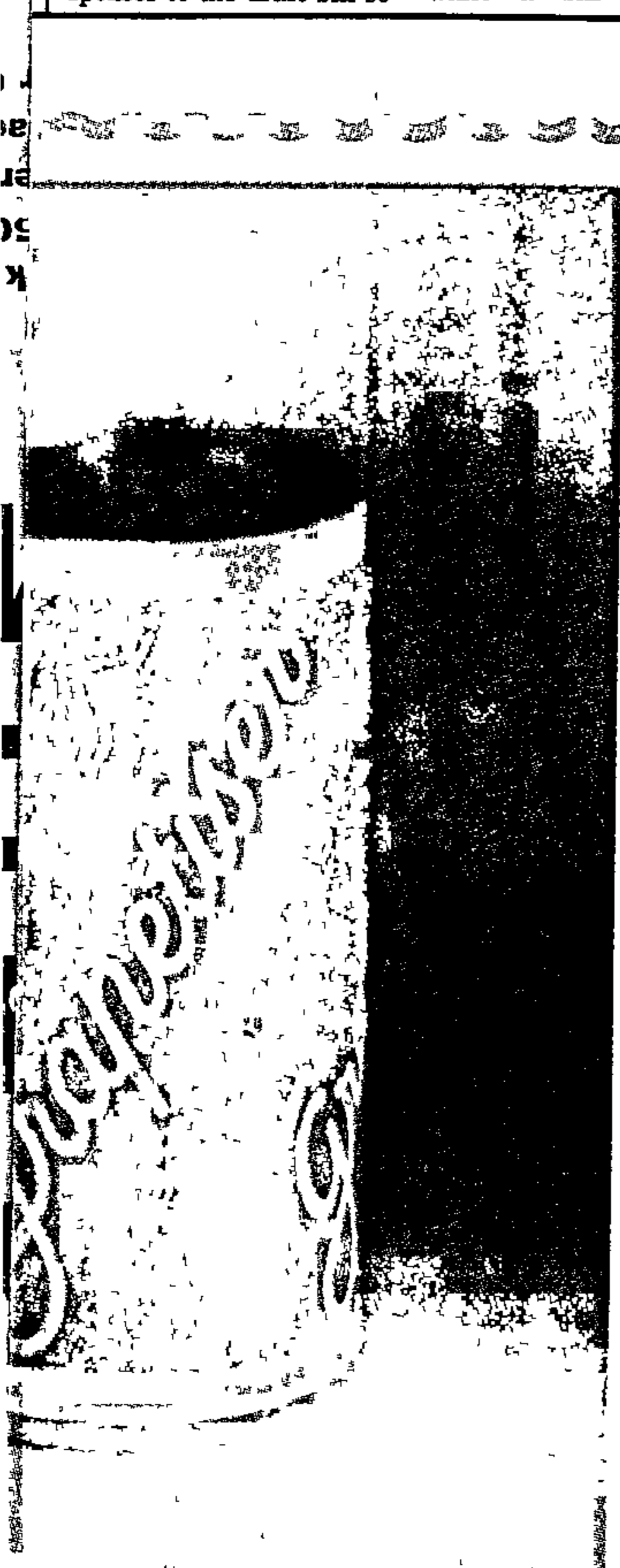
They also comment on perhaps one of the most controversial and fundamental philosophical questions now before delegates to the multi-party talks: the relationship of equality and liberty. The draft now speaks of a "free, open and democratic society based on the principle of equality". The debate is over whether this formulation ranks equality higher than liberty and if so, whether this is desirable.

Specify

The council agrees with the drafters that the phrase "free, open and democratic" captures the concept of liberty. But they argue that the phrase also captures the concept of democracy — and cite a decision of Canada's highest court to back up this view.

In their opinion the clause should either specify both equality and liberty, or else leave out the two words and simply speak of a "free, open and democratic society" since this embodies the concepts of both equality and liberty.

This memorandum will now be considered by the technical committee along with other submissions recently received. An ad hoc committee, appointed from delegates to the negotiating forum, has also met to discuss specific problems with the draft. That body will meet again this week for more discussions before finalising their recommendations.



Police 'spy' fails to show commission arms caches

ALLEGED police "spy" Bongani Mbatha failed to show Goldstone commission members the arms caches he earlier claimed were hidden near a Thokoza hostel, saying he had made the statements under duress. *BiDay 16/8/93*

However, he did show the commission the place where he claimed he was kidnapped by Phola Park residents. *(252)*

Mbatha was due to go with the commission early yesterday morning to search for the arms caches referred to at a news conference on Saturday.

However, Brig Zach Gouws, who facilitated the commission's investigation of the incident, said yesterday Mbatha had "changed his statement completely" when the commission interviewed him prior to the planned search.

Mbatha was handed over

GAVIN DU VENAGE

to the commission on Saturday after two news conferences where he claimed to be a police spy.

A sweating Mbatha told reporters he knew of hidden arms caches at Thokoza hostel, allegedly provided by police to hostel dwellers for use against residents.

He was handed over to the commission, which took him to Thokoza early yesterday. Mbatha alleged he had been kidnapped from a Phola Park taxi rank.

He said he was interrogated and assaulted several times before being dragged before the Press.

Gouws said Mbatha had pointed out the places where he had been interrogated to the commission. Blood smears were removed for forensic tests.

He said a kidnapping docket had been opened

Claims retracted

Confession was 'made under duress'

BY LEE-ANN ALFREDS

An alleged police informer and Inkatha Freedom Party member, who claimed on Saturday that police and the IFP had joined forces to attack township residents, yesterday retracted his statements, saying he had been forced to make a confession.

Bongani Mbatha (22) was paraded before journalists on Saturday by East Rand Phola Park residents after he was captured on Friday. Mbatha then said he was an IFP member and worked closely with the police.

He claimed that police supplied the IFP with large caches of weapons and sometimes police uniforms, and that Internal Stability Unit members and Inkatha hostel-dwellers had been responsible for about 400 killings on the East Rand since July.

Mbatha also gave details of an attack he said was planned for Phola Park.

When left alone with journalists, a trembling Mbatha insisted that Phola Park residents had not assaulted him or forced him to make a statement.

Yesterday, however, Mbatha denied everything at a meeting with SAP members and Goldstone Commission investigators.

He told them he was abducted, assaulted and forced to make a statement, police spokesman Brigadier Zirk Gouws said.

Gouws said Mbatha had also

ALLEGED police informer Bongani Mbatha is now in the care of the Goldstone Commission' after a dramatic about-turn.

shown them the place where he had been abducted, assaulted and forced to give a press conference.

He said blood smears found at one of the sites would be tested. AK-47 and 9 mm pistol cartridges and ANC Youth League literature had also been found.

A member of the ANC's Phola Park committee, Vincent Mtusi, denied that Mbatha had been assaulted.

He said Mbatha had been stopped by "comrades" who suspected he was an IFP member.

"When we questioned him he said there was friction in the hostels. He said hostel-dwellers wanted to move out because they were forced to do things they didn't want to do," Mtusi said.

Goldstone Commission investigator Pieter Botbiji said: "Mbatha is back in our custody. We will look after him."

The IFP called the confession a dirty-tricks campaign, but the ANC said it would co-operate with the Goldstone Commission in its investigations.

Removals victims query rights bill

Star 16/8/93

■ BY JO-ANNE COLLINGE

Parties negotiating the future Bill of Rights can expect the bill's property clause to be intensely lobbied by communities who lost their land under apartheid (252)

"We are concerned that the property clause in the Bill of Rights ignores the rights of people who were forcibly removed from their land," a group of 60 rural communities declared at the weekend.

"We fully support the protection of security of tenure. However, the clause proposed by the negotiators prejudices those who have already lost their security of tenure in favour of those who now own land."

Representatives of the communities met near Johannesburg on Saturday

to discuss a campaign of mass action to be mounted under the slogan "Back to the land"

They warned that they expected a Bill of Rights to guarantee the return of their land. "If it does not do that, we will have no option but to return to our land by force, whatever the consequences."

Communities demanded that:

- The Government impose a moratorium on the sale and transfer of State-owned land
- The Government cease making unilateral decisions on land distribution and setting up "unrepresentative advisory structures".
- An effective land claims court be set up.
- Land be restored to those forcibly removed from it
- The landless be given access to land.

41 Was forced to lie?

By Mzimasi Ngudle

16/9/93

THE MAN who last week claimed police fermented and took part in violence in East Rand townships retracted his allegations before the Goldstone Commission yesterday and said he made the allegations under duress. (252)

Mr Bongani Mbatsha (22), who was captured by Phola Park residents after they suspected that he was a police spy and Inkatha Freedom Party (IFP) member, and paraded by the local ANC leadership on Saturday, told the commission he concocted his story after he was severely beaten by his abductors.

Witwatersrand police spokesman Brigadier Zirk Gous said Mbatsha told the commission that all his allegations were untrue.

Sunday newspapers reported that a visibly terrified Mbatsha admitted to reporters at a Press conference on Saturday that he was both a police spy and IFP member.

Mbatsha had claimed that police sometimes dropped off large supplies of weapons and ammunition at a Tokoza hostel, issued hostel dwellers with police uniforms; the IFP members infiltrated camps with police and attacked residents, the East Rand Internal Stability Unit (ISU) and IFP hostel dwellers wearing camouflage uniforms worked together and had been responsible for many deaths on the East Rand since July, IFP leader Chief Mangosuthu Buthelezi was aware of the arrangement and had even brought weapons with him to distribute to hostel dwellers during his recent tour of the East Rand last week; and the IFP had huge arms caches hidden in holes behind the hostel.

Gous said the Goldstone Commission, accompanied by police and ANC and IFP officials, yesterday investigated Mbatsha's claims and found no weapons.

Prior to the investigation, Mbatsha told the commission's investigators that he had been intimidated by his abductors to make the claims. "Mbatsha said there was nothing for him to point out because there were no arms caches at the hostel," Gous said. "He told the investigators that he told lies because he was severely beaten."

Mbatsha took commission investigators to a taxi rank where he said his abductors put him into a minibus taxi and took him to a room in Phola Park. Investigators were shown blood stains on the walls of the room in which Mbatsha claimed he was assaulted. Mbatsha added his abductors had taken pictures of him there. Forensic tests would be conducted on the stains.

Gous said Mbatsha would remain under the protection of the Goldstone Commission until his allegations of assault and earlier claims had been thoroughly investigated. Meanwhile the IFP reportedly denied the allegations of arms caches and demanded that Mbatsha be released into the care of his family and his abductors be arrested. The ANC, embarrassed by the turn of events, yesterday said it would co-operate with the commission in its investigations.

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ANC did not plant bomb, inquest told

Sowetan 17/8/93

IT was unlikely that African National Congress members could have planted a bomb in a car parked in front of Port Elizabeth's police headquarters, the Goniwe inquest heard yesterday

This emerged during the evidence led by security policeman Major Deon Niewoudt, who has been accused of blowing up three policemen and an informer in a police vehicle in 1989

The inquest was earlier told that Niewoudt had murdered the four because of information they had on security police complicity in the deaths of United Democratic Front activists Mat-

thew Goniwe, Fort Calata, Sparrow Mkhonto and Sicelo Mhlauhi

Niewoudt yesterday agreed it was unlikely that ANC operatives would have been able to gain access to a garage on the premises of Louis le Grange Square to plant the device

He also agreed it was unlikely they would have been able to do so unnoticed by guards (252)

Mr Anton Mostert SC, who is appearing for the SADF, also said the amount of explosives used showed the person who planted the bomb had intended to kill the four — *Ecna*

Torture Sowetan report

18/8/93
ANC
warned

RETURNED Exiles Com-
mittee president Mr Pat
Hlongwane has threatened
"physical action" against the
African National Congress
should it not release the
report on alleged human
rights abuses in ANC deten-
tion camps.

The commission, which
sat under prominent South
African businessman Mr
Sam Motsuenyane, earlier
this year, inquired into alle-
gations of torture and mur-
der in ANC detention camps
outside South Africa. Its re-
port was expected to be re-
leased earlier this month.

Speaking in Durban yes-
terday, Hlongwane said:
"We will take physical ac-
tion if the report is not re-
leased, because the ANC
only understands that lan-
guage."

He would not elaborate,
except to say the action
would follow pickets and
other demonstrations
of the alleged victims of the
camps were expecting com-
pensation to arise from the
report's recommendations.

Hlongwane accused the
ANC of delaying tactics and
said he would demand a
meeting with ANC president
Mr Nelson Mandela should
the report not be released
soon.

His statements came as
the Returned Exiles Com-
mittee, which claims to in-
clude 1 000 former ANC
detainees, prepared to in-
tebrate "victory day" to cel-
ebrate the release of
ANC exiles two years ago
from the Quatro camp in
Uganda and to remember
those allegedly killed in de-
tention.

Hlongwane made head-
lines last year when he re-
portedly threatened senior
ANC leaders with death for
their alleged involvement in
torture. He withdrew the
threat later.

He caused a stir again last
month when he told report-
ers in Durban he was a mem-
ber of the Afrikaner
"Weerstandsbeweging,"
"militarily" — Sapa

Death car had false plates

Sowetan 18/8/93

~~254~~ 252

Sowetan Correspondent

■ LIMPET MINE Uncertainty about

bomb that killed 3 cops and informer:

IF A BOMB WHICH killed four people had been placed in the boot or under a seat, it could have been put there only by the SAP, the Goniwe inquest was told yesterday

Mr Anton Mostert, SC, for the Defence Force, was cross-examining Major Deon Nieuwoudt about the explosion which killed three policemen and an informer on the Motherwell-Addo Road on December 15 1989

Nieuwoudt agreed that to get into the car somebody would have needed a key

Mostert said if the bomb was placed in the boot or under a passenger seat, then it could not possibly have been planted by the African National Congress

All evidence indicated the bomb was not simply a limpet mine attached to the axle beam of the Jetta, as had been claimed.

Nieuwoudt said that bombs and explosives were unpredictable and it was not always possible to establish exactly what explosives had been used.

Cross-examined by Mr Mike Hodgen, assistant Attorney-General, he said he was qualified in the destruction, use, identification and clearance of bombs. He said he could not say why the Jetta appeared to have different registration numbers

On the night of the explosion it had

had a Transvaal registration plate while on other occasions it carried a CB (Port Elizabeth) registration plate.

On December 14 he had gone home at 4pm and then at 8pm gone to New Brighton to see an informer

He later went to the New Brighton police station because he had been informed there was a well-known terrorist in the area.

Though he had told his team to fetch Warrant-Officer Mbalala Ngoduka, who had already gone off duty, he then decided to go to Ngoduka's house personally because he did not know if the warrant-officer might be too tired to continue working

Detentions 'attempt to smash civics'

Anger as community leader held in Tokoza

Star 19/8/93

■ BY CHARMEELA BHAGOWAT

A Tokoza community leader who was a witness in an 11-month-long Goldstone Commission inquiry into causes of violence in the township has been detained by police

Tokoza Civic Association general-secretary Lous Sibeko was one of 12 people held in raids on Tokoza homes on Tuesday

Police spokesman Captain Wikus Weber said they were detained for questioning in connection with "unrest violations"

The southern Transvaal branch of the SA National Civic Organisation (Sanco) yesterday

condemned the detentions, saying the deployment of security forces "was only a guise to smash community organisations" and that police should raid the hostels from where it alleged attacks had been launched.

Sanco said Sibeko had played a vital role in the past in assisting the Goldstone Commission. "We suspect he is being removed from Tokoza to inhibit him from giving information leading to the arrest of killers in the area."

Police said four bodies were found in Tokoza on Tuesday. Three people were killed and three injured in an attack on a

Tokoza home on Monday. One woman was killed in Katlehong on Tuesday.

When The Star approached the Goldstone Commission for comment on the police raids, advocate Torie Pretorius said "If there is enough evidence of police harassment of the community, it must be submitted to the Goldstone Commission which will decide whether to investigate the matter." (252)

Reporters this week saw several Tokoza homes with their doors broken down. Occupants claimed police were responsible. Weber denied that police had broken into the homes

Four 'people's court' deaths in Bhambayi

CT 19/8/93
DURBAN — Police believe four people who were found dead in the informal settlement of Bhambayi were killed by a "people's court"

A man and a woman were found shot dead on Tuesday night, and the bodies of two more men were found yesterday morning, said SAP spokesman Major Bala Naidoo (252) (252)

Maj Naidoo said the two people killed on Tuesday night were found in the Khanyile area of Bhambayi. Several R1 and AK-47 shells were found at the scene.

Later that night six shacks were burnt down. Police discovered the bodies of two men early yesterday

One man had been necklaced. At least six people are believed to have died in "people's courts" since the weekend.

Three more killings in separate attacks in Umlazi, south of Durban, have occurred over the past two days.

Police said Mr Jerry Govender, 38, was stabbed to death early on Monday and an unidentified 42-year-old man was shot dead yesterday morning.

Mr Pat Zulu, 49, was shot dead near Umlazi's railway station on Tuesday afternoon. He was apparently killed in an argument, police said — Sapa, Own Correspondent

Stiff penalty for Prince's killers

Mystery of borrowed car

19/8/93

SHOCKING SIGHT Borrowed red Jetta

blown up by limpet mine at roadside:

Sowetan Correspondent

A SECURITY policeman said yesterday he could not remember why he had to borrow the car which was later destroyed by a limpet mine when he had his own police vehicle that day

Captain Gert Lotz was giving evidence at the inquest on Matthew Goniwe, Fort Galata, Sicelo Mhlauri and Sparrow Mkhonto.

Earlier Lotz said he had used the red Jetta which later exploded, killing three policemen and an informer on the morning of December 14 1989

He said he had gone to work in his official police car but could not remember why it was necessary to ask Major Deon Nieuwoudt for the use of another car

He could not remember if his car was being washed or being used by somebody else (262)

He went to see an informer but the man did not put in an appearance He then ran

several private errands before returning

He did not enter the car in the police register or sign for it as was usual practice

He could not remember why he did not do this.

He was voluntarily working late when he received a call from Nieuwoudt asking him to bring the car to the Motherwell turnoff.

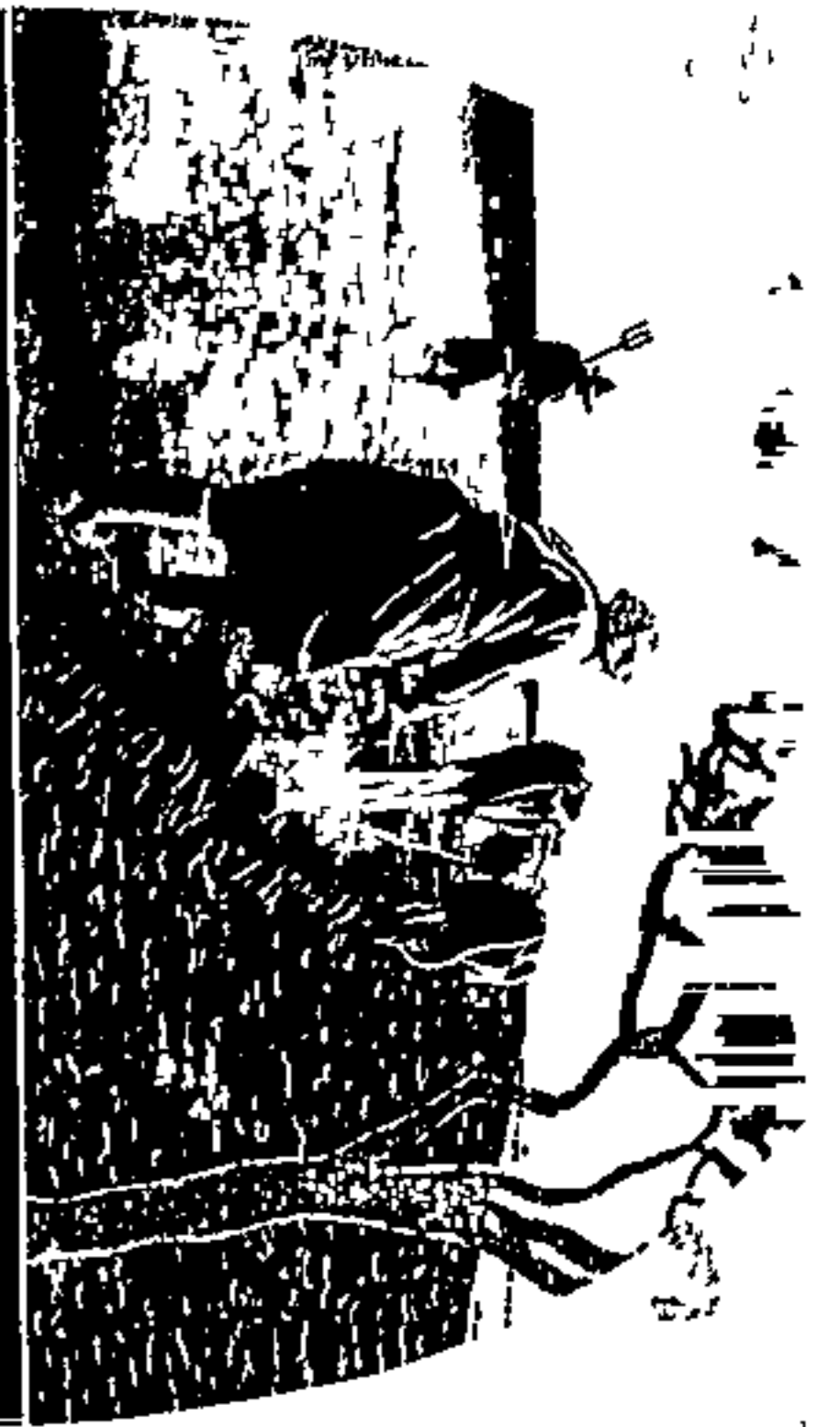
When he arrived he saw Nieuwoudt and four black policemen

He returned to Louis le Grange Square in their minibus. He could not remember why his walkie-talkie had not been turned on and said it was most unusual for an experienced police officer to lose radio contact.

He returned to the scene with a Colonel Roelofse and when he saw the devastation he was so shocked, he went to the side of the road and vomited.

He admitted that before 1985 he had been a member of Koevoet, along with several other members who had been transferred to Port Elizabeth during the height of the unrest

The inquest is proceeding



Back to the land

We say that:

- We strongly object to the inclusion of a property clause in the transitional bill of rights. Property rights are too important to be rushed through the inaccessible processes at the World Trade Centre. Instead, they should be dealt with by all South Africans after an election. It is not clear how long transitional property rights will last but they will prevent any restoration or redistribution of land from taking place during that time. We believe that land restoration needs to be tackled urgently, and we demand that it is completed within the next five years.
- Because of the discriminating laws and policies in South Africa, our country is now owned by white people. The Land and Group Areas Acts prohibited us, as blacks, from owning land up until 1991, and our property rights were flagrantly disregarded through the policy of forced removals. The proposed clause sets out that black rights to land that was stolen from them are "dependent on feasibility". A property clause in this context will protect white power and privilege.

We note with deep concern that:

- If property rights for existing owners are guaranteed in the constitution, without sufficient provision for land restoration and redistribution, then a land claims court or a land reform policy will be vulnerable to challenge or review. It will enable whites to challenge any laws and policies aimed at restitution on the basis that they conflict with their constitutional rights.
- As affected communities, we have not been thoroughly consulted, and especially not by parties such as the National Party and the Democratic Party.
- Extra-parliamentary organisations and certain parliamentary organisations like the Progressive Federal Party (now the Democratic Party) have a proud history of resisting forced removals. Attempts to "de-constitutionalise" the restoration issue fly in the face of this history and could prevent the restoration of our land.

A Call for More Discussion on a Property Clause in the Bill of Rights

We, the rural and landless communities participating in the Back to the Land Campaign, have borne the brunt of discriminatory land policies. Together with the service organisations we work with and other supporters, we bring the following message to the negotiators at the World Trade Centre.

We hereby demand that:

- the proposed property clause, be either scrapped, or be drastically changed in order to ensure that those who have been unjustly deprived of their land have a right to restitution;
- all affected parties, particularly the landless and rural people, be given the time and opportunity to make submissions on the matter;
- thereafter, the issue be openly and thoroughly debated in the multi-party negotiating forum; and
- this debate should be broadcast in full on radio and television, for all South Africans to hear.

To each delegate at the forum, we say:

There can be no freedom without land, and there can be no peace until the emotional issue of land is settled. The multi-party forum needs to commit itself to restoration and land reform before a new constitution is drawn up. We are concerned that the property clause, which is due to be finalised at the World Trade Centre, underplays the rights of people who were forcibly removed from their land and who have been denied access to land.

We fully support the protection of security of tenure. However, the clause which the negotiators are proposing legitimises rights that were obtained through statutory discrimination of the past. It prejudices those who have already lost their security of tenure and works in favour of those who now own land.

The Bill of Rights is an important document with far reaching implications for all South Africans. We expect it to guarantee the return of our land, or the granting of access to the land. If it does not do that, it will have no legitimacy in the eyes of landless and rural communities. We will then have no option but to return to our land by force, whatever the consequences.

Submitted on behalf of the Back to the Land Campaign. A campaign of over 70 rural and landless communities, supported by the National Land Committee and affiliates.

elezi said 2018/93
 ANC president Nelson Man-
 day told the Transport and Gen-
 ers' Union's national congress in
 g SA faced the very real dan-
 ght wing opposing a democrat-
 ent. (118)
 was going to speak to the right
 t it to join negotiations
 take countries such as Angola
 ibique had made after indepen-
 fighting instead of negotiating
 position, Mandela said
 liberation would happen with
 the right wing
 said the ANC had to find ways
 sing whites' concerns They
 fear a "tit-for-tat" policy when
 ame to power, he said
 issued calls for the dismantling of
 SACP/Cosatu alliance, saying
 made the calls had not been part
 ggle
 l fight the election together and
 ether" — Sapa-Reuter

Women calm angry squatters

WOMEN for Peace defused a potentially explosive situation in Phola Park on the East Rand yesterday, moving through the tense squatter camp to calm residents

The women arrived in five busloads as policemen, an ANC delegation, peace observers and a large media contingent arrived to visit the area Angry residents gathered outside their shacks as police Nyalas followed by a convoy of about 15 cars arrived B/Day 2018/93

The policemen formed a cordon around the contingent as it moved towards a house where alleged police informer Bongani Mbatha claimed he was tortured by ANC members Police have said the house still contains bloodstains (218)

Women for Peace forced the contingent back towards the entrance of the squatter camp, singing and shouting for peace ANC Youth League members tried to quell growing anger as residents hurled abuse

Police tried to assure Phola Park residents they were there to protect the Press, but the contingent was forced to withdraw

The ANC earlier yesterday accused police of damaging property and assaulting residents during house searches

Police spokesman Capt Wikus Weber said police would react formally to the allegations

Statistics indicated there was "some kind of orchestrated force" in the area.

Police said yesterday the bodies of two men with gunshot wounds were found in Thokoza One had been shot 18 times Four men were arrested after police found a 12-bore shotgun at a Tembisa house

In other incidents, a security guard was stabbed to death at a railway station in Braamfontein, Johannesburg, and a train commuter was found dead on the tracks at Longdale station — Sapa

Goldstone says greed central to taxi violence

A COMMITTEE of the Goldstone commission has listed intolerance, selfishness, provocation and greed by taxi operators as the immediate cause of taxi violence

Among other causes were the effect of apartheid laws on urbanisation, commercial factors, the Transport Department's role, a lack of law enforcement and the absence of facilities (252)

Political rivalry and affiliation were not causes of taxi violence, the report said

The committee's fifth interim report was released yesterday, more than a year after it began hearings into taxi violence

The authorities' failure, because of apartheid laws, to provide even rudimentary transportation facilities to masses of people on a daily basis, was an important factor in the violence buildup (252)

Among the commercial factors in the violence were the inability of the free market to operate because of the cost and delays of the permit system, the absence of business skills in operators, the effects of unfair competition by the state-subsidised bus and train services, the deterioration of the economy, and the inflationary effects on running expenses leading to overloading, and the necessity for high speed to

increase passenger turnover.

On the role of the Transport Department, the report was scathing, noting an absence of anticipation and lack of communication with taxi operators.

It said secrecy in the issuing of permits by local road transportation boards and, more particularly, the absence of reasons for refusals of permits and high fees for appeals, had led to a perception by taxi operators of corruption among officials.

The committee's report noted that where sufficient manpower and facilities existed, effective policing reduced violence and intimidation

"(But) the absence of proper law enforcement in most areas has brought the legal system and the efficiency of the whole system of control into disrepute."

It also said the taxi industry should not be deregulated in the foreseeable future, and not before informal townships and settlements had become established and peaceful communities

The report, which is not final as the committee still has to investigate the SAP's role in the Cape Town taxi violence, is now in the hands of President F W de Klerk — Sapa

SAP counsel accuses ANC

THE ANC was bent on discrediting police to hasten joint control, SAP senior counsel Flip Hattingh told the Goldstone commission's inquiry in Johannesburg yesterday B/Day

He referred to a commitment made in Sebokeng last year that the police, the ANC and the civics would patrol "to identify the enemy", but nobody had come forward from these organisations 2018/93

Cross-examining ANC Vaal subregion chairman Kaizer Klaas, Hattingh said "I'm putting it to you that you are not the least bit interested in co-operating with the police so you can discredit the police and get joint control"

Klaas said it was the police who were trying to discredit the ANC by releasing thugs turned over to them by the organisation (25)

Hattingh said "Often you bring the person but not the evidence The police need evidence" — Sapa

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INSURANCE COMPANY



Bill of rights is too long, says expert

St. Times

22/8/93

By CARMEL RICKARD

ONE of the most experienced United States civil-rights litigators, Professor Jack Greenberg, has described the draft bill of rights now being considered at the World Trade Centre as longer and more detailed than necessary.

The Columbia University law professor heads a group of US human-rights lawyers visiting South Africa at the invitation of the Legal Resources Centre. The group wants to help local lawyers prepare for litigating under a bill of rights.

Speaking after a seminar in Durban last week, Professor Greenberg said he believed all this coun-

try's courts should be able to consider constitutional issues and questions related to a bill of rights.

However, because of South Africa's unique problems it might be best to create a special new court which would have the final word on constitutional issues. (252)

Commenting on the draft interim bill of rights, Professor Greenberg said that, while it was longer and more detailed than he thought necessary, a court sympathetic to human rights would find it gave enough powers to protect the public.

Judges demand say in new constitution

By CARMEL RICKARD

THE country's Chief Justice and all the judges president are meeting in Pretoria this weekend amid growing demands by judges for a say in the debate over a new constitution and bill of rights.

SI Times
Legal sources say they have been forced into silence on these key issues because they have not been invited to make an input, and no mechanism exists which would allow them to do so.

22/8/93
It is understood the judges are disappointed and concerned that they have not been able to discuss key aspects of the constitution and the bill of rights with the technical committees responsible for drafting these documents.

(252)
Clear evidence of the growing concern came on Friday when the judge president of the Transvaal, Mr Justice Frikkie Eloff, took the unusual step of raising the problem in public with Justice Minister Kobie Coetsee.

Anxious

During the opening of the new Pretoria Supreme Court buildings, Mr Justice Eloff noted that it was important for judges to make their input on the constitutional debate. He also called on Mr Coetsee to ensure the judiciary were given the opportunity to contribute.

This weekend's urgent meeting is another indication of growing concern among the judiciary.

According to legal sources, they will be discussing the proposed constitutional court and other related issues on which they feel they should be consulted by the multi-party forum.

□ To Page 2

Judges demand their say

SI Times
22/8/93
□ From Page 1

Members of the judiciary have been put in a difficult position because of the decision by the multi-party negotiating forum not to allow oral submissions. Groups may make written representations to the technical committees.

While they are anxious to give their views to the negotiating forum, a number of judges are surprised that their contribution was not actively solicited and that the judiciary are effectively having to request that they be allowed to make an input. They believe they have wide expertise on the practicalities of the administration of justice and could make a valuable contribution.

The problem of access to the technical committees drafting the constitution and bill of rights is not limited to the judges, however, and the General Council of the Bar, which represents the country's advocates, has now taken up the issue on behalf of the organised legal profession as well as the judiciary.

In particular, they want to discuss the administration of justice under a new constitution and mechanisms for enforcing a bill of rights. The chairman of the GCB, Mr Wim Trengove SC, said he believed that, ultimately, the enforcement mechanisms were even more important than the contents of a bill.

Mr Theuns Eloff, head of administration at the talks, said he expected the GCB and other bodies representing the organised legal profession to "interact" with the relevant technical committees within the next three weeks.

They would first have to make written submissions, and the committees could then request a meeting if they felt this was necessary, he said.

(252)
Apart from the GCB, the committees were likely to "interact" with the Law Commission, the Black Lawyers' Association, the National Association of Democratic Lawyers and others.

However, Mr Trengove said this process was not suitable. First, to make representations in the abstract was meaningless, and, second, it was inappropriate for the judiciary to make representations in this way, he said.

I WAS PAID TO BE HITMAN

By JUSTICE MOHALE

A 20-YEAR-OLD Kagiso man, alleged to be a police agent, has told City Press how his desperation for soccer boots prompted him to join hit squads set up to kill the ANC leadership in the area.

Veli Khumalo's shocking confession has been made to the Goldstone Commission.

The shy youngster said he decided to spill the beans because he was "sorry" and because he had been "caught" after being overheard talking about his abortive attack on an ANC leader.

Although he implicated two policemen at the Chandor Police Station in Krugersdorp, whom he said supplied him with arms, police issued a blank denial (252)

Khumalo said he was part of a conspiracy, which included hostel dwellers and policemen, whose mission was to create havoc in townships.

He said he was from a destitute family and could not resist the offer of R800 a job.

He said one evening in June after a soccer training session at the old Kagiso hostel ground, he was called by the men who recruited him. He was taken to their rooms and introduced to two white policemen who took him to Chandor Police Station and introduced him to two other cops.

City Press has their names, but the



MAYHEM MAN ... Veli Khumalo says his mission was chaos.

◀ THIS man says cops recruited him to murder THIS political opponent ▶



TARGET ... ANC leader Maureen Hatshwayo was "to be killed".

C/Reed 22/8/93



Custody deaths were 'dirty tricks'

By ELIAS MALULEKE

C/Reed 22/8/93

INKATHA and members of the "Kheswa Gang" in the Vaal Triangle have made allegations of SAP "dirty tricks" over the death in detention of Victor Khetusi Kheswa and his lieutenant, Daniel Moses Mabote.

Police spokesman Maj Piet Van Deventer declined to comment on some of the allegations, saying they were still under investigation.

Inkatha Vaal region organiser Mwezi Twala claimed that the police "assassinated" the "Vaal Monster" and were turning on members of his gang in a bid to silence them because some of them "knew too much".

Three other people who were close to Kheswa - Victor Mthembu, Clement Cindi and Hunter Ntloou - are also living in fear, as a result of threats allegedly made by the police.

They claimed in a bail application in court this week that their names were drawn up by the police as suspects in claiming threats were made that they would be killed one by one.

Van Deventer said the list was not a hit list. He claimed it was the names of suspects wanted in connection with at

least one assassination campaign started in July after advocate Jan Munnik reported on his investigation into the affairs of the notorious Vaal "Yankee" unit - an SAP crime investigation team of 100 policemen which used Kheswa as an informer. The unit was disbanded last year and some officers suspended.

Van Deventer declined to comment on claims made in the media in the past and as late as June that Kheswa was the leader of a hit squad that used the Kwamadala Hostel as a springboard to terrorise residents of Boipatong, Evaton, Sebokeng and Sharpeville, and that he was not arrested because he worked with a "police third force".

The police earlier also dismissed allegations about the "Kheswa Gang" operation from the Kwamadala hostel.

However, minutes after his mysterious death in police custody, police said Kheswa was everything that had been claimed about him - and had been implicated in several massacres

■ To Page 2

By JUSTICE MOHALE

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Veli Khumalo's shocking confession has been made to the Goldstone Commission.

The shy youngster said he decided to spill the beans because he was "sorry" and because he had been "caught" after being overheard talking about his abortive attack on an ANC leader.

Although he implicated two policemen at the Chamdor Police Station in Krugersdorp, whom he said supplied him with arms, police issued a blank denial (252)

Khumalo said he was part of a conspiracy, which included hostel dwellers and policemen, whose mission was to create havoc in townships.

He said he was from a destitute family and could not resist the offer of R800 a job.

He said one evening in June after a soccer training session at the old Kagiso hostel ground, he was called by the men who recruited him. He was taken to their rooms and introduced to two white policemen, who took him to Chamdor Police Station and introduced him to two other cops.

City Press has their names, but the police have denied such men are employed at the police station.

Khumalo says they showed him guns and grenades hidden in a locker.

He then underwent a three-week crash course at the police station in shooting, after which the police gave him a camouflage police uniform and he and others were driven around the townships in a stolen car which was kept at the the police station.

They went to a Swanieville shebeen and robbed patrons and the owner.

Khumalo said he was paid R800 as promised. Two days later they were fetched from the hostel by their police handlers and taken to the house of ANC leader Maureen Hlatshwayo.

Khumalo said he threw an explosive through her window, but it failed to go off.

However, he was later grabbed by ANC marshals who took him to Hlatshwayo's house where he confessed.

Hlatshwayo said Khumalo nearly killed a month-old infant in the attack. However, she had forgiven him because he had come clean.

West Rand Police PRO Maj Henriette Bester denied police knew anything of Khumalo or the incidents



ORDEAL... Augusto Palacios,

Palacio after h

By MOSES MAMAILA

encouraged - ... die, the union said.

DP blasts electoral no-go areas

Biday 23/8/93
ELECTORAL no-go areas were being established and would make the holding of a free and fair election next year impossible, DP Johannesburg city councillor Jack Bloom said at the weekend.

He was speaking at a seminar on the New Liberals at the SA Institute of Race Relations in Johannesburg.

Bloom tried to hold a public meeting at Orange Farm two weeks ago but was prevented from doing so by ANC youths who stoned his car and threatened him. *(204)*

He said if the DP could not hold a meeting at Orange Farm, which was a peaceful settlement, it would not be able to hold meetings in Sebokeng, Soweto and other townships.

"The real problem is the pervasive environment of fear and intimidation in these townships, so that even if the DP could be assured of the safe conduct of a meeting, very few residents would be brave enough to attend."

PATRICK BULGER

"In this light, I can state categorically that the elections next year cannot and will not be free and fair in the accepted sense in any of the established democracies.

"What we will certainly have is the formal mechanism of voting, and probably an accurate tally of votes, but this will serve less as a validation of the democratic process than as a means of providing legitimacy to the resulting government," he said.

At the same seminar, the DP's expansion co-ordinator in the western Cape, Stephen Ntsane, said political intolerance in townships was a legacy of apartheid divisions along ethnic and racial lines.

Ntsane said civil society had not been able to take root in townships but township dwellers wanted an extension of civil rights including the right to liberty and free speech.

Coetsee says judges face new role

PRETORIA — The role of judges would change with the introduction of a constitution and a bill of rights, Justice Minister Kobie Coetsee said at the weekend. *Biday*

Speaking at the official opening of the new R43m Pretoria Supreme Court building, Coetsee said whereas judges currently played an interpretive role in applying the law, in future they would have to take part in law-making policy. *(252)*

To fulfil this new role, it was essential that a "relationship of trust" be established between the judiciary and other branches of government. Transvaal Judge President Judge

ADRIAN HADLAND

C F Eloff said the judiciary needed to be included in discussions on the creation of a constitutional court and the future role of judges. *23/8/93*

The question of whether a constitutional court should be part of the Appellate Division, part of the Supreme Court, a combination of both or a separate body would need to be discussed by all concerned.

The new Supreme Court building has 29 courts and 52 judges' chambers. It is linked by an underground tunnel to the Palace of Justice.

your forces with the right wing in taking up government. "I don't

Rape protest in lawman's office

CT 24/8/93 (252)

Staff Reporter

A GROUP of anti-rape protesters angered by low bail amounts granted to suspected rapists invaded the fifth-floor office of Cape attorney-general Mr Frank Kahn yesterday.

They sought assurances that he would personally intervene and look into their grievances

The group of about 30 women, comprising residents of Observatory and the city bowl and members of Rape Crisis and the Black Sash, gathered outside Mr Kahn's offices in Victoria Road at lunchtime to protest against a magistrate's decision to grant two Athlone men bail of R200 each after they were arrested for allegedly raping and sodomising a woman in Observatory in June

Protest organiser Ms Anthea Oosthuizen handed a petition bearing 2 000 signatures to Mr Kahn at the ground floor entrance

Then the group decided to confront him in his fifth-floor office after he refused to answer any questions downstairs

Mr Kahn told the women his office had opposed bail in the Observatory case, but the prosecutor had "been overruled" by the presiding magistrate when it came to lowering the bail set

Both suspects — who were initially granted bail of R1 000 before it was reduced to R500 and then R200 as they could not afford more — were still in Pollsmoor Prison as they had been unable to raise the bail money

His personal view on the bail

granted in the Observatory rape case would amount to "contempt of court"

"I'm aware of the feelings surrounding bail, but the court must also take into consideration the liberty of the suspect

"If the police say they are in favour of bail then there is nothing we can do"

Inquiry

Mr Kahn gave the assurance his office would consult the police to "ascertain their attitude and opinion" regarding rape cases

"I share your concern but we have a legal system I will look into the matter and find out what happened with the police I get annoyed when people say I don't take rape seriously"

He would relay his findings to the group by Thursday

ANC Vaal chairman Kaizer Klaas yesterday admitted to the Goldstone Commission that his organisation had refused to co-operate with a police request for help in stemming violence in the area. (S)

Klaas said as the police did not adhere to the peace accord stipulation of co-operation between parties to end the violence, the ANC had also decided not to do so. (252)

Speaking in Johannesburg at the commission's investigation into attacks

ANC refused to help SAP stop violence

on police, Klaas said he had not received a police request for assistance. (S)

But, presented with a copy of the request, he confirmed he had signed it, but had only a "vague recollection" of its contents.

The request, dated September 29, 1992 and addressed to Klaas and Sebokeng chairman Watch Motubedi, listed 13 members of the ANC who had been arrested for illegal possession of arms, includ-

ing AK-47 rifles and hand-grenades. 24/8/93

SAP commander Capt P J Celliers said in the document his office believed Klaas and Motubedi could stop "this sort of violence" by publicly condemning it, informing people of this standpoint and motivating them to "sincerely and vigorously work towards peace". (S)

Under cross-examination by SAP counsel Flip Hattingh, Klaas admitted

he knew two of the ANC members on the police list who had been found guilty of illegal possession of firearms, but who had disappeared before they could be sentenced.

Klaas said that even if he knew where the two wanted men were, he would not tell the police.

More than 370 policemen were killed in SA last year, many of them in the Vaal Triangle townships — Sapa

NEWS Vaal ANC boss at Goldstone ● National Youth

'We won't co-operate'

Sowetan 24/8/93

African National Congress Vaal chairman Mr Kaizer Klaas told the Goldstone Commission yesterday the SAP was not adhering to the Peace Accord, and so the ANC was not willing to either

Testifying in Johannesburg at the commission's investigation into attacks on police, Klaas admitted his organisation had refused to co-operate with a police request for assistance to stem violence in the Vaal Triangle townships.

Cross-examining Klaas, SAP coun-

sel Mr Flip Hattingh demanded: "Are you saying because the police (allegedly) did not comply with the Peace Accord, you (the ANC) would not?"

Klaas said this was correct.

His testimony arose out of a letter sent by Crime Intelligence Services Commander Captain PJ Celliers on September 29 1992 to Klaas and Sebokeng ANC chairman Mr Watch Mothibedi.

The letter said ANC members had been involved in murders and armed attacks on police

Celliers said in the letter his office believed Klaas and Mothibedi could stop "this sort of violence"

Asked if the police had asked him for assistance to identify attackers or holders of illegal firearms, Klaas said he was unaware of any such requests

Shown a copy of Cellier's letter, he said he had only a "vague recollection" of the contents (252)

Pressed on the letter's reference to attacks on police, he said he recalled this "very faintly" — Sapa

Trial is ^{Sowetan} postponed
25/3/93

THE case against nine policemen charged with murder in connection with the Sebokeng shootings on March 26 1990 was yesterday postponed indefinitely in the Vereeniging Circuit Court. Only six of the policemen attended the brief hearing before Mr Justice T Grobbelaar. No charges were put to the accused and no evidence was led. The charges against the policemen, all from the Vaal Triangle and Krugersdorp areas, followed a report by the Goldstone Commission of Inquiry appointed at the time to investigate the shootings. All are facing six counts of murder, one of attempted murder and an alternative charge relating to the negligent use of a firearm — *Sowetan*

Correspondents and Sapa (252)

Jurists prepare for SA's Bill of Rights

Billay 26/8/93

ADRIAN HADLAND

PRETORIA — A Bill of Rights would affect every level of SA's judicial system, a Unisa law conference heard yesterday.

Durban University's law faculty dean Prof David McQuoid-Mason said a Bill of Rights would affect private law, contracts, property rights, privacy, family law and virtually every other sphere.

In almost every case, once a Bill is in place, "we will first have to ask ourselves whether we are dealing with a constitutional issue before we can rush off to standard remedies", he told the conference on the future of private law.

The Bill would affect litigation from the magistrate's courts upwards as it would be too late to raise constitutional questions once cases had reached the appeal stage.

Roman-Dutch law as the basis for SA's legal system would also have to be carefully considered, Unisa law professor Joan Church said.

"The fact that there is a need for a symposium on the future of SA private law indicates that the future of Roman-Dutch law as the common law of this country is a matter of moment."

The public's lack of faith in Roman-Dutch law, together with its poor record regarding

the restitution of property and rights under apartheid, meant there were many valid objections to Roman-Dutch law's use under a new legal dispensation, Unisa's Annél van Aswegen said.

But vague wording a Bill could pose problems of interpretation. (252)

"A general precedence of fundamental rights over any conceivable private interest smacks of totalitarianism and in its inflexibility contains the seed of the erosion of the very justice it seeks to promote," Van Aswegen said.

Other areas which would be affected included defamation in the light of a freedom of speech clause, property rights against land reallocation, adoption, abortion, pensions, bigamy, gender issues, affirmative action and the right to die, said McQuoid-Mason.

Whatever the area of law, some form of intervention was likely, he added.

He called on universities to study judicial decisions from countries, including India, New Zealand, Canada, Germany and Ireland, which had some experience in applying a Bill of Rights to the common law.

Eglin wants new authority in place soon

LINDA ENSOR

CAPE TOWN — The sooner a new legislative authority was put in place the better, as SA could not continue with the administrative instability it was experiencing, DP MP Colin Eglin said yesterday.

It was necessary to introduce stability and certainty into the situation, he told a Cape Chamber of Industries function.

"There is nothing more dangerous in a society in transition than an ever-weakening government and an ever-increasing political force outside the formal structures.

"We have to bring together a government which has de facto and de jure political power.

"This is what makes it so important that we

get on with the political process as quickly as possible," Eglin said.

All the institutions of the apartheid era were still in place but there had been a shift in the balance of power. While President F W de Klerk's government had constitutional power, it had become difficult for it to administer the country effectively, as de facto power had moved into the hands of informal institutions.

Eglin was "very, very hopeful indeed" about the outcome of the transition, though there would be turbulence en route.

Negotiators have only 2 days left for Bills

Political Staff AUG 27/89/13

TIME is running out with only two working days left for the Negotiating Council to finalise four draft Bills in time for next month's parliamentary session

Negotiators failed this week to finalise draft legislation for a Transitional Executive Council (TEC), an Independent Media Commission, an Independent Broadcasting Authority and an Independent Electoral Commission

The target date for their completion has now been shifted to Tuesday

Constitutional Development

Minister Roelf Meyer earlier this week warned the council that the session of parliament could not be postponed. The tight time-table he spelt out was

- The four draft bills have to be finalised by "the end of the week or early next week at the latest", and
- The Interim Constitution is to be completed by the end of next month for discussion in a second short parliamentary session in October

Democratic Party chairman Colin Eglu also pointed out that for an election to take place in April, it has to be promulgated in November. The promulgation could, however, only take place after all the draft Bills, including the Interim Constitution, have been passed by Parliament

Mr Meyer yesterday said "some extra hours" were needed to complete the work by Tuesday

However, Ciskei negotiator Mickey Webb and Bophuthatswana negotiator Rowan Cronje believed that the Tuesday deadline was unattainable. Webb said the target date was "physically impossible" and "under normal working conditions we need another 10 days". Mr Cronje said, if Tuesday's deadline was missed "it is not necessarily the end of the world"

Lawyers' ads 'ineffective'

252

Staff Reporter

28/8/93

THE lifting of the ban allowing attorneys to advertise their services was a "non-event" and has been ineffective in attracting more clients, Mr André van Vuuren, director-general for the Association of Law Societies, said yesterday

Mr Van Vuuren said the best way to attract clients was direct contact and word of mouth. He said few law firms were advertising since being allowed to from last month.

Advertising would not affect attorneys' fees significantly because of the competition in the market, he said.

Mr Ian Murray, director of Professional Services of the Law Society of the Cape of Good Hope, said it was too early to say whether advertisements were attracting more clients.

He said attorneys were not allowed to tout, may not compare their services or prices and may not claim specialised knowledge or expertise.

City legal firms said yesterday they were considering placing advertisements.

A leading law firm advised the public to check the professional qualifications of those offering services and whether the firm had "the financial muscle" to provide the service.

Taxi violence: source of it all comes from within, says Goldstone

CIPress 29/8/93

(252) (252)

A COMMITTEE of the Goldstone Commission has fingered intolerance, selfishness, provocation and greed leading to the use of violence as the immediate causes of fighting among taxi operators.

The committee's fifth interim report was released on Thursday, more than a year after it began hearings into the taxi violence in various centres.

Saying political rivalry and affiliation were not causes of taxi violence, the report places much of the blame on operators, who it says are plagued by intolerance, selfishness, a need to provoke and greed.

"In few cases were operators or organisations in the industry prepared to accept, let alone recognise, their own faults in relation to the problems. In the final analysis, the use of violence by taxi operators is the most immediate cause of the violence," says the report.

Among other causes, in historical sequence, were the effect of apartheid laws on urbanisation, commercial factors, the role of the Department of Transport, a lack of law enforcement and the absence of facilities

The report says massive and rapid urbanisation and the government or local authorities' failure - because of apartheid laws - to provide even rudimentary transportation facilities to masses of people on a daily basis were a factor in the buildup to violence.

In addition, conflict arose when historical divisions between people mirrored those between operators in the regular taxi industry, who served "lawful" areas in terms of apartheid, and "pirate" operators, who

Goldstone hits at taxi wars

A COMMITTEE of the Goldstone Commission says the taxi industry should not be deregulated in the foreseeable future before informal townships and settlements have become established, peaceful communities

This is one of the recommendations in the committee's fifth interim report on taxi violence. The committee sat for more than a year to hear evidence on the taxi violence

Scores of people have been killed throughout the country in rival taxi association clashes

The report, which is not final as the committee still has to investigate the SA Police's role in Cape Town's taxi violence, is now in the hands of State President FW de Klerk.

Stating that political rivalry and affiliation are not causes of taxi violence, the report says the existing regulation of the industry needs to be replaced by one which acknowledges the place of the minibus in the country's transport infrastructure. It must seek to protect the interests of passengers, taxi operators and the public

Local Road Transportation Boards are discredited, the commission says, and their replacement with other statutory bodies are not likely to provide any success.

The committee presented guidelines for future regulation of the industry.

■ A genuine partnership needed to be formed between taxi associations and the controlling authority.

■ The controlling body should be statutory

■ Permits should be issued at local level with due regard for prevailing conditions;

■ Certain criteria should be invoked for the granting of permits, and,

■ Every decision of the issuing body should be subject to a simple, inexpensive form of appeal, and there should be independent, accessible handling of complaints at local level.

The committee also recommended improved training facilities for the taxi industry by asking for assistance from organised commerce and industry. Local authorities and taxi associations should discuss and implement ways of improving ranking facilities

Representatives from the industry should also be identified and consulted in the formulation of local, regional and national transport policies.

The report further says the functions of transport inspectors should be transferred to local authorities and, in particular, to traffic police

Every local authority should appoint at least one person to liaise with local taxi associations and community organisations, while dispute-resolving mechanisms should be established.

The present system of appeals from local transportation boards should be simplified.

serviced informal or "illegal" settlements.

Among the commercial factors in the violence, the report notes, was the inability of the

free market to operate because of the cost and delays of the permit system, the absence of business skills and sophistication by operators, the

absence of understanding of market forces, the effects of unfair competition by the heavily state-subsidised bus and train services, the deterioration of the economy and the inflationary effects on running expenses and the consequent overloading and the necessity for high speed to increase passenger turnover

Turning to the role of the Department of Transport, the report was scathing

It noted an absence of anticipation and lack of planning, lack of communication with taxi operators, the secrecy and insensitivity (transparency) of local road transportation boards in the issuing of permits and particularly the absence of reasons for refusals of permits and the high fees charged for an appeal

As a result, there was a perception by taxi operators of corruption and unfairness among department officials.

The department's work was not helped by the serious understaffing of its inspectorate.

On the question of law enforcement, the committee's report noted that where there was sufficient manpower and facilities, effective policing had reduced violence and intimidation.

"(But) The absence of proper law enforcement in most areas has brought the legal system and the efficiency of the whole system of control into disrepute," it was stated in the report.

In many cities and towns, the committee said, there were inadequate ranking facilities, which added to the many problems

The committee was chaired by DJ Rossouw SC

Hlongwane 'was a spy for SAP'

By ZANELE VUTELA

VOCAL anti-ANC dissident Patrick Hlongwane was a spy for the SAP for more than five years, the Motsuenyane commission found (252)

The commission said in its report "the preponderance of evidence supports the findings reached by a tribunal in February 1991 that Hlongwane was for more than five years a police agent actively involved in numerous acts of sabotage against the ANC"

The commission however accepted that Hlongwane was tortured and beaten while in Quatro

The commission therefore recommended that "the ANC issue a general apology to Hlongwane for the torture to which he was subjected and the humiliating treatment he endured while incarcerated in Angola"

Regarding Mwezi Rodney Twala, chairman of the Returned Exiles Co-ordinating Committee and now an Inkatha member, the Commission found that "while the initial arrest of Twala was based on reasonable cause, he was wrongfully imprisoned, first in Luanda and then in Quatro, without a hearing"

From unbelievable to ludicrous

By DAVID BULLARD

PUBLIC officials have never been eager to be accountable to either the press or the taxpayer and the well-publicised PIC bond options affair does not look like changing that.

The Public Investment Commissioners (PIC), trustees of the State pension funds, sold one-week at-the-money options on long-dated government bonds for R900 to selected parties. Option holders pay a premium for the right to buy or sell the underlying commodity, in this case gilts or long-term government bonds.

"At the money" refers to the situation where the option is priced at the market price of the gilt itself.

The real market price at the time of the PIC deal was at least R2 800. Because the bond market deals in millions of rands, this gives a handsome, risk-free bonanza to the lucky few at a cost to everybody else.

Explanations offered by the PIC range from the plain unbelievable to purely ludicrous. One of the more en-

tertaining is that the PIC priced the options using "intrinsic volatility".

Nobody else has ever heard of intrinsic volatility.

Besides, there is no intrinsic value in the out-of-the-money options which the PIC claimed to be selling.

Similarly, the claim to be using a different options pricing model has been met with disbelief. Whatever else they may be, the commissioners are not at the leading edge of financial instrument technology.

Initially, the commissioners asked the public to believe that they dealt only with people who did not job or speculate but traded back to back. Part of the condition of the option was that it should not be on-sold (at least one firm is believed to have ignored this condition and washed the profits through a bank).

If that were the case, how could one

sell a non-negotiable option to somebody who only trades back to back?

Whoops... the commissioners reversed the story and now claim that they limit transactions to those parties who, from experience, they associate with large deals in the stocks concerned.

So why don't the commissioners deal with three, of the most active merchant banks in the bond market? Surely that would improve the marketability of government stock more than dealing privately with selected stockbroking firms, some of which may be undercapitalised for this role?

Many of us in the market are asking how the commissioners can be both an investor in government debt through the pension fund role and at the same time claim to be an issuer of it.

This hermaphroditic existence would seem to suggest that the role of the Reserve Bank as market maker in government stock is superfluous, a ridiculous suggestion, particularly because its dealings with the market are

beyond reproach.

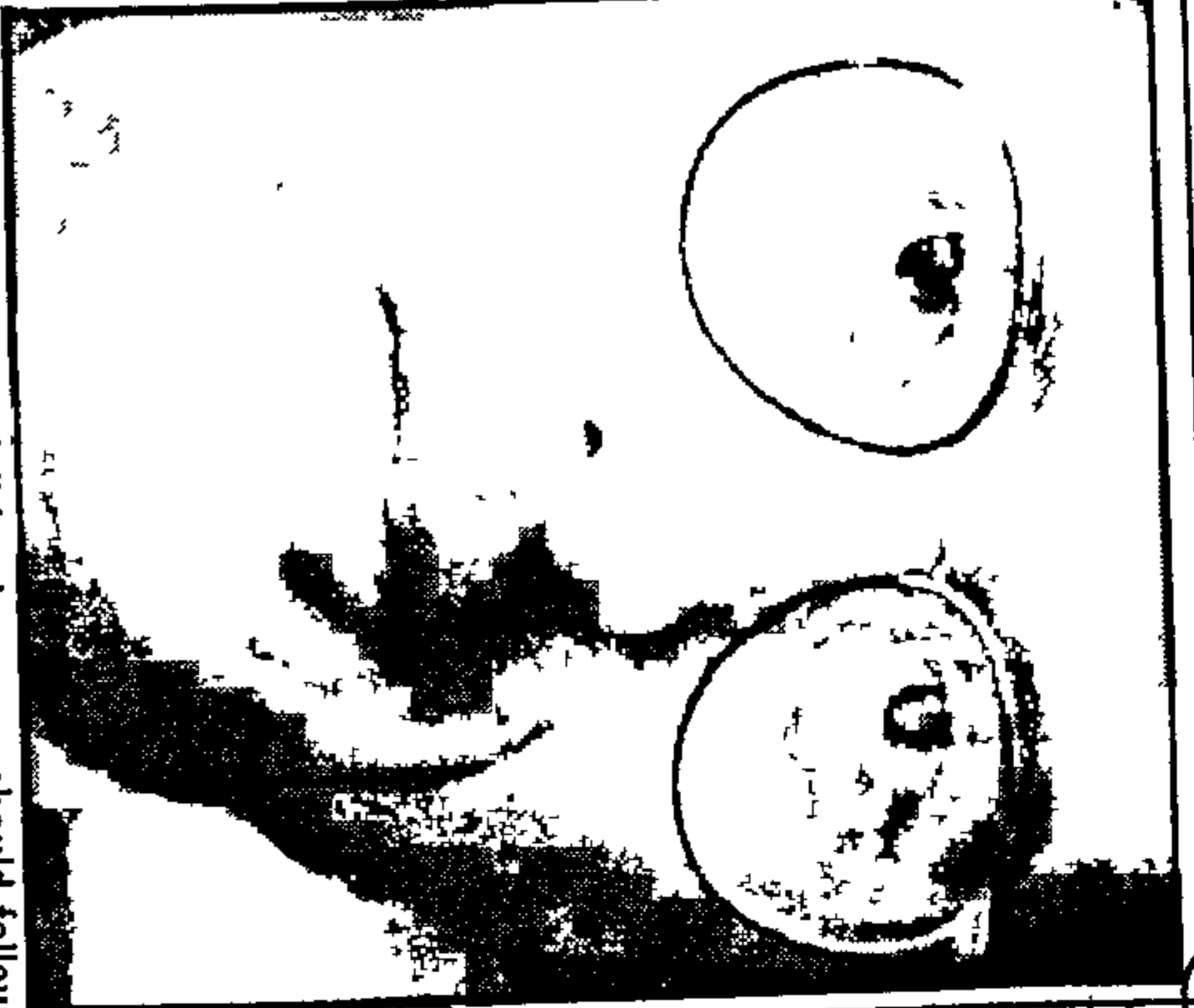
So what is to be done? One suggestion is that an independent inquiry be launched by the Minister of Finance.

The Office of Serious Economic Offences has wide powers of discovery and they should be invoked, extending, if necessary, to the inspection of personal bank accounts.

The full legal process should follow. Any individuals involved should be banned from membership of the Bond Market Association on the grounds that the Act provides for the exclusion of those who are not of good character or high business integrity.

The bond options market is far too large and important to ignore problems of this kind and it might be good to see more than lip service paid to the concept of the level playing field, particularly from the JSE.

David Bullard is a director of the Johannesburg Options Market, a company which specialises in options trading.



DAVID BULLARD: The full legal process should follow

focus on

Sowetan 30/8/93

APARTHEID was possible because South Africa's constitution had no provisions to protect citizens from arbitrary Government actions

There was no Bill of Rights to prevent the passage of the infamous 1913 Land Act and the myriad so-called laws that deprived the majority of South Africans of most of their civil and economic rights

No one knows better than South Africa's disadvantaged what it means to be defenceless in the face of unjust legislation, permitted by a defective constitution and upheld by a hamstrung legal system

Naturally the thought uppermost in the minds of many of those who suffered under apartheid is to balance the scales. Those who bear no malice will merely be determined to ensure that injustice does not continue, others will want to see past wrongs redressed, while an unknown number will want revenge

Thoughts of revenge are understandable but worrying to all people of goodwill who are committed to building a peaceful and prosperous society

Greater suffering

The most important reason why the majority should hesitate about supporting a programme of revenge is the probability that it will not be in their own personal best interests

There are many examples in history where the anger and frustration of a people have led them to support policies that have caused them greater suffering

Great changes after long periods of oppression should therefore be treated with the utmost caution

Will the broad majority of black South Africans benefit from a programme of reverse discrimination against whites? Possibly a massive programme of redistribution, taking property, cash and jobs away from whites to give to blacks? Remember, the question is not *is it justified*, it is *will blacks really benefit*?

Obviously some people will gain in the short term, but will the broad masses benefit? Not likely from what we have seen of other countries where large government wealth transfer programmes have been attempted. The poor have been made even poorer, to their bitter disappointment

Great, prosperous and just nations are built on solid foundations. In their modern form they are built on the rock of a sound constitution, a just legal system, the rule of law and, just as importantly, citizens who believe in these institutions. If we want to build such a nation we can do no better than to borrow from other countries the fundamental principles of good government that have allowed them to become peaceful and prosperous

We will also have to take note of the sad truth

After apartheid, balancing the scales justly is uppermost in most people's minds but, says Free Market Foundation director **Eustace Davie**, revenge is not the way to achieve it: (252)

that it is essential to protect citizens from the arbitrary actions of their own governments

Defining the proper role of government is crucial, particularly if we want to ensure that our future government protects and serves us and does not enslave us

The most important functions of government are to provide an army (to protect citizens from foreign aggression), a police force (to maintain peace between citizens) and law courts (to punish criminals and settle civil disputes)

When governments go beyond these functions it usually cannot avoid benefiting some citizens at the expense of others

Politicians and civil servants are like everyone else — they look after their own interests first

We should therefore take care not to give them too much power. As the British historian, Lord Acton, warned "Power tends to corrupt, and absolute power corrupts absolutely"

When the American people gained their independence from the British, they wrote a constitution and a bill of rights containing clauses that were intended specifically to protect citizens from government abuse of power. This was a revolutionary new idea and it worked so well that it was later borrowed by the Swiss to bring peace to their strife-torn country

The sound system of government adopted by the USA allowed its relatively poor immigrant population to build, in a harsh country, the wealthiest nation on earth in just 200 years. The Swiss, adopting the same basic approach but with some refinements of their own, turned a beautiful but small and economically unattractive area with an ethnically diverse population into a country with one of the highest per capita incomes in the world

We South Africans can also write a constitution and a bill of rights with the same kind of protection for individual citizens as those enjoyed by the Americans and Swiss

There is a catch, though. If we write a constitution that will protect our children and our children's children, there can be no revenge, no arbitrary seizure of property

Claims for compensation for past damages are, of course, a different matter entirely and would have to be dealt with by the courts acting under the new dispensation

We have a crucial and difficult choice to make. Either we establish a just constitution and legal system now and let go of thoughts of revenge (other than punishment meted out by

the courts) or we abandon any thought of building a sound base for the future. It should be stressed that if we choose the first option many evil acts will go unpunished so as to avoid punishing the innocent. Moreover, the Government would not have the power under a just system to seize and redistribute property arbitrarily

If we leave holes in the system of justice so that one section of the population can be punished for past transgressions, the whole population, including those who have suffered in the past, will be at the mercy of whatever government is in power. In other words, blacks would be as vulnerable as they were under apartheid

If revenge is indeed the goal, an avowedly racist constitution which protects black people and their property but not whites would be preferable. Rather have justice for some than justice for none. No just system of government is possible without the recognition and protection of private property rights

The word property refers not only to land but also to belongings of every kind. Protection of private property therefore means protection of anything people may own, including their clothing, the tools they use in their work and intangible property such as the goodwill of a business

As everyone accumulates property of some kind, a just society must establish clear rules to prevent property from being taken by force. If property is not safe, people will not save and invest and the economy will not grow. Societies that have the best rules for protecting private property have the greatest long-term economic growth and the greatest reduction in poverty

The old communist, Max Eastman, in later life recognised the importance of private property,

It seems obvious to me now - though I have been slow, I must say, in coming to the conclusion - that the institution of private property is one of the main things that have given man that unlimited amount of free and equalness that Marx hoped to render infinite by abolishing this institution

Strangely enough Marx was the first to see this. He is the one who informed us, looking back, that the evolution of private capitalism with its free market had been a precondition for the evolution of all our democratic freedoms. It never occurred to him, looking forward, that if this was so, these other freedoms might disappear with the abolition of the free market.

Continued tomorrow

They're playing with words in Interim

1/9/93

(252)

Constitutional lawyers, when they are of constitution-making, sometimes relax by playing a word game. The game is to find one word to capture the value given primarily by a constitution or its Bill of Rights.

Some players, for instance, say that the value primary in the American Constitution is liberty. In the German dignity, and in the Canadian multiculturalism. South Africans now have a document with which they, too, can play.

It is the Chapter on Fundamental Rights in the Interim Constitution now being drafted by a technical committee at the World Trade Centre — the Bill of Rights which will govern the transition, and furnish an influential model for the final Bill of Rights.

On the surface, a most promising candidate for the value commanding first place in this Bill is equality. The Bill guarantees not just equality before the law, but equal protection of the law; and not just against the State, but, potentially, against private individuals.

The Bill puts an arguably looser rein on affirmative action programmes than even the ANC's draft Bill of Rights. And it gives one who complains of unfair discrimination (in certain kinds of proceedings) an unusual advantage by requiring the party denying the charge to

carry a special burden of proof. The Bill, moreover, permits the rights it gives to be limited by legislation if the limitation is reasonable, and justifiable in a free, open and democratic society, "based on the principle of equality".

It also directs that it is to be interpreted to promote the values which underlie a free, open and democratic society based, again, "on the principle of equality".

But any democratic society is "based on the principle of equality", in some sense or another of those capacious words. The useful question is, which particular sense. The Bill does not try to answer.

Merely to invoke the general idea of equality here adds very little to the meaning. The content of "equality" has been debated so fully that the word is used these days to identify a section of a library, not to determine specific choices its presence in these clauses is largely futile and somewhat gratuitous.

This propensity to adorn clauses with unhelpful invocations of equality strengthens the impression that the document is uncommonly preoccupied with that value.

All of which might lead one to expect that on the great questions of principle, this Bill would consistently choose the egalitarian path. Curiously, however, on

THE draft Bill of Rights for the transition appeals to the idea of equality, but overlooks the concept of equal rights, argues Etienne Murehnik (right)



two of the oldest questions of equal rights — equality of religious freedom and equality of freedom of speech — the Bill comes down on the side of discrimination.

The religious clause says that "religious observances may be conducted at State or State-aided institutions provided that such observances are conducted on an equitable basis, and attendance thereto is free and voluntary".

It is far from clear what it means to conduct a religious observance, but since the most famous contemporary controversies in this area are about officially organised prayer in government schools, the Bill presumably means to endorse that practice.

It is not inconceivable that the clause will be taken as authority also for religious education in State schools, and for any number of as yet unenumerable practices committing the State to a particular religious perspective.

Nor is it clear whether the clause permits the State to discriminate between religious groups down on the side of discrimination.

It is plain from the contrast between "equitable" and the "equality" which punctuates the rest of the Bill that something less than equal treatment of the religious is intended. How much less, few can say.

But what is clear is that the State may discriminate between the religious and the irreligious, otherwise the clause would have no point.

The point of the clause is to permit the State to endorse religious practices. The effect of that is to signal greater State approval of believers than of non-believers, and the effect of that is to empower believers and weaken non-believers. The classical example is

school prayer. When the government endorses prayer, as it does when it authorises a State-employed teacher to lead a service, it announces its support for the religious.

To that it is no answer to make participation voluntary, as the clause does. For one thing, State endorsement itself operates in subtle coercive ways.

For another, State endorsement of school prayer divides the student body into insiders — those who participate — and outsiders, those who do not. In important ways, that discrimination on the ground of religion. Religious equality requires the State to favour neither Christian over Muslim nor devout over faithless.

This clause arguably fails to guard against the second. Indeed, going to the other extreme, it pre-empt the debates in constitutional courts elsewhere that have proved so illuminating, and entrenched religious discrimination.

By doing that, it betrays the Bill's apparent devotion to equality. Much the same is true of freedom of speech. The greatest threat to free speech is, and always has been, that government comes to dominate the means of communication, so that its message is heard considerably better than those of its rivals.

The most obvious way for government to do that is to censor; and the free speech clause in the Bill will guard against censorship (provided that its enforcement is given to trustworthy judges).

But censorship is not the only way for government to dominate the means of communication. Another is to use its control of some of the media to favour itself. The dismal history of the SABC makes that obvious.

To meet that danger, it was suggested to the Technical Committee that it include in the free speech clause a provision requiring the State, in the exercise of any control it may have over the public media, to ensure diversity of expression and opinion.

The object was to protect against radically unequal access to the State-controlled media, and so to protect against what our history shows to be possibly the greatest threat to freedom of speech. To this, the committee nonchalantly replied that such a clause would be "inappropriate in a chapter on fundamental rights".

The nebulous negative "inappropriate" is, of course, a common refuge for those who cannot articulate a reason. If the government's voice is heard much louder than everyone else's, speech is not free, and democracy is an illusion. Far from being "inappropriate", this is a matter which lies at the core of the responsibility of those entrusted with constitutional protection of fundamental rights. Freedom of speech, which they are charged with entrench-

ing, requires some measure of equality in access to the means of communication. Here, too, the Bill has missed a question of equality basic to the protection of fundamental rights.

It must be understood that the Technical Committee drafts under political attraction, and that responsibility for the deficiencies of the Bill is unclear.

But whoever is responsible, the document reflects a process which has been so busy decorating the Bill with empty appeals to the idea of equality that it has overlooked concrete questions of equal rights central to true democracy.

It is surely time now for attention to move from ornamental equality to real equality.

Etienne Murehnik is a professor of law at the University of the Witwatersrand.

MADAM & EVE

By S Francis, H Dugmore & Rico

Truth commission call elicits mixed response

Biday 11/9/93

PATRICK BULGER

SA's political groupings say they support a truth commission to unveil human rights abuses that took place during the apartheid era, according to an article in left-leaning journal Work in Progress (252)

But yesterday the NP said a truth commission would be impractical and could cause more conflict NP media director Marthinus van Schalkwyk said the idea that taxpayers should compensate victims abused by a particular party was socialistic and unacceptable

There were sufficient instruments to handle misdeeds An amnesty was preferable

The ANC said this week it wanted a truth commission established to unveil human rights abuses across the political spectrum and a policy devised for compensation.

The Work in Progress article surveyed attitudes of political spokesmen towards a truth commission It quoted two NP spokesmen who did not reject a truth commission out of hand

"We support full disclosure — as long as the truth-telling is truthful. We would support truth commissions provided they are not manipulated to slant their reports, and the integrity of members is beyond question," NP information director Jacko Maree was quoted as saying.

Deputy Justice Minister Sheila Camerer said government was open to negotiation on the issue but had already established such a commission in the Goldstone commission.

Azapo's Gomolemo Mokae said he supported a truth commission. The PAC's Barney Desai said human rights violators should be identified and tried The Inkatha Freedom Party's Suzanne Vos said multiparty consensus on a commission was important, and it should not become a witchhunt, nor should it exclude liberation organisations.

TIM COHEN reports that Justice Minister Kobie Coetsee said he was astonished at the ANC's response to the Motsuenyane commission report, and suggested that instead of a truth commission the ANC should hand the report over to authorities in the countries where crimes were apparently committed.

He said SA did not have jurisdiction over human rights abuses committed in neighbouring countries. Criminal proceedings could therefore not be brought against the perpetrators within SA, but could be brought in the countries where the acts were committed.

'Special courts to counter violence'

Southern 3/9 - 7/9/92

By Christelle Terreblanche

MEMBERS of the Western Cape Peace Committee have called for special criminal courts to compensate for the inadequacies of the justice system

They feel the wheels are grinding too slowly to deal effectively with politically-related violence

Trials take up to two years and witness protection in the wake of bail granted to suspected instigators is not sufficient, they say

"It is tragic that people with valid information do not want to come forward, because they have no guarantee that they will come through a trial alive," says Mr Chris Spies, regional organiser of the Peace Committee

"We will have to come up with something innovative."

Chapter 10 of the Peace Accord provides for setting up "special criminal courts" not unlike the special rape court recently instituted

intimidation by setting up Special Criminal Courts specifically for the purpose," the accord states

"For unrest, political violence and intimidation-related offences to be effectively combated, criminals should be prosecuted as effectively as possible and at the earliest instance

Little faith

"Of course people in this country have very little faith in the judicial system. It lacks legitimacy and people have never been consulted about it," a member of the committee, who does not want to be identified, explains

In addition, the courts are far from communities and townships most affected by the violence. Very little accessibility to justice exists, the committee says

Recent examples of the implications are numerous. Committee members explain that allegations around "balaclava gangs" and the "Big Eight and the taxi-violence" have been coming to the fore for a long time

Yet, people or communities don't have access to the system of justice, so they don't take their complaints

there. In addition, it is a common complaint that people are often turned away from police stations when making complaints about politically-related violence, committee members say

The other channels open to them are making statements to non-governmental organisations and peace monitors. But witnesses are reluctant to make statements without witness protection

This is the rub. Often alleged criminals are eventually picked up by police and taken to court, but just as soon let out on bail. Then witnesses are intimidated or threatened, sometimes for months

Really adequate witness protection does not exist. To protect a witness often means you have to take the witness and his/her family out of their community for long periods. They are then cut off from their work, livelihoods and communities, which is untenable

In the meantime, killing and violence continues, and the daily lives of people in townships are increasingly subjected to violence

There is concern that communities will increasingly take the law

into their own hands, even returning to the kangaroo courts that existed in the eighties

Committee members agree some townships now have people's courts that work well, but that it is not an ultimate solution

"I think that a complete restructuring of the judicial system will have to be done after the election, but we must do something in the interim to fill the vacuum that exists on the ground," one member points out

Briefings

They also propose that state prosecutors get more comprehensive briefings before trials. They are often unaware that somebody who stands trial is suspected by the entire community to be a member of a balaclava gang which has committed criminal offences, they say

Prosecutors must know the backgrounds and implications of granting bail to such people

While not dismissing the concept that people are innocent until proven guilty, committee members say the process must be speeded up significantly in order to effectively deal with violence.

THE TALKS AND YOU



At the World Trade Centre

INTERIM BROADCASTING AUTHORITY BILL

This historic piece of draft legislation was approved unanimously by the Negotiating Council yesterday. Once it has gone through Parliament and has then been approved by a talks plenary session, it will dramatically open up the airwaves. It will also signal the end of State-dominated control of broadcasting.

THE PROCESS: A resolution was adopted - with opposition from the Bophuthatswana government and the PAC - in terms of which Bills approved by the Negotiating Council will go through Parliament but not take effect until a plenary session of the Multiparty Negotiating Process - the name used in the absence of agreement on a name to replace Codesa - approves "the total package", including the Interim Constitution.

TODAY: A day off for negotiators, who return on Monday to get to grips with the draft Transitional Executive Council Bill.

CHRIS WHITFIELD

Star 3/9/93 Joy over open airwaves

← From Page 1

Peter Soal said: "This is of great significance. In the past we have been restricted generally to the SABC.

"This now means we are going to have a multiplicity of choices as many new radio stations open up."

The draft IBA Bill is the third chunk of legislation to have been approved by the council to "level the playing fields" in the build-up to the election.

The draft Independent Media Commission Bill and the Independent Electoral Commission Bill were agreed to on Monday.

The draft IBA Bill in essence takes the authority to allocate broadcast licences away from the Postmaster-General and hands it to a seven-person council appointed by the State President on the advice of the transitional executive council.

The IBA council will be able

to allocate all available frequencies.

The Postmaster-General will, however, continue to allocate frequencies for police and military purposes.

The legislation will also apply to television.

Three types of licences will be allocated: public, private and community. They will last eight years for radio stations and six years for television.

Political parties will be excluded from getting licences.

The adoption of the draft Bill by the Negotiating Council was met by a round of applause.

But most relieved of all must have been the technical committee which has wrestled the Bill through its various permutations as well as long and sometimes tortuous debates.

As one committee member put it after the votes were counted. "Oh happy day."

Goldstone team upstages cops and finds witnesses

By CARMEL RICKARD

THE Goldstone commission achieved in a matter of days what the Kwazulu Police could not manage in two years, it emerged this week.

For at least two years, the Kwazulu Police made no headway in their investigation of Mr Siphwe Mtolo's death, a killing that allegedly involved other members of the Kwazulu Police. The difficulty, they claimed, was that they were unable to locate key witnesses.

The Goldstone commission's investigation force was asked to follow up the case, and quickly located the witnesses. The first was found within a few hours, the rest a few days later.

It involved no special feat — the Goldstone investigators simply went to the addresses given by the witnesses in their statements and asked where the witnesses were, a Goldstone

commission hearing in Westville was told

The committee, chaired by Mr Malcolm Wallis, SC, is inquiring into several Kwazulu Police cases which were allegedly not properly investigated — or not investigated at all. The committee will be asked to decide whether the cases illustrate inefficiency, incompetence — or something more sinister.

Several of the cases were brought to the attention of the commission by Durban's Legal Resources Centre.

Advocate Carl Koenig said the Goldstone investigation team had discovered that the investigating officer in Mr Mtolo's case

was also the investigating officer in another murder that took place on the same day (252)

He said the cases shared other features. In both, allegations had been made that the Kwazulu Police were implicated, and in both, the person who had been killed had been accused by the police of murdering some of their members.

Mr L.J.L. Visser, SC, for the Kwazulu Police objected strongly to any connection being made between the cases, saying they were being made on hearsay.

The hearing has been adjourned to a date still to be decided.

Top judge in storm over bill of rights

By CARMEL RICKARD

THE vice-chairman of the South African Law Commission has sharply criticised Witwatersrand Attorney-General Klaus von Lieres und Wilkau for his negative attitude to a proposed bill of rights.

Exchanges between Mr Justice Pierre Olivier and the Attorney-General were quoted in public for the first time by Transvaal advocate Gilbert Marcus at a legal conference near Maritzburg last week.

The judge had accused Mr von Lieres of not understanding key legal concepts known to "any student of human rights".

Judge Olivier, described by Mr Marcus as "one of the most influential architects of constitutional reform", also said the Attorney-General's views were based on "faulty facts and insight". They were "totally out of line with mainstream South African legal thought".

Mr von Lieres expressed his reservations, which are apparently shared by other attorneys-general, during a seminar at Rand Afrikaans University three months ago. He said the moral values underlying the principles governing a bill of rights were already part of common law.

Judge Olivier comment-

ed on Mr von Lieres's views at a conference in the Magaliesberg earlier this year.

Judge Olivier questioned Mr von Lieres's preference for a bill that is not "too detailed" or "too comprehensive". He also queried his warning that a bill of rights which hampers effective law enforcement could lead to a crisis as happened in Argentina some years ago "when the police and military decided to take the law into their own hands".

Burden

Mr von Lieres said South Africa could not afford a bill of rights "which leaves all the crime-fighting agencies with their hands tied behind their backs in the war against crime — because war it is".

"The more numerous the duties the bill seeks to enforce, the more onerous the burden of law enforcement instead of protecting the law-abiding citizen, the criminal becomes over-protected."

"It must be clear to any right-thinking individual that the state apparatus responsible for combatting crime can become completely marginalised if a bill of rights recognises second and third genera-

□ To Page 2

tion rights which will have the effect of making the detection, investigation and prevention of crime more difficult than is the case at present.

Judge Olivier took Mr von Lieres to task for confusing "second and third generation rights" with procedural rights. (The former deal with socio-economic and environmental

rights, the latter with procedures to be followed during investigation, arrest and trial of a suspect.)

The judge, described as "inexorable" the argument that procedural rights "cater to a relatively small, criminal-minded part of the population".

A-G and judge clash on rights

According to Judge Olivier, concern about protecting procedural rights comes from those who

Mr von Lieres is away overseas for a month and could not be contacted for comment.

want a legitimate, credible and basically fair system of criminal procedure. This group includes most legal academics, private practitioners and judges, added Judge Olivier, "certainly not a relatively small criminal-minded part of the population".

Inkatha wants 'Vaal Monster' inquest

CIPRESS 5/9/93

By ELIAS MALULEKE

INKATHA is to launch a campaign in a bid to reopen the inquest into the death in detention of "Vaal Monster" Victor Khetisi Kheswa

The Free State attorney-general decided this week not to go ahead with

the inquest

Inkatha national spokesman Ed Tillet said Inkatha's Johannesburg branch would take up the matter with the Ministers of Law and Order and Justice (252)

Tillet reiterated on Friday that the A-G's decision was "a cover-up to

protect the police who are responsible for his death" (416)

Tillet said Inkatha would also demand the suspension of Sergeant Gerhurdus "Pedro" Peens, who has been linked to the deaths of both Kheswa and Daniel Mabote, who were in his custody

Claims have also been made by Inkatha's Vaal

region, other organisations and some of Kheswa's gang members that he was killed and "muzzled" by the police because he allegedly knew too much

Allegations have it that Kheswa conspired with the police in the past to launch his attacks in the Vaal Triangle

Kheswa died mysteriously in the hands of the

police minutes after he was arrested

His death was followed three weeks later by that of his alleged lieutenant, Daniel Mabote, who allegedly jumped out of the window of a speeding police car

Police claim that the A-G's decision "vindicated" the police from blame

Political comment and newsbills by K Sibiyi, headlines and sub-editing by B Keswa, both of 2 Herb Street, New Doornfontein, Johannesburg



Support for death penalty

PRETORIA — Almost 50% of people surveyed believed the death penalty should be used more frequently in SA, an SA Criminology Society conference was told at the weekend

But results of the survey indicated that policy makers needed to devote immediate attention to educating the public on issues surrounding the death penalty, University of Durban-Westville researchers Angina Parekh and Cheryl de la Rey argued

Almost 90% of respondents said they were unaware of changes and recent amendments to the law regarding the death penalty, 50% indicated they were unsure as to which crimes were punishable by death — some suggested fraud and adultery — and 40% had no idea how many people had been executed a year up to 1990

Between 1978 and 1989, 1 487 people were executed in SA, excluding the TBVC states

While international research showed there was no scientific evidence to suggest the death penalty fulfilled either a deterrent or retribu-

ADRIAN HADLAND

tive function, 65% of respondents said the death penalty was an effective deterrent and 55% said it allowed people to see justice had been done

Other results of the survey, in which 333 people were questioned, indicated that 51% believed some people were found guilty and executed in error and 53% thought — contrary to overseas study evidence — that the death penalty saved the public money

A direct connection between high income and belief in the death penalty was uncovered in the survey

"It is easy to understand that higher income groups would feel more vulnerable and therefore respond in a more authoritarian fashion with regard to the death penalty," the researchers said

It was also found that white respondents generally believed in the more frequent execution of capital criminals, while black respondents opted for a less frequent application or abolition altogether

1973
1973
Sowetan 6/9/73

Denial on MK, Apla conspiracy

THE Goldstone Commission yesterday denied it was suppressing information concerning an agreement between Umkhonto we Sizwe and the Azanian People's Liberation Army about terror attacks in the country (252) ~~(312)~~ Conservative Party Law and Order spokesman Mr Schalk Pienaar on Saturday charged that the Commission knew about an agreement between the African National Congress' military wing and its Pan Africanist Congress counterpart that MK cadres would carry out terror attacks while

Apla would claim credit "Why does he not reveal the real character of the violence - that there has been an agreement between MK and Apla that MK will undertake attacks while Apla will claim credit? (Mr Justice) Goldstone knows this but does not make it public," Pienaar said at the CP Transvaal congress
Expressing surprise Mr Justice Richard Goldstone said in a statement "The commission has never received any direct or indirect evidence or information concerning such an agreement — Sapa

107 to be SA's '911' number

A BILL to establish a South African equivalent of America's 911 national emergency telephone number was published yesterday.

South Africa's number will be 107.

The bill provides for reporting centres to receive and process calls.

The 107 number is to be used only if a caller believes life, limb or property is threatened. People contravening this provision could be fined or jailed — Sapa

New bridge at SA, Zim post?

DURBAN — Zimbabwe and South Africa are considering building a new bridge on their shared border over the Limpopo River.

Revealing this at a tourism workshop here yesterday, Mr Edward Chindori-Chiningi, Southern African director of the Zimbabwe Tourism Office, said it was expected to run alongside the Beit Bridge.

Top Russians' offices sealed

MOSCOW.— The offices of Russian Vice President Alexander Rutskoi and deputy prime minister Mr Vladimir Shumeyko have been sealed pending the outcome of a corruption investigation against both men, authorities announced yesterday.

Both officials have been suspended and their offices will remain closed for the duration of their suspensions.

Violence takes its toll on the tourist industry

MILLIONS of rands have been lost by tour operators and hotels as the tourism industry slumped in the wake of the recent St James Church massacre and the Beaufort West bus attack.

Huge cancellations by overseas tourists, specifically because of violence, have resulted in retrenchments and cutbacks at some establishments.

Local bookings and business conferences are all that are keeping some establishments from going under.

The number of overseas visitors who entered through Johannesburg, Durban and Cape Town airports during July decreased by 0,4%, compared with the same month in 1992.

However, the Central Statistical Service said that during the period January 1993 to July 1993, the total number of foreign visitors increased by 12,5%, compared with 1992.

"Things are very bad," said Hlu-

luwe Protea Hotel general manager Mr Steven Zampieri.

"We had 50% cancellations last month. Tour operators told us it was because of the church massacre and bus attack.

"We had to retrench 12 people last month and if it wasn't for businessmen and local tourism we would have closed down," Mr Zampieri said.

Mr Rob Deane of Bushlands Game Lodge and Zululand Safaris said his bookings were 79% lower than for September last year.

"One tour operator averaged 33 tourists a run in September last year compared to eight this year.

"These are around-the country tours so you can imagine what all the hotels on that route are losing," he said.

The Natal publicity association blamed lost bookings on the violence and inflation. — Staff Reporter, Sapa

UK prisoners surrender

LEYLAND, Lancashire.— Some 400 rampaging inmates who seized control of a northern England prison early yesterday and wreaked havoc in an all-night orgy of destruction surrendered to officials at midday.

The rioting prisoners torched and vandalised buildings, furniture and facilities at Wymott Prison in Leyland, northern England, causing damage estimated by officials at up to £40 million (R200m). — Sapa-AFP

First victim-offender mediation service set up

SOUTH Africa's first victim-offender mediation process — aimed at keeping offenders out of the criminal justice system while providing restitution to their victims — has been launched in Cape Town.

The system provides for a third party to mediate between offender and victim, a Human Sciences Research Council (HSRC) spokesman said.

"The rights and losses of victims, which are usually neglected in the normal criminal justice process, are addressed during the mediation process.

"It is less expensive than many other forms of sentencing, such as imprisonment, and is particularly suited to juvenile offenders and first offenders involved in property crime," he said.

The programme was established by the National Institute for Crime Prevention and the Rehabilitation of Offenders (Nicro) after research funded by the HSRC.

CT 7/9/93

CT 7/9/93

(252) CT 7/9/93

Legal profession has crucial role

B/Dav 7/9/93

SUSAN RUSSELL

LAWYERS, judges and academics, had a crucial role to play in ensuring the establishment and maintenance of a democracy in SA, Chief Justice Michael Corbett said yesterday.

Opening the 14th SA Law Conference yesterday in Sandton, Corbett said it was not possible to say exactly how SA's new constitution would look, but it seemed it would contain strong elements of federalism and a justiciable Bill of Rights.

"These two features will have an important impact upon the practise of the law and the legal profession generally," he said.

Lawyers would have a crucial role to play helping to delineate the boundaries of federal and regional powers and ensuring fundamental rights and freedoms guaranteed by the Bill of Rights were observed by the various legislatures and all those in authority.

Corbett countered accusations that the present SA judiciary was "illegitimate" and did not represent the population as a whole.

"I do not think these general attacks upon the judiciary are well founded or that they contribute constructively to the proper and efficient administration of justice in this country," he said.

"I detect in some of this criticism an underlying sentiment that the task of a judge is not a particularly difficult one and that any person with the required legal

qualifications can do the job.

"In my view this is an illusion and the sooner it is dispelled the better."

Corbett described the judge's task as one of the most difficult there was.

"The judge must be beholden to no one.

He must be not only willing but also unflinching in his resolve to decide cases in whatever way his professional skills and his conscience direct him, whatever the consequences and however unpopular his decision may be.

"He must be objective, unbiased, unattached to any preconceived notions or philosophy which would tend to make him take sides or take an unduly severe or lenient view of certain types of conduct.

"He must in a sense stand aloof from the society in which he lives while at the same time being acutely aware of the realities of that society, of its moods, its values, its mores."

Corbett conceded that the SA judiciary was virtually all white and male, but pointed out that there were only a limited number of suitably qualified men of other race groups and women available for appointment as judges.

"I have no doubt that in the long run this will change radically, but in the short term the predominance of white males seems to me to be unavoidable," he said.



At the SA Law Conference yesterday were Piet Langenhoven and Prof Louise Tager, top; Ed Southey, left; and Ismail Ayob. Pictures ROBERT BOTHA

No 'quick-fix' to imbalance

JOHANNESBURG — There was no quick fix for imbalances in the courts, Chief Justice Michael Corbett said yesterday

Speaking at the South African Law Conference Mr Justice Corbett referred to criticism that courts were not representative and lacked legitimacy

There were limited numbers of other race groups qualified for judicial appointment

"I have no doubt this will change radically but in the short

term the predominance of white males seems to be unavoidable"

There must, in the future, be some sacrifice of principle in favour of pragmatism. But the dangers of an undue lowering of standards were manifest, he said

Although it was impossible to say what the new constitution would look like, there was a likelihood that it would contain strong elements of federalism and a justiciable bill of rights

CF 7/9/93
These two features would have an important impact on the legal profession, which would play a crucial role in ensuring the establishment and maintenance of democracy (252)

"For most of us it will be a question of learning new skills."

• A former president of the Association of Law Societies of SA, Mr Ed Southey, was presented with an award for meritorious service — Sapa

Taxi probe goes west

THE Goldstone Commission is to hold a preliminary inquiry into the tension and conflict in the taxi industry at

Sowetan 8/9/93 (252)

Sowetan 8/9/93

Rustenburg, Mr Justice Richard Goldstone said in Pretoria yesterday.

Two members of the Goldstone Commission of Inquiry into the Prevention of Public Violence, Mr DJ Rossouw and Mr MNS Sithole, will hold the public inquiry on September 24 at the community hall, Rustenburg (252) (252)

Kwazulu Court action hits snags

□ Seems to have no legal foundation

Transvaal Judge President

APR 19 1973

Political Staff

152

He said the multiparty negotiating process was a voluntary process and had no statutory basis. It also appeared not to have any contractual basis which could establish a right on the part of the Kwazulu government.

"I have difficulty in seeing on what basis the court can assume jurisdiction," Mr Justice Eloff said.

"It may well be that the proper approach would be that the court is not the forum to resolve this sort of dispute and that it should be resolved by the parties involved.

"The court could only exercise its power of review if it can be said that the parties had formed themselves into some sort of universitas with a constitution."

Mr Visser replied that the parties had established rules of procedure which could be seen as a contract.

Mr Justice Eloff answered "I have difficulty in seeing how rules of procedure established by the parties can be seen as a contractual arrangement. It falls far short of what the court would require from an enforceable contract.

"I have a fundamental difficulty and unless you can resolve that, regardless of our view of the facts, we are powerless to act."

Mr Visser then asked for a short adjournment to consult with his clients

The application, brought against the co-chairmen of the negotiating council, M J Mahlangu and Pravyn Gordhan, started before a full bench of the Supreme Court in Pretoria today.

Mr Justice Eloff, presiding with Mr Justice Van der Walt and Mr Justice Plewman, ordered a short adjournment 40 minutes after the start of proceedings at the request of Louis Visser, SC, counsel for the Kwazulu government.

Interrupting Mr Visser after 20 minutes' opening argument, Mr Justice Eloff said he had "fundamental difficulties" in establishing whether the court had any jurisdiction over the matter.

OF CAPE TOWN could occur on this," he



KwaZulu loses court case

Own Correspondent

PRETORIA. — The KwaZulu government's call on the Transvaal Supreme Court to set aside decisions made by sufficient consensus at multi-party negotiations was dismissed with costs yesterday

"We are back to square one," said KwaZulu negotiator Mr Ben Ngubane following the decision of a full bench of the Transvaal Supreme Court that it had no jurisdiction to re-view the decision-making process at Kempton Park.

Mr Ngubane said the ruling made a summit meeting of political leaders "an absolute necessity"

Delivering judgment, Transvaal Judge President Mr Justice C F Eloff said the court could only review decisions made by statutory bodies or contractual agreements

The rules of procedure agreed upon by multi-party negotiators did not constitute a contract.

● IFP election threat — Page 2

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Page 2



Goldstone to probe effects of violence on children

By CHARLENE SMITH

JUDGE Richard Goldstone, touched by a UN report on the effects of violence on South African children, has decided to investigate their plight.

A commission, which could include foreign experts, will try to establish how children have been affected by violence, what their short- and long-term needs are, and how these needs can be met.

The commission will begin its work later this year.

The move was spurred by unpublished reports by the United Nations Children's Fund and the National Children's Rights Commission on the effects of violence on children in Natal.

According to the reports

● The Unicef team found 400 young men aged between 12 and 25 living in the bush near Rich-

mond, Natal

● More than 80 percent of people in internal-refugee camps for displaced people are women and children (252)

● Families have been torn apart by ideological differences.

● There is a high incidence of malnutrition and ill health among people affected by violence

● There have been dramatic increases in rape and the sexual abuse of children

Mrs Scholastica Kimaryo, Unicef's representative in South Africa, said political violence was only part of the problem.

She said there was a significant level of structural violence — such as domestic violence —

which was more insidious, but she believed the Goldstone investigation would find "innovative ways to solve problems"

Legal monopoly comes under fire

By CARMEL RICKARD

THE monopoly of the country's advocates over Supreme Court appearances and judicial appointments has been blamed for exacerbating the "legitimacy crisis" of the country's legal system.

These allegations were made this week by Johannesburg lawyer Peter Leon to Appeal Court judge Mr Justice John Milne.

The Milne commission, inquiring into whether attorneys should be allowed to appear in the Supreme Court, began in Durban on Wednesday and could last for several weeks.

It has been described as one of the most significant events for many years in the usually staid profession. Official organisations representing both attorneys and advocates have submitted detailed argument and a number of other groups have also made representations or are expected to do so.

These include members of the judiciary, the Legal Resources Centre and the Democratic Party.

Outlining the attorneys' argument, Mr Leon said advocates had a monopoly on Supreme Court appear-

ances and judicial appointments in that judges were almost always selected from the ranks of senior advocates (252).

There were a number of senior black attorneys in the country, but only five black senior counsel.

If judges continued to be appointed from among SCs only, it would take many years before the judiciary included significant numbers of black members.

The virtually all-white, all-male bench contributed significantly to the legal system's lack of credibility in the eyes of the public, and the bar's monopoly therefore contributed to the problem.

However, if "suitably qualified" attorneys were allowed to appear in the Supreme Court, the judiciary could more quickly be transformed, with more black candidates and more women gaining experience in the higher courts and becoming available as judicial candidates.

Mr Leon also urged extending rights of audience on other grounds, saying it would increase consumer choice and that the present monopoly amounted to unfair competition.

Judges warn bill could wreck property market

BY CARMEL RICKARD

SOUTH AFRICA'S chief justice has warned that the draft bill of rights could wreck the property market if it is not changed. *STimes*

Chief Justice Mick Corbett, on behalf of all the other judges, has sent a 31-page memorandum to the World Trade Centre committees dealing with the present draft bill of rights.

In their memorandum, the judges point to many flaws in the wording of the bill of rights, saying some clauses are "ambiguous and confusing" while others will create great uncertainty and serious problems of interpretation and application. *BUSS*

Still others were so inadequately worded that they would open the door to "busybodies" bent on instigating litigation.

Judge Corbett stresses that the judges' comments are "apolitical" and deal with practical problems and legal consequences rather than the principles reflected in the draft.

(2.52) Drastic

However, he takes issue with the drafters for asking the courts to decide a crucial question of principle: whether the bill of rights should apply only between the state and individuals (vertically) or whether it should also apply to relationships between individuals (horizontally). The judges say it is "highly undesirable" to leave this problem for the courts to decide.

They say that if the bill of rights operates vertically only, then the eviction clause in the bill will inhibit the state from selling or letting properties.

If the clause acts horizontally as well, it would prevent individual landlords from evicting people who don't pay their rent. The effects would be "even more drastic", and could wreck the property market. *12/19/93*

The judges say that, if the intention of the clause is to protect squatters, the drafters should spell this out clearly. They also criticise the clause on compensation for land taken away because of race policies, saying the problem should be dealt with in a

To Page 2

Bill could wreck property market

From Page 1

different way

The judges express concern that the "fundamentally important" issue of detainees' rights is not dealt with adequately because the draft bill does not spell out certain internationally recognised procedural rights. For exam-

ple, it does not outlaw evidence obtained in violation of the detained person's rights. *(2.52)*

Members of the committee debating the bill of rights said Judge Corbett's comments were being taken "very seriously indeed".

Substantial changes had been made to the current

draft before the judges' comments were received, and many of these alterations were "already moving in the direction of the chief justice's suggestions".

When an amended draft is ready, it will be sent to the judges, and to other lawyers' bodies, for further comment.

STimes 12/19/93

Man indemnified second time

(252)

Cape Town — A former Koevoet policeman, Dirk Calitz, was indemnified for the second time yesterday and acquitted on a charge of assault.

Warrant Officer Calitz — who served only 15 days of a 10-year sentence when he was freed in Namibia in 1990 — appeared in a Cape court in connection with an incident in Robertson in 1990, in which 37 people

were shot and nearly 70 hurt during police action.

The court was busy with final legal argument after a two-year trial when proceedings were stopped in terms of Section 3 (2) of the Further Indemnity Act, and informed that Calitz had been granted indemnity by the Indemnity Board.

Calitz (34) was indemnified the first time by the then Administrator-

General of South West Africa, Louis Pienaar, after Calitz had been sentenced to 10 years' imprisonment by the Windhoek Supreme Court in 1987 for beating a headman to death with a pole.

Yesterday he was again granted indemnity and acquitted on both the assault charge and an alternative charge of negligently injuring people with firearms — Sapa

Husbands who rape ⁽²⁵²⁾ can now be prosecuted

Political Correspondent

THE government has buckled under pressure from the women's lobby to strip qualifications from a new law outlawing "marital rape".

One of the most controversial clauses of the Prevention of Family Violence Bill will, for the first time in South African law, expose husbands who rape their wives to prosecution in court.

But in the first two drafts of the bill the clause was qualified: in the first a man could be convicted of rape of his lawful wife only where the marriage had broken down and they no longer lived in the same home, and in the second, rape within the home was criminalised, but required written authority of the Attorney-General before a husband could be prosecuted for rape.

But the bill debated in parliament yesterday has been stripped of these qualifications.

Democratic Party MP for Groote Schuur Dene Smuts welcomed the measure.

If successfully implemented the bill would set society a new standard, a new norm.

● See page 4

Storm brews over 'double' indemnity

MICHAEL MORRIS, Political Correspondent

A POLITICAL storm is brewing over the granting of a second indemnity to former Koevoet policeman Dirk Calitz during his trial in Worcester for assault

Warrant Officer Calitz — who was indemnified in 1990 after being jailed for 10 years by the Windhoek Supreme Court for beating a headman to death — was rescued by the Further Indemnity Act yesterday

His trial for assault, arising from incidents in Robertson in 1990 in which 37 people were shot and nearly 70 injured during police action, was halted and he was acquitted

The African National Congress and Democratic Party slammed the move today

ANC spokesman Willie Hofmeyr described the Indemnity Board's decision as "an absolute disgrace" and a "grave abuse of the indemnity process"

"We are particularly concerned that the court case was allowed to go on for so long before there was an application for indemnity, and that the police and Calitz have consistently denied there was any wrongdoing

"It appears now that conviction may have been imminent, and that's what made them apply for it"

DP deputy justice spokesman Lester Fuchs said the decision to grant indemnity to Warrant Officer Calitz "for a common law crime is a slap in the face for justice and is the reason people lose confidence in the whole justice system"

Attorneys wait in vain for Asmal

Staff Reporter

MORE than 100 attorneys waited in vain for their guest of honour and main speaker at their annual lunch at a top city hotel on Monday

Later it became known that ANC constitutional expert Professor Kader Asmal, scheduled to address the Cape Town Attorneys' Association, failed to keep the appointment as he was tied up with Mr Nelson Mandela's visit

Professor Asmal, who apologised to the association yesterday, said he had never missed a lecture in 30 years

"Mea maxima culpa. It was total inadvertence," he said yesterday

He had spent the whole of Monday with Mr Mandela and had not gone to his office at the University of the Western Cape where his secretary usually gives him his day's folder

Because of this, he missed the luncheon, he said

FW, Mandela named

OSLO. — President F W De Klerk and Mr Nelson Mandela have been nominated for the 1993 Nobel Peace prize.

The news surfaced yesterday when it became known that the nominations for the 1993 prize closed on February 1 — leaving peacemakers Mr Yassar Arafat and Mr Yitzhak Rabin outside the deadline.

Other nominees include Czech President Mr Vaclav Havel, the Red Cross and the Salvation Army.

"I expect that we shall see the most recent events in the Middle East reflected in the nominations for the peace prize," said Mr Geir Lundestad, director of the Nobel Institute.

"But the deadline for nominations for the 1993 prize closed on February 1."

There were 120 nominations for this year's award, worth R2,89 million. The names of the recipients will be announced on October 15.

Tourist shot dead in Miami

MONTICELLO, Florida — A British tourist was shot dead and another wounded yesterday at an interstate highway rest stop in northern Florida — nearly a week after a German tourist was killed in Miami.

Police said a man was killed and a woman was wounded in their car by two young men who went up to the vehicle in an apparent robbery attempt.

The man died at the scene. The woman was airlifted to hospital, where she was in satisfactory condition.

The man was the ninth foreign visitor to Florida to be killed in the past year — UPI

Unita closes in as truce call is rejected

JOHANNESBURG. — Rebel forces closed in for the kill around the besieged Angolan city of Cuito yesterday as the government rejected a Unita ceasefire offer.

The government demanded international sanctions against Unita and said its truce call was a propaganda ploy before a United Nations Security Council debate on the renewed civil war.

The rebels poured artillery fire into Cuito and there was fighting on all defence lines, Angolan state radio said.

"A thick pall of smoke makes it difficult for the sun's rays to get through. The number of dead is incalculable. They must be several hundred," the report said.

"The city is being put to the torch and the sword."

The central highland city — described by foreign aid workers as a "forgotten Sarajevo" because of its appalling suffering — has been under siege for eight months.

The total death toll is estimated at 20 000 people.

Unita military commander, General Arlindo Chenda Pena "Ben Ben", on Monday presented proposals for a unilateral ceasefire from next Monday.

Diplomats expressed scepticism about the offer, saying Unita had repeatedly violated the 1991 peace accords since returning to war after losing elections last September to the ruling MPLA. — Sapa-Reuter

UTF call to farmers

BLOEMFONTEIN. — Free State farmers should not fulfil their obligations to the Unemployment Insurance Fund, said Dr Pieter Gous, president of the Free State Agricultural Union.

Contrary to previous information given to farmers, the fund had serious financial problems, he said yesterday.

As farmers were not responsible for this crisis, which could lead to big increases in premiums, they could not be expected to make the fund liquid and healthy.

Dr Gous said the South African Agricultural Union (SAAU) had already asked for registration to be postponed until 1994.

There were urgent negotiations under way with the Department of Manpower and to strengthen the hand of the SAAU farmers should wait for further developments.

Those who had already registered were advised not to pay the increase of 0,9% to 1%. — Sapa

Call to punish rights violators

JOHANNESBURG. — Perpetrators of human rights violations during the apartheid era should be brought to book, three prominent political figures said on last night's Agenda.

The TV programme, featuring former Progressive Federal Party MP Mrs Helen Suzman, Nobel Peace Prize-winner Archbishop Desmond Tutu and the Azanian People's Organisation's Dr Aubrey Mokoape, centred on the ANC's recommendation that a Commission of Truth be established.

A fourth guest, Pretoria bomb blast victim Mr Neville Clarence, said it would be more practical to simply wipe the slate clean.

Archbishop Tutu and Mrs Suzman said people who had committed atrocities on both sides should be brought to book.

Mrs Suzman emphasised compensation for families, and Archbishop Tutu stressed the need to deal with the past to start with the future.



A strong court is ⁽²⁵⁾

agreed on

JOHANNESBURG —

South Africa will have a strong and independent Constitutional Court to protect and enforce the interim constitution, multi-party negotiators unanimously agreed yesterday.

The proposed Constitutional Court contains "all the best parts" of existing constitutional courts internationally, a government negotiator said. Its powers would be excessive, a number of negotiators pointed out.

'En bloc'

Despite broad agreement on many issues during the debate on the judiciary in the interim constitution, negotiators agreed to allow further submissions, which means the topic will be "revisited".

The Constitutional Court, according to the report from the technical committee of specialists, will comprise 11 members — 10 people to be appointed as judges, and a president.

They have to be appointed "en bloc" by 75% of the members present at a joint sitting of the National Assembly, or lower house, and the Senate, or upper house.

— Sapa

CT 15/9/93 252
**Goyt defends
indemnity**

By ANTHONY JOHNSON
Political Correspondent

THE government yesterday defended as "even-handed" President F W de Klerk's decision to grant indemnity to an ex-Koevoet policeman on trial for assault after 37 people were shot and 70 hurt in police action in Robertson in 1990

Warrant Officer Dirk Calitz, 34, was indemnified in 1990 after he had been sentenced to 10 years' imprisonment by the Windhoek Supreme Court in 1987 for beating a headman to death

In the Robertson incident, WO Calitz was said during his trial to have ordered riot police under his charge to shoot rubber bullets and bird-shot at a crowd of about 900 running in panic from a tear-smoked community hall.

In defence of

the community

252
WM 17-23/9/93

ABOUT 85 percent of all criminal accused have no lawyer to represent them when they are tried in court. Over 100 000 people a year are sentenced to imprisonment without being legally represented. These statistics make it essential to find creative ways of providing legal representation in criminal cases.

It is generally accepted that there is a duty on the state to provide funding for legal aid although how the scheme should operate is a matter of controversy, particularly in the field of criminal justice.

One method is for the state to provide a legal aid organisation with funds to employ private practitioners to defend criminal accused on a referral basis. The other is for the organisation to employ full-time criminal defence lawyers or public defenders.

A public defender scheme is generally regarded as about twice as cheap as a referral scheme, while the quality of services provided by public defenders is widely acknowledged as more efficient.

The Legal Aid Board set up a pilot public defender project in Johannesburg on January 2 1992. The project was initially planned for two years, but has now been extended by the board until the end of 1994.

The South African Legal Defence Fund (Saldef) convened a national conference last year to discuss the question of public defenders. Criticisms were made of the Legal Aid Board and its pilot public defender programme, and Saldef has started

Durban's innovative public defender scheme aims to serve as a model for the rest of the country, writes

DAVID MCQUOID-MASON

His own investigation into how a public defender network could be extended throughout the country. The board is investigating the same question, and a scheme has also been suggested whereby law graduates could be employed as public defenders under the supervision of qualified attorneys.

Now, the Association of Law Societies has approved the establishment of a School for Legal Practice at the University of Natal, Durban, in January 1994. It is hoped the school will work closely with the University Legal Aid Clinic to set up a pilot public defender programme in Durban.

The school and clinic will be housed in the university's new Education and Innovation Foundation Law Centre building, which will also accommodate other university legal outreach programmes.

The school will provide law graduates with five months intensive training in legal practice as an attorney. Thereafter, in terms of the criteria of admission to the attorneys' profession, the graduates will be required to undergo either one year of articles of clerkship or one year of community service, or a combination of both amounting to one year.

The school graduates 60 students a semester and the clinic hopes to



Victorious... These community members won their court case after being represented by a lawyer, but hundreds of thousands are not so fortunate

identify 15 of these to be trained as public defenders for six months under the supervision of a qualified attorney. The students would be given trial advocacy training immediately after completing the school's programme and would then be able to appear in the magistrates' courts as public defenders. They will then write up their experiences in a case book and, on completion of their internship and examination of the book, will obtain a post-graduate diploma or certificate in legal practice.

The service by law graduates in the clinic will count as six months' community service under the new admission requirements, and preliminary discussions have been held with members of the Natal Law Society with a view to arranging for students who complete the programme to obtain a further six months' experience in law firms.

It may, however, be necessary to provide some form of stipend for students from disadvantaged backgrounds in the public defender programme, and for those who are sub-

sequently employed for six months in law firms.

Approaches will be made to non-governmental organisations and foundations interested in helping members of disadvantaged communities who want to enter the legal profession. Funding will be sought from the Legal Aid Board for the salary of the supervising attorney and office running expenses for the project, and some preliminary discussions have already been held with a deputy director of the board.

It is hoped that the proposed Durban public defender scheme could serve as a model for other parts of the country fortunate enough to have a School for Legal Practice. The programme will provide young disadvantaged South Africans with an opportunity to gain access to the legal profession, but will also assist some of the large number of unrepresented accused who pass through the courts each year.

David McQuoid-Mason is dean of the law faculty, Natal University, Durban

Gender sensitive

THE Centre for Human Rights at the University of Pretoria has begun a project on gender-related issues, starting with a lecture series in May. Copies of the papers delivered are being prepared for publication. Experts deal with topics such as sexual harassment on campus and domestic violence.

The centre was also asked by Vista University staff members to run workshops on sexual harassment in Mamelodi and other Vista campuses. Project co-ordinator Makgathi Mokwene works with Pretoria University's Students' Representative Council to create a gender-sensitive culture among the student body and staff through workshops, talks and posters.

Now the centre is considering whether to work with the SRC in setting up a rape counselling centre. Though the centre will be based on campus, it will serve the surrounding community as well, working with community-based organisations and individuals.

Future projects on gender will also focus on whether culture facilitates violence against women and what women can do to curb the violence in society.

Contact Mokwene at (012) 420-3820



UN reviews 45 years of human rights activism

252 WM 17-23/9/93

By LORAIN GORDON

THE historic inter-governmental United Nations World Conference on Human Rights in Vienna during June this year aimed to review human rights progress since the Universal Declaration of Human Rights in 1948

Before the conference, there was wide acceptance of the UN principle that a state's respect for the rights of the individual is a legitimate international concern. With international relations in a new gear after the cold war, the time seemed right to try to strengthen the UN's weak machinery for holding governments to their human rights obligations.

The path was not smooth, however. The preparatory process included three meetings, which failed to agree on an agenda. A small but significant minority of governments made every effort to block the process and prevent progressive recommendations.

At preliminary regional meetings of African, Latin American and Asian blocs, a number of governments challenged the universality of human rights, creating fears that the conference could be a serious setback to achievements made over the years. One group led by China, Iran and Syria, tried to relativise the Universal Declaration. They claimed that rights were a function of a country's history, level of development, cultural tradition and religion, and that minimum standards especially those concerning the death penalty and the rights of women and children, were essentially Western.

However, the general feeling of the conference was that while there was a need for cultural diversity, this could not be a cover-up for discrimination and oppression. The universal nature of human rights was reaffirmed in many paragraphs of the final recommendations.

In addition to the 5 000 delegates, about 1 500 non-governmental organisations attended, participating in a comprehensive programme of parallel activities. The UN General Assembly requested their active participation in the conference and the preparatory process, and the official view was that NGOs play an essential role in UN human rights programmes by setting standards and monitoring.

However, the role of NGOs is a problem for some governments, reluctant to risk human rights progress. One government delegate after another declared that their countries did not perpetrate human rights abuse. But graphic pictures and reports displayed by NGOs in the



ABOVE: Battle for rights ... Legal Resources Centre members look after the LRC stall at the UN conference

RIGHT: The South Africa flag flies at the entrance to the Vienna venue

corridors below the conference hall confirmed abuse on a global scale.

NGOs were essentially limited to lobbying, and there was no formal undertaking that governments would respond. The inter-governmental forum restricted itself to evaluating the UN's work on human rights — contentious claims about country-specific violations not being regarded as strictly relevant. But NGO concerns undoubtedly influenced the conference agenda. The Vienna Declaration finally adopted by governments stressed the role of NGOs and their right to carry out their human rights activities without interference.

Nearly every day there was also an African NGOs co-ordination meeting at which representatives of the 202 participating NGOs from Africa tried, in heated debate, to reconcile historic differences between Anglo- and Francophone organisations.

The right to development was accepted for the first time by the world government delegates as an integral part of fundamental human rights. At their preparatory regional meeting, African governments affirmed the indivisibility of rights — economic, social, cultural, civil and political — and the link between development and human rights. They stated that the implementation of



human rights implies at the national level effective development policies, and at the international level more equitable economic relations. The world conference confirmed that extreme poverty constitutes a violation of human dignity and that less developed countries should be supported in their transition to democracy and economic development.

The final declaration, adopted by 167 governments, contained a number of important agreements. For example, women's rights are to be integrated into the mainstream of human rights, racism, xenophobia and ethnic cleansing were strongly condemned, and on the initiative of the Islamic states a special declaration on Bosnia was adopted by majority vote, the right to seek asy-

lum from persecution was affirmed; the general assembly was urged to adopt standard rules on the rights of disabled people, and human rights education was stressed as a priority.

Perhaps most controversial was the demand for a high commissioner for human rights. As a compromise the general assembly will be asked to consider this as a priority.

These resolutions have the potential to set the human rights agenda for the coming decade. And there is some good news. When the original Universal Declaration was adopted there were only 50 UN members. The new Declaration has been signed by over 180 nations.

■ Loraine Gordon is the LRC publications officer

Koevoet man gets indemnity — again

(252) WM 17-23/9/93
Gaye Davis: Cape Town

FORMER Koevoet member Dirk Calitz was given a 10-year sentence by the Windhoek Supreme Court for beating a headman to death. But he served only 15 days of that sentence before he was indemnified and released in 1990.

This week, the South African Police warrant officer's trial on charges of assault — arising from a police action in Robertson the same year of his release, when 37 people were shot and about 70 injured when police allegedly opened fire on a packed hall — came to an abrupt halt after lasting almost two years. He had been granted a second indemnity.

Cape Attorney General Frank Kahn said he had "no comment" to make on the furore which has since erupted, but the Worcester regional magistrate presiding over Calitz' trial, AJ van Wyk, made his feelings clear about having his discretion substituted with a rubber stamp.

It felt, said the magistrate, like being a pilot who had been building his own aircraft for two years, only to have "both his hands chopped off just before he flies".

Calitz' indemnity has the effect of an acquittal. He cannot be charged again with the same offence. The African National Congress described it as a grave abuse of the indemnity process and an absolute disgrace.

Democratic Party deputy justice spokesman Lester Fuchs said granting Calitz indemnity for a common law crime was "a slap in the face for justice".

Civil Rights Act needed to reverse discrimination

(252) WM 17-23 9/93

A NEW constitution and Bill of Rights will neither stop nor reverse the effects of discrimination. They must merely be the centre of a larger effort to reverse inequalities.

Another important part of such a programme will be a Civil Rights Act. Along the lines of similar laws in the United States, Canada, the United Kingdom and other African countries, such legislation would provide specific penalties for discrimination and segregation in citizenship rights, housing, employment, public facilities and government services, for example. Parliament could pass such a Bill immediately. It should do so, at the latest, immediately after a transitional government takes power.

Many South Africans, including experienced lawyers, do not initially see the need for a civil rights law.

They ask how a Bill of Rights and a civil rights law differ. A Bill of Rights guarantees rights at the constitutional level, so it is a "higher law" than ordinary legislation. A Civil Rights Act is ordinary legislation, operating like any other law.

A Civil Rights Act, on the other hand, provides a specific method of enforcing the equality provisions in a Bill of Rights.

It might state that an employer who pays people different wages for the same work on the basis of their race or gender has discriminated unfairly, and that such a person is liable to pay the lower-paid worker the difference plus damages.

A Civil Rights Act will be the implementing legislation or enforcement "teeth" for the equality provisions in a Bill of Rights.

Once people understand the difference between Bill of Rights and a Civil Rights Act, they may still not see any need for the latter. They ask why it will be necessary to have a law compelling equal treatment if the Bill of Rights contains justiciable equality provisions. In fact, such a law is essential to implement constitutional equality provisions.

The government would have several reasons for enacting a civil rights law. It would function as an interim measure to prohibit discrimination before a Bill of Rights takes effect.

It would also provide sanctions against private discrimination. This would be particularly important if the Bill of Rights applies only against government (vertically) and not against private parties (horizontally).

A third and most important reason for a civil rights act is to enforce the equality norms in a Bill of Rights. The Bill is both brief and vague on the question of

A Bill of Rights is fine, but what we need is a Civil Rights Act to enforce it, argues **DAVID SULLIVAN**

equality, and more details will be needed. For example, a Bill of Rights does not establish the exact forms of relief plaintiffs can expect for specific violations of their rights. This would be contained in civil rights legislation.

It would not only attack racial discrimination, but should also target discrimination on other grounds such as gender, religion, nationality or ethnic background, disability, sexual orientation or family status.

While many people think of a Civil Rights Act in the context of "private apartheid" it would certainly also apply against the government, civil servants and public enterprises. The public sector is the source of many notable US civil rights cases, such as the Rodney King trial.

Civil rights laws in North America and Europe are intended primarily to protect disadvantaged minority groups. As a minority in South Africa, whites may have legitimate opportunities to pursue civil rights claims — for example if a local government denies or dilutes their voting rights, or if a department of the new government fires white civil servants.

If it follows the US model of constitutional supremacy, the new constitution will need to empower parliament to pass enabling legislation for its human rights norms. It should go further and authorise parliament to legislate in order to redress past inequalities. This would be particularly necessary if constitutional rights operate only vertically and not horizontally.

A Civil Rights Bill is necessary as a complement to a Bill of Rights in order to end inequalities, but it alone will clearly be insufficient. Not only will a new law leave attitudes unchanged but it will not address other fundamental problems. The US experience demonstrates this: after dramatic civil rights advances of the 1950s and 60s in courts and congress, public schools and facilities are no longer segregated but racial inequalities remain dramatic, persistent — and growing.

David Sullivan, a US citizen, is a law student who has just returned to the US after three months with the Law Reform Project of Lawyers for Human Rights. He has worked with LHR on a draft Civil Rights Act and mechanisms for its enforcement.

Saldef to go on its own

252 WMM 17-23 | 9/93

By GAYE DAVIS

THE South African Legal Defence Fund (Saldef) wants to set up and staff its own offices to deal with cases it normally farms out to attorneys

National director Ntobeko Maqubela said this could halve Saldef's R18-million a year budget. "Although Saldef pays a lower rate, legal fees are so exorbitant that our donors see it as pouring money into a bottomless pit. Salaried staff dealing with our cases will ease this."

Saldef's trustees recently agreed in principle to the change and Saldef has started consultations about feasibility.

Maqubela said because the majority of Saldef's cases came from the Natal, PWV and Border regions, offices would first be set up there. It was possible that these offices could later provide a model for a future public defender system, or become part of such a system.

"The Legal Resources Centre does mainly test cases, while we generally deal with individual human rights matters. The Legal Aid Board can't manage to do its own work, and has never had a human rights focus. Lawyers for Human Rights' work is largely project-based. They don't handle litigation unless it's relevant to a particular project."

"Saldef's new system will mean quality justice for those who most need it."

The National Association of Democratic Lawyers, the Black Lawyers Association, the LRC and LHR are all represented on Saldef's board, which discussed the issue last month.

"The board agreed that Saldef move

more into the developmental area and economise, and it was proposed that regional offices be set up to do Saldef work. These offices will not be public defenders offices in the true sense but could serve as model for one or become part of such a system.

"The board suggested we consult attorneys, especially those dependent on Saldef work. We've been asked to come up with detailed plans — the number of attorneys required and so on — to see if it is feasible and if it will be cost-effective."

Initially, work would be handled by the staffed Saldef offices as well as judicare, which funds lawyers to take cases.

Attorney who earned most of their income from Saldef cases would "not be happy" about the move, Maqubela said. "But we are motivated more by the needs of the people."

He hoped the round of consultations Saldef is currently engaged in would resolve attorneys' fears.

Saldef spends about R1,5-million a month on legal fees and recently experienced such a severe funding crisis that no new cases were accepted.

Maqubela said the situation had improved, but donors felt strongly that paying legal fees was not the most effective way to operate. "They want structures developed which will nurture democracy in this country and Saldef's transformation will be just one of the processes leading to this."

If he gets the go-ahead, Maqubela hopes to start early next year.

Strike damage
(152) 205/1/1/93
JOHANNESBURG — Police
were called today when striking Anglo American Property Services workers overturned pots and uprooted ornamental trees in the Carlton Centre.

Grosskopf asks for indemnity.

CT 18/9/93
Staff Reporter

ANC bomber Mr Hein Grosskopf has applied for indemnity — but his parents last night said they had no knowledge of this (ZS2)

Mr Grosskopf said in a weekly newspaper that he was involved in the 1987 bombing of the SADF's Witwatersrand Command and applied for indemnity.

Mr Grosskopf's Stellenbosch parents refused to comment.

Marital rape outlawed, but officials' attitudes have still a long way to go

DI CAELERS

Weekend Argus Reporter

RAPE IS rape — and no means not. That is the unambiguous message from a government decision this week to strip qualifications from a new law outlawing marital rape — but, say the specialists, the real battle is only just beginning.

Far from soliciting a flood of women rushing to court to accuse their husbands of rape, the status quo will remain until the police, district surgeons and the courts change their attitudes too.

Symbolically however, the new law is vital to create a starting point from which the relevant organisations can begin to lobby for meaningful change.

The real problem, according to Lawyers for Human Rights's women's desk director Ilse Olicker, lies in the victimisation of complainants at the hands of the criminal justice system. "Until, and unless, the agents of the criminal justice system — police, district surgeons and the Attorney-General's office — develop the necessary sensitivity and understanding to deal with the issue, I don't believe things will change very much."

Deputy Minister of Justice Sheila Camerer disagreed, say-

ing the rape issue was the subject of a two-pronged offensive by her department, with the outlawing of marital rape being only half the picture.

A specialist rape court set up at Wynberg in April this year was a pilot project, which saw the number of sexual offences convictions almost double just within the first month.

"This pilot project will be extended to other centres and we are also looking at further techniques to assist women in giving evidence. The whole caring approach of justice is gaining momentum and this includes the special treatment of rape victims right from the time the rape is first reported," she said.

However, African National Congress Women's League regional chairwoman Nomatyalala Hangana said there was still a long way to go in convincing women that they would meet with a sympathetic attitude from police.

While victims of marital rape were just as scared to report assaults as victims of any other rape, they faced far worse humiliation in the form of a "go to hell" attitude from police.

252 ARG 18/9/93
tion), told Weekend Argus that the more personal the relationship between the perpetrator and the victim, the less likely it was the rape would be reported.

More than 50 percent of women had experienced at least one situation where they had been forced to have sex when they didn't want it. "And I'm not just talking about thinking they would just get it over with so they could get back to sleep. I'm talking about submitting under threat."

"Marital rape is integrated in the whole battering experience. As one woman put it, it's the cherry on top of the degradation and humiliation."

Mrs Van Zyl said the new law would clearly establish that a woman had the right to say no, whether or not she was married, and result in marital rape switching from an invisible crime to a visible one.

"But there is still a lot of work to be done. Magistrates, lawyers and the courts must be trained, women's support groups must be established and women must be encouraged to come forward."

"Marriage is a contract between equals and not one where one person owns the other. We need to get away from the notion of conjugal rights."

"Marital rape as a crime has to be law for women to be protected, to recognise that rape is rape, irrespective of whether it's committed by a husband or a boyfriend. But this is not going to open a floodgate of marital rape reports. Women will still be scared of being laughed at and humiliated by police."

Discussing the lack of statistics for marital rape, Ms Hangana told Weekend Argus the incidents mostly emerged when welfare organisations dealt with battered women. When women finally gained the confidence to report assault, it was discovered that they had also been raped.

Nicero senior social worker Naomi Hill agreed, saying the sexual component of battering was very prominent. "It is very common and I believe there needs to be a lot more education around positive sexuality. Women think it is part of their marital duty to have sex whenever a man wants it and battery occurs when the woman refuses to have sex."

Mikki van Zyl, co-ordinator of Wildfire (Women in Law and Development for Feminist Information, Resources and Educa-

Sweeping changes Suggested for courts

By CARMEL RICKARD

THE judiciary faces the most fundamental changes in many decades if negotiators accept new proposals unveiled at the World Trade Centre this week. 19/9/93

Delegates favoured proposals for the Constitutional Court to be separate from the present Appeal Court, rather than be part of it.

They also supported recommendations that members of the new court be appointed by a committee of MPs and senators, while Supreme Court judges be appointed by a new judicial services commission.

However, further discussions and submissions might modify aspects of the proposals. (252)

Senior members of the General Council of the Bar, which represents the country's advocates, meet this weekend to discuss aspects of the proposals before issuing their official reaction.

If negotiators accept the proposals as they stand, key issues will be removed from the jurisdiction of the Appeal Court, which until now has been the highest court in the land. The ordinary courts will apply the constitution and the bill of rights. However, appeals will be heard by the Constitutional Court rather than the Appeal Court.

The appointment procedure for the Constitutional Court ensures that all political parties are equally represented and that no party can force its preferred candidates on to the slate.

Appeal judges divided on attorneys in high courts

By CARMEL RICKARD

THE question whether attorneys may appear in the Supreme Court is proving so controversial that even Appeal Court judges are divided on the issue

In submissions to the Milne commission which is considering the issue of appearance rights, the Chief Justice, Mr Justice Mick Corbett, said his fellow Appeal Court judges were "almost equally divided" over the issue. At present, only advocates may appear in the higher courts.

The commission, chaired by Mr Justice John Milne, is sitting in Durban to hear evidence about whether certain attorneys should also be allowed rights of audience in the Supreme Court.

Mr Justice Corbett said those Appeal Court judges in favour argued that the legal profession should have the respect and support of the public. This would be more easily achieved by removing a system perceived as doing nothing but maintaining privilege for advocates.

It should be replaced by a body of Supreme Court practitioners more representative of the people.

The "pro" judges also argued that extending rights of audience would give

greater opportunities for black lawyers to be considered for appointment as judges. They said market forces would show whether the competition of attorneys' appearance rights would be bad for the administration of justice.

Those judges against said the existing system had established a level of excellence "unparalleled on the African continent" and it would be unwise to tamper with it. Opening up rights of audience would lead to a drop in the standard of Supreme Court advocacy and the quality of justice would be affected. They said some focus of stability was needed at a time of fundamental change.

They challenged several arguments commonly made in favour of appearance rights and pointed out that even though attorneys had rights to appear in specialist courts like the Income Tax Special Court, attorneys expert in these fields still briefed counsel to appear for them.

During hearings of the Milne commission this week, Mr Michael Kuper SC, representing the advocates, said black advocates felt it was "patronising" to argue that standards should be lowered so that more black practitioners could obtain Supreme Court experience and thus be eligible for judicial appointments.

Court bid to protect documents

By ANTHONY JOHNSON
Political Correspondent

A BID by the apartheid state to sweep the murky side of its history under the carpet will be challenged in the Pretoria Supreme Court next week.

A court application designed to save innumerable classified and historic state documents from the shredding machine and the furnace has been filed by the director of Lawyers for Human Rights, Mr Brian Currin.

He said yesterday that his personal crusade was not motivated by feelings of revenge but aimed at "preserving our history for our children and their children".

Mr Currin said he had embarked on his course of action when, to his surprise, no party or organisation seemed to be taking steps to block the wholesale destruction of important security-related documents by all government departments and the SA Defence Force.

Mr Currin said he had written to a number of prominent individuals voicing his concern about the issue.

Mr Currin's lawyers said the application was expected to be heard by the Pretoria Supreme Court next Tuesday. The application seeks a declaration from the court for all documents — classified and non-classified — to be saved in terms of the provisions of the Archives Act. CS 20/9/93

'S first child-abuse court for city

EDMAN child abuse court was an extension of this.

LISED child-abuse court in the country, first in the country, officially opened by Minister Kobie Coetsee on tomorrow.

abuse court follows of a special sexual court in Wynberg six o, also a national i the rape initiative Cape Attorney-Gen- Kahn a step fur-

, whose initiative to e state's service to vours culminated in e of the sexual of- t, said the Depart- stice had given him port and opening a

child abuse court was an extension of this.

The sexual offences court had been a huge success. Between April 1 and August 31, 147 cases had been disposed of during an average of four-and-a-half hours court-time a day.

Although this figure represented fewer cases than those disposed of in a "normal court", the emphasis was on quality not quantity, he said.

The senior state advocate involved in the implementation of the rape initiative, Sandra Swart, said the provision of a rape unit at Victoria Hospital and the appointment of a Victim Support Services Co-ordinator at the Wynberg court were among the breakthroughs

achieved in terms of the initiative so far.

She said 182 rape complaints had already passed through the rape unit — she preferred to call it a "comfort room" — at Victoria Hospital.

The co-ordinator of Victim Support Services, Elsabe Durr-Fitcher, a social worker seconded from the Department of Welfare, had the job of connecting the victims of sexual offences with existing welfare organisations as soon as possible after the alleged offence, Mrs Swart said.

Mr Kahn thanked the regional director of Health Services (Western Cape) and his personnel for "going the extra mile" in assuring the system worked

APR 22 1985 (252)

He also complimented the police for facilitating the process by feeding Ms Durr-Fitcher information of sexual offences within 24 hours of their occurrence.

"A major area still needing to be addressed fully is counselling for the survivors of sexual offences from both the private and public sectors.

"But this initiative adds a new dimension to the legal system, which is in essence accused-orientated rather than victim-orientated and I'm confident it can be sorted out in time."

● Criminologist Dr Irma Labuschagne will hold a symposium for Cape prosecutors on October 6 to heighten awareness about rape cases.



RAPE COURT SPECIALISTS: Control prosecutor, Denise Greyling, prosecutors Helene Combrinck and Lynette Myburgh, and social worker Elsabe Durr-Fitcher are the specialist team who co-ordinate sexual offences trials at the Wynberg Sexual Offences Court.

Picture OBED ZILWA, The Argus

Black advocate calls on magistrate to withdraw

(252) ARL 23/993

JOHANNESBURG — Tempers flared in the Regional Court here yesterday when a black advocate demanded the withdrawal of a white magistrate, accusing him of "an attitude towards black lawyers" and unprofessional behaviour.

Magistrate H.J. du Toit refused to withdraw from the case, saying the accused, Johannes Mathee, 32, would not be prejudiced by the exchange between himself and advocate Nkola Motata.

Mr Mathee, a resident of Meadowlands, Soweto, allegedly bombed and partially destroyed the Mzimhlope hostel last year — at the height of intense conflict between the hostel dwellers and residents.

He faces several charges of possessing explosives, causing explosions and maliciously damaging property.

Mr Mathee is alleged to have stolen the explosives from his former employers, Dantex Explosives.

His trial began in February. Mr Mathee was denied bail and has been in custody since his arrest in July last year.

Mr du Toit said on Wednesday Mr Motata was bordering on contempt as he had arrived at the court late.

He denied having "an attitude towards black lawyers".

He would not withdraw himself from the case.

The case will resume tomorrow — Sapa

White man's law dies hard

Behind Nadel's Legal Education Project is an ambitious quest to transform SA's legal system **GAYE DAVIS** reports

25/2 WSM 17-23/9/93

THE National Association of Democratic Lawyers has launched a major research project to investigate and help facilitate the transformation of South Africa's legal system into one that is credible, representative and geared to serve the interests of all.

Nadel's national director, advocate Plus Langa, said at the project's recent launch in Cape Town that the country needed institutions supported by the entire population. Yet, with most of them dominated by white males, the "concept of white man's law dies hard".

Nadel's Legal Education Project, said Langa, was the start of a quest "to look searchingly and critically at our legal system from the point of view of the community" and "eliminate the feeling of uneasiness that we are very far from reaching a state of normalcy with a multi-racial bench and non-racial control of the Bar Council".

Johnny de Lange, the advocate heading the Legal Education Project with the assistance of project officer Dr Velaphi Sibisi, says it will focus on legal education, the profession itself and the institutions involved in administering justice.

Research into legal education will involve investigating not only law faculties' admission policies and ways of ensuring greater access, but also course content and standards. It will also involve training Nadel members.

De Lange said very few firms take clerks from disenfranchised communities so they go to smaller, often one-person firms which are

basically criminal practices. They land in a firm with limited scope of work yet have to write exams on estate planning and contracts of which they have no experience. So we will be looking at ways of exposing them to these areas.

Our members have lots of practical experience but need skills in serving on the Bench and adjudicating in court cases. In the longer term would come legal education directed at the public, on human rights and the constitution.

As far as the professions itself is concerned, disenfranchised members don't feel part of structures such as the Bar Council and Law Societies. De Lange said. "Though all practising lawyers belong to them, they aren't active members. Wittingly or unwittingly, these bodies have always served the interests of the white minority."

Similarly, the judiciary, the courts and other bodies administering justice were all geared to serve apartheid. "We want to see how best to

restructure to make them more representative. At present judges are appointed by the cabinet, but all people need a say.

"But we don't want a situation where lawyers choose judges, functioning as a closed shop. A judicial service commission comprising MPs representing the people, members of the legal profession and laymen. There's also the issue of labour's participation in the judiciary. To get black lawyers into these structures we need affirmative action programmes. Going hand in hand with this is the question of training. Should we have a training school for judges — as Canada has — not just to train new judges, but retrain old judges?"

Is the division between judges and magistrates desirable; the perception is that it means A and B justice. In Germany you start as a magistrate and work your way up to becoming a judge. This would enable affirmative action.

The argument that standards would drop was fallacious. "What kind of standards are we talking about? Those of apartheid justice, where the judiciary largely trampled over human rights and, bar a few exceptions, judges held their peace and went along with it?"

"We're not denying the need for skills, but the standards we are looking at are not just technical — they relate to an understanding of human rights and the needs of the people."

The ground the project will cover is shifting a commission is investigating whether attorneys should have rights of audience before the supreme court; Justice Minister Koble Coetsee is overseeing the restructuring of the Department of Justice

Decrying the changes as piecemeal, De Lange asked: "Does this sudden acceleration of pace mean an attempt to avert more radical restructuring: before laws governing restructuring are passed they should first have been discussed widely, beyond traditional circles."

Commenting on the Act recently passed making the office of the attorney general independent of the Department of Justice, and the Bill mooted to regulate the activities of magistrates, De Lange said: "They are not necessarily bad things in themselves, but we don't believe the government is restructuring for any laudable reasons. It's an attempt to make it difficult for any new government to change the system.

"The legitimacy crisis won't be addressed without a meaningful overhaul and restructuring

"We need different personnel, training — but also we need to restructure for a shift in emphasis, to serving interests of the majority."



Judge Nic Olivier for Cape bench

252

CT 24/9/93

SOUTH AFRICAN Law Commission vice-chairman Mr Justice Nic Olivier will be seconded to the Cape Supreme Court, a senior city advocate will have his term as acting judge extended and another will be sworn in as an acting judge. The Judge President of the Cape, Mr Justice G. Friedman, said yesterday Mr Ian Farlam, SC, would have his term extended till the end of the year. He has been acting judge since April.

Mr Richard Horn, SC, who will be sworn in, was admitted to the South African Bar in February, 1983, and took silk in December last year.

Special sexual offences court for city

Staff Reporter

JUSTICE MINISTER Mr Kobie Coetsee yesterday opened a special court for sexual offences at the Cape Town Regional Court to cater for the spiralling number of sexual crimes involving children and the unique demands this places on the legal system.

The courtroom is linked via

closed circuit television to an adjacent room where juvenile witnesses can give evidence in an unthreatening environment without having to come face to face with the accused — often a member of their immediate family

Mr Coetsee said "In cases of rape and child molestation the evidence given by the complain-

ant or child is sometimes the only evidence available and exceptional demands are placed on the courts"

He said the special court had been necessitated by the "alarming" number of rape and indecent assault cases involving children in the Western Cape

(252) (298) 27 24/9/93

RICKARD surveys the likely candidates to serve on a powerful new constitutional court

AT LAW faculty teachers, in chambers around the country, speculation has started in earnest about likely candidates for the new constitutional court Cognoscenti mull over qualifications and some potential candidates and their backers have started jockeying for positions

But key questions about the new court have yet to be finalised Negotiators at the World Trade Centre have deferred a final vote to allow the judiciary and other branches of the legal profession to comment on suggestions from the technical committee drafting constitutional proposals

The committee's draft for a constitutional court and a new appointment mechanism for the other courts speaks of the need to make a fresh start and improve the credibility of the legal system. However the proposals are not without controversy

They make the constitutional court quite separate from the Appellate Division, rather than a chamber of the AD which many influential members of the profession would prefer It removes key issues from the jurisdiction of the AD, ordinary courts will apply the constitution and the bill of rights, but all appeals on these issues will go to the constitutional court rather than the AD.

The appointment procedure for the 11 members of the new court is another controversial issue The draft proposes that every political party in the assembly and in the senate will have one member on the selection committee They will meet in camera to interview candidates and make their choice

They must come to a unanimous decision. If this proves impossible, 75 percent of the committee may nominate the president and eight judges, and the remaining 25 percent choose the other two judges.

All these nominations must then be approved by 75 percent of a joint sitting of the assembly and the senate, with no debate allowed

This system is intended to ensure that the new court is not a clone of the courts gone by; that fresh ideas, credibility and skills will infuse the constitutional court through a selection process more democratic than in the past. But it is vulnerable to the same problems of political

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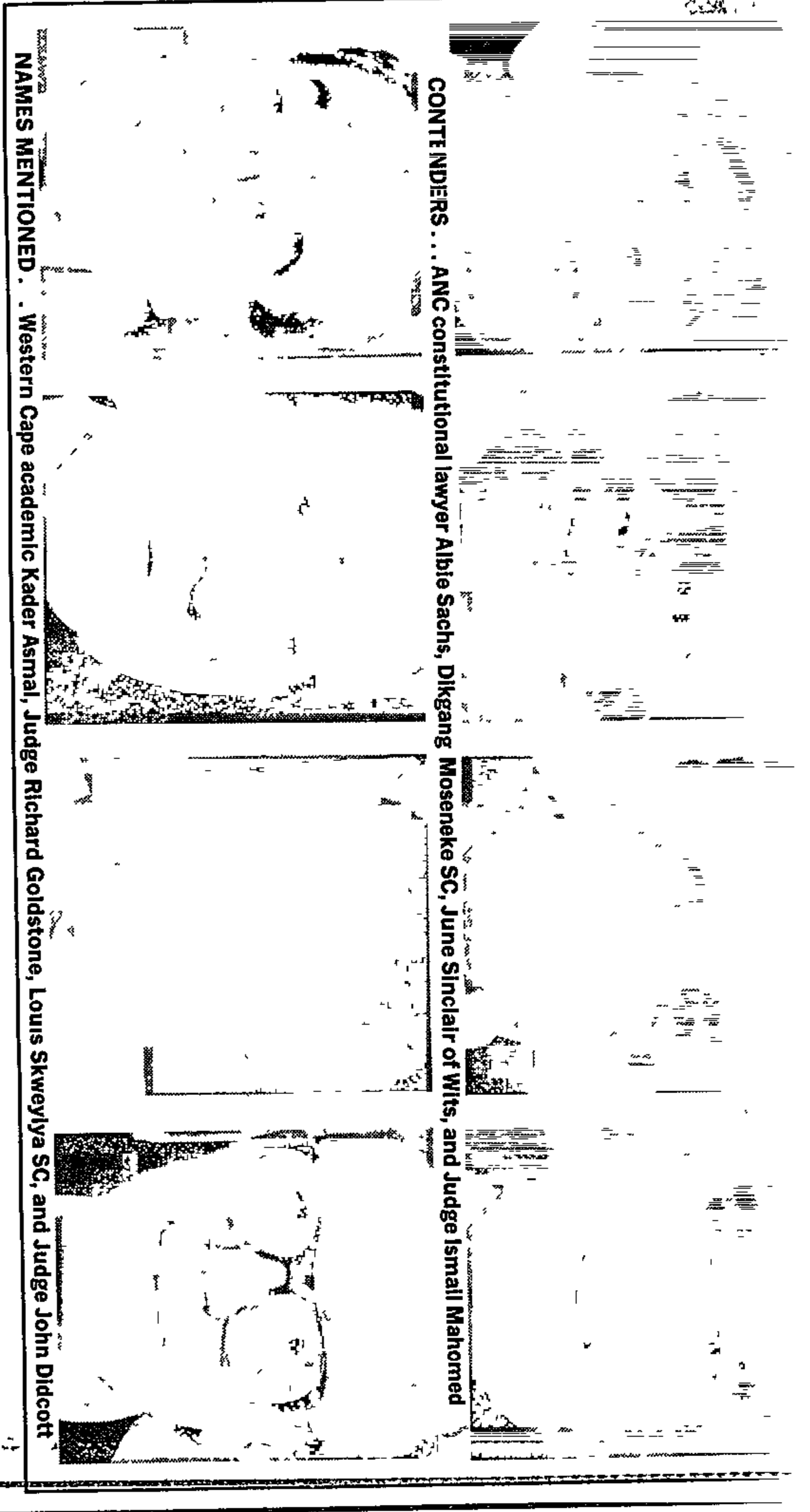
new South Africa

manipulation as the present system, and could well result in judges being chosen after political horse-trading rather than on merit. There is also no provision for any input at all by the legal profession.

Perhaps a two-stage process of interaction between the profession and parliament should be considered, with politicians drawing up a list of candidates they find acceptable and members of the profession selecting from that list, or vice versa

SO who will the selectors consider? A constitutional court judge must be a South African and a "fit and proper person" for appointment. He or she may be a Supreme Court judge or they may have an LLB (or another qualification which allows admission as an advocate) with at least 10 years' experience as an advocate, an attorney or a legal academic.

However, another clause allows other people to be considered if, through their training and experience, they have "expertise in the field of constitutional law relevant to the application of this constitution and South African law". Discussion about possible candidates reveals the obvious: the pool of women



CONTENDERS... ANC constitutional lawyer Albie Sachs, Dikgang Moseneke SC, June Sinclair of Wits, and Judge Ismail Mahomed. NAMES MENTIONED... Western Cape academic Kader Asmal, Judge Richard Goldstone, Louis Skweylya SC, and Judge John Dicoct

dates, male or female, is at the moment neither deep nor wide, although this will change in the next five or six years. Many in the categories unrepresented on the present bench come from the academic world and have little courtroom experience.

Influential senior practitioners feel that relatively few contenders qualify in terms of temperament, proven ability and the wide-ranging experience ideally needed in a judge. Beyond these few, a creative approach becomes necessary, with constituency credibility and potential becoming important factors

Any list of possible appointees must be incomplete and controversial. Candidates seriously regarded in some circles, are dismissed as unsuitable in others, and the abilities and experience of potential appointees now being discussed, vary widely.

Interestingly, several sitting judges feature in serious discussions about suitable candidates. They include Judges Goldstone, Mahomed, Krieger, Ackermann and Dicoct Judge Malne is also mentioned, although some feel his influence is more needed on the AD Judge Olivier of the South African Law Commission, responsible for scholarly research on a wide range of constitutional issues, is another favoured name. Chief Justice Corbett also

STIves 26/9/93

252

that the draft proposals allocate the Chief Justice an automatic seat on the constitutional court This would ensure that, whether the constitutional court is separate from the AD or not, there is a "binding" of the two bodies, emphasising that "justice is indivisible"

FORMER Legal Resources Centre director Arthur Chaskalson heads the list of practitioners and he seems assured of a place. Jeremy Gauntlett of the Cape bar is regarded as another suitable candidate (The present black SCs (all, are male) must be in the running, among them Hassan Mall, Lewis Skweylya, Dikgang Moseneke, Zac Yacoub and academic Charles Dlamini. Female silks include Natalie Fleischack who works with the special court dealing with rape and child molestation,

and chief family advocate Frances Bosman; while Karen Blum has experience as an acting judge and must therefore be a serious contender

Members of the bar who have not yet taken silk, but whose names recur include the president of the National Association of Democratic Lawyers, Pius Langa, Marimno Moerane, Selby Bagwa and Kgomoiso Moroka from the Johannesburg bar, the only black woman advocate mentioned

The present director of LRC, practising attorney Geoff Budlender, gets strong backing Colleagues in the profession regard him as a likely contender given his intellectual abilities, his experience and his long commitment to human rights issues.

Pre-eminent among the likely academics is long-time human rights campaigner John Dugard of Wits Some sources also tip his colleague

Dennis Davis, recently exposed to a national audience through the TV show *Future Imperfect*. Wits vice chancellor June Sinclair is mentioned, along with the law school dean Carole Lewis Another Wits lawyer Edwin Cameron has the advantage of more court experience than most academics

OF all the women contenders, the most consistently mentioned is UCT's Professor Kate O'Regan with her specialist knowledge of gender issues Fellow professor Christina Murray who teaches constitutional law also features although like Professor O'Regan she might be considered too young by the selectors

Another UCT professor, Thandabantu Nhlapo, would make an invaluable contribution with his expertise on customary law and its relationship to private law, an issue likely to feature strongly before the court if the bill of rights operates horizontally as well as vertically

University of the Western Cape professor Kader Asmal who has taught and published extensively on human rights issues, together with fellow ANC constitutional lawyer Albie Sachs must be on their party's slate and have support from some other organisations as well Like several others already mentioned however, these are controversial candidates because of their high political profile

Past political appointments to the bench helped undermine judicial independence and credibility, regardless of the quality of the individual involved Many lawyers say it is a practice they have fought for decades, and they ask whether the legal system can afford to repeat this mistake.

This is not to suggest that judges must have grey political or legal backgrounds At issue however is the dividing line between someone with political beliefs, even strong political convictions, and a person so strongly identified with a party that the public do not believe independence is possible



LEGAL BEEF . . . Advocate John Motata was allegedly humiliated by a Johannesburg magistrate during a packed court session. ■ Pic: THULANI SITHOLE

Political comment and newsbills by K Sibiya, headlines and sub-editing by B Keswa, both of 2 Herb Street, New Doornfontein, Johannesburg

Lawyer to take action

By MARTIN
NTSOELENGOE

PROMINENT advocate John Nkola Motata is expected to file a complaint with the Bar Council tomorrow after he was allegedly humiliated by a Johannesburg magistrate this week (252)

Trouble started in the Regional Court when advocate Motata asked for time to consult with his client and magistrate HJ du Toit gave the advocate "only a minute".

While Motata was consulting with client Mosupi Mathee, Du Toit allegedly screamed at the two, charging that they were wasting his time.

Motata subsequently asked magistrate Du Toit to recuse himself because he was biased against his client who was charged with 10 counts of sabotage and one of possessing explosives.

Mathee was acquitted on all counts.

APPOINTMENT TO SUSPEND THE INQUIRY

By CARMEL RICKARD

THE Milne commission, considering whether attorneys should appear in the Supreme Court, has been urged to suspend its deliberations until a national legal forum has been established. *S Times*

The National Association of Democratic Lawyers (Nadel) said this week it would not make representations to the commission, nor would the Black Lawyers' Association.

Nadel said the legal system needed to be restructured to make it compatible with the emerging democratic and social order. *26/9/93*

The Milne commission was established by a government considered illegitimate and there was no consultation with other players in the profession

before the commission was appointed. *(252)*

Its terms of reference were too narrow and a number of other important issues involving the profession, apart from attorneys' rights of audience, also needed to be dealt with.

Commission chairman Mr Justice John Milne heard similar evidence from Durban advocate Lous Skweyiya, SC, who suggested that the judge should compile an interim report without making recommendations.

However, Judge Milne has announced no decision in response to the call that he suspend the inquiry.

The legal forum held its first "pre-meeting" on September 2. A steering committee was set up and the first full meeting is expected to be held in October.

State documents 'Archives Act holds'

252

CT 29/9/93

PRETORIA — State documents will be dealt with in accordance with the Archives Act, according to Justice Minister Mr Kobie Coetsee

But, in a short statement, Mr Coetsee added that "certain people who have supplied information (to the government) are entitled to secrecy".

His statement was related to a Pretoria Supreme Court application brought by Lawyers for Human Rights director Mr Brian Currin in his personal capacity 10 days ago

In papers before the court Mr Currin said instructions from national intelligence chief Mr Johan Mostert to directors-general of all state departments had called for the destruction of all files not emanating from their own departments.

Mr Currin argued in his application that legal opinion given to the state — that classified documents did not fall under the Archives Act, thereby preventing their destruction — was wrong and unlawful. He called for all documents, classified and non-classified, to be declared as falling under the provisions of the Archives Act.

Mr Coetsee said the government regarded "a truthful perspective on South African history as a particularly high priority".

But, he added, "at the same time, the government is fully aware of the privileges recognised internationally as well as in the Republic of South Africa in terms of which certain people who have supplied information are entitled to secrecy" — Sapa

New govt regulations make grants a privilege rather than a right, say lawyers

Star 29/9/93

252

'Thousands could lose their pensions'

BY ZINGISA MKHUMA

Every month since last October Piet Radtsoani (69) and Jarus Mathokwe (65) of Dobsonville, Soweto, have been taking an early morning walk to join the long queue at the township's pension payout point.

But each time the two neighbours would go back home dejected and empty-handed. The reasons they could not be paid varied, they said. "It's either that your fingerprints were not done correctly or your application form was misplaced."

Whatever the reasons for the delay in their payments, one thing is certain, the two men, who both support their families, will not get their pensions for many more months to come.

Radtsoani and Mathokwe — and scores of other pensioners and mentally retarded or disabled people — are victims of new draft regulations of the Social Assistance Act. These regulations, which stipulate that pensioners should fill in new application forms and be questioned

MANY are concerned that new legislation will leave elderly blacks without a monthly income

by clerks before they qualify for grants, have been strongly condemned by social welfare organisations, lawyers and the Black Sash.

Although the regulations have not yet been gazetted, The Star found people who already qualified for State grants were being made to re-apply and subjected to the means test.

In terms of the regulations they must now produce

- A house permit
 - An unemployment insurance number
 - A marriage certificate
 - Proof of employment, including the employer's signature
 - Details of assets, including bank balances
- National director of the Legal Resources Centre Geoff Budlender said last week that, when the Social Assistance Bill was first in-

troduced in Parliament, the LRC warned it was an attempt to take away a legal right and replace it with a privilege, which would be granted at the discretion of Government officials.

The Government denied this and, after sustained protests, it removed some of the most controversial aspects of the Bill, which was then enacted.

Difficult

Budlender said the new draft regulations under the Social Assistance Act confirmed "our fears" that Government officials intended using their powers to undercut the right to pensions.

"They place wide discretionary powers in the hands of officials, and in practice will make the legal right to a pension very difficult."

The Government recently announced the parity of social pensions and other allowances for all racial groups to ease the plight of the poor. It said the maximum amount for old-age pensions, disability grants and grants to foster parents would be

R370 a month, but that in terms of the regulations a new means test would be used and each case assessed on its own merits.

The Black Sash said the regulations proposed a totally new system of means testing which seemed more complex and difficult to understand. It also decreed that children living with parents may be deemed to be boarders and this would be considered as income.

"There is an overwhelming number of highly discriminatory clauses effectively allowing the director-general to decide the date from which an applicant's grant may be paid, the amount, the worth of his or her property, or to decrease or increase a grant."

Pinky Vilakazi, of the South African Council for the Aged, confirmed the regulations were already being implemented, and said they would disqualify thousands of black pensioners, some of whom could not produce marriage certificates because they had married under customary law.



Chasing elusive pensions . . . Piet Radtsoani and Jarus Mathokwe both have families to support but can't get their grants paid. PICTURE KEVIN CARTER

Clerics slam Bill of Rights

CF 2/10/93
PRETORIA — Church leaders yesterday called on politicians to ensure that a new constitution and Bill of Rights guaranteed protection for unborn children and did not entrench special rights for homosexuals.

The call was made by about 1 000 ministers and Christian workers at a three-day interdenominational conference which ended yesterday, the KwaSiza-

bantu Ministers' Conference said in a statement (252)

"We call on Parliament and negotiators at Kempton Park and all political parties to make sure that the God-given right to life of all human beings is written into the law

"We reject the idea that 'termination of pregnancy' can be considered a human right"

On homosexuals, it said the

conference noted with shock and disappointment that the leaders of "our land decided to give constitutional protection to perverted life-styles"

"The inclusion of the words 'sexual orientation' in the anti-discrimination clauses of most Bills of Rights of various political parties will give special protection to anti-family and anti-society life-styles" — Sapa

Judge urges human rights lessons for kids at school

S/T Times 3/10/93
252

By CARMEL RICKARD
A SENIOR judge has taken the government to task for making no effort to prepare for human rights education in schools, and he has urged a campaign to lobby for its official recognition in the syllabus.

Speaking at a conference of high-school principals in Durban this weekend, Mr Justice Pierre Olivier, vice-chairman of the South African Law Commission, said the failure of the state to introduce human-rights education in schools was "inexplicable"

He said that over past decades, the state and its institutions put up "stubborn resistance" to the idea of human rights, and even the words were viewed with suspicion

However, since February 1990, the country had officially been committed to a human-rights regime and the introduction of a bill of rights

Yet, even at this stage, Judge Olivier noted, "nothing of any importance was done to stimulate debate on the question of human-rights education in schools or to provide teachers' training in human rights or to open the doors for human rights teaching in our schools"

Judge Olivier said teaching human rights at schools was "one of the most effective and long-lasting ways" of establishing a human rights culture

"As a country, we have

neglected not only such education, but also serious discussion and debate (about the issue), and we shall regret it."

The judge said that when people were taught human rights, they learnt that they had inherent worth and that in the eyes of the law, they were as valuable as the most powerful in the country

Pupils learnt self-respect and respect for others. They also learnt about tolerance, "and that we do not need to annihilate our adversaries"

Although the country would soon have a bill of rights, daily violence indicated there was still no human-rights culture. Without such a culture, Judge Olivier predicted, the new democracy will be still-born

"Liberty, democracy and human rights can only be protected superficially by a constitution and a constitutional court. They are protected effectively only by the will of the citizens to protect them"

Judge Olivier urged lawyers and teachers to work together to establish human-rights education in schools

He outlined the issues other countries had found controversial in teaching human rights, and said he believed it should be taught as a separate subject initially, which could then permeate all the other disciplines

UN calls for recognition of minority rights

JOHANNESBURG — Experience showed that the recognition of minority rights was the best route to political harmony, according to the United Nations World Campaign for Human Rights.

Minorities should be allowed to govern a wide range of matters "internal" to them and should be able to implement this control by levying taxes, it said.

The UN's views on the issue, an

emotive one for most South Africans, were carried in a campaign booklet distributed at an International Human Rights Law Conference at Wits University on Saturday.

Many minorities were subject to grave and persistent violations of their basic rights, it said.

"Long experience has shown that neither oppression — applied in

defiance of international law — nor neglect of minority problems provides a basis for relations between groups with different characteristics in the same country."

Assimilation had sometimes been attempted, but it had often failed. The drive to preserve identity was strong, and it applied as much to minorities as to nation states.

"The experience of countries

where a majority of the population lives in harmony with one or more minorities shows that (positive) action takes the path of recognition of minority rights, and includes the means to ensure these rights are respected."

The issue raised some ire from the audience at the conference. One man said recognition of the Afrikaner's rights to self-determin

nation were "eternally" at odds with the abolition of apartheid.

Another man, whose contribution was applauded, said he was an Afrikaner, but those demanding a volksstaat were a "lunatic fringe."

African National Congress academic Dr Kader Asmal said the recognition of language and culture were acceptable but demands for secession were not — Sapa

(252) (SAPA)

Goldstone on police violence

BIDAY 5/10/93

BILLY PADDOCK

THERE was strong circumstantial evidence of security force involvement in political violence, but not enough conclusive proof to make a judgment, Judge Richard Goldstone said yesterday.

Speaking to the Cape of Good Hope Law Society at Sun City, he said that as a lawyer and a judge "I have little doubt that a considerable cause of some of the political violence is the work of *agents provocateurs*. But, by applying the same logic and reasoning to known facts, I do not know who is responsible for it."

The obvious suspects were those parties resisting change and threatening violence.

There were substantial reasons for concluding that the interests of government and the NP would be strongly against such

destabilising activity "They are too firmly and irrevocably committed to the present negotiated peaceful change. If that process fails so, too, do they."

Goldstone said there was proof of covert criminal activity by security force members in the '80s. "The activities of the CCB speak for themselves. Without anticipating any finding which may be made at the Goniwe inquest, some of the evidence relates to further possible involvement by the military or police in criminal activity at that time." (252)

There was also government's secret funding of Inkatha and the SADF training

□ To Page 2

Goldstone

BIDAY 5/10/93

□ From Page 1

of Inkatha supporters in Caprivi in 1986, and the involvement of some of those trainees in recent violence. (252)

In the Trust Feeds case, senior police officers had been found to be party to covering up political murders committed at the instance of a police officer by police force members under his control.

The SAP's inability to apprehend and successfully charge any but a small number of persons responsible for the large number of murders committed on trains and in other public places had added to the suspicion of security force involvement, Goldstone said.

Other factors included the Goldstone commission's raid on the Covert Collection Department and the discovery that Military Intelligence was employing a man with a serious criminal record to undermine officials of the ANC. Also, 10 months after the dismissal of 23 senior officers, President F W de Klerk still had not given the reasons for their dismissal.

"To this already long list of relevant evidence I would add that the present head

of Military Intelligence, Gen Joffel van der Westhuizen, less than a month ago refused to answer questions put to him at the Goniwe inquest on the grounds that the answers would tend to incriminate him. He is still in a position of great authority in government service and able to influence further investigations," Goldstone said.

In the light of all this, "can any South African be blamed for believing that a third force or third forces are responsible?" he asked. But he added that his staff had struggled to find credible evidence of the third force and its sponsorship.

Goldstone said "To the extent that the commission is a jury, in respect of third force activities that jury is still out."

In a statement last night the NP said Goldstone's remarks strengthened the party's argument that it and government had no interest or part in the violence. "To the contrary, the NP is the party whose cause suffers the most due to the present violence. In fact the parties responsible for the violence are cleverly trying to shift the blame to the NP."

Govt 'planning meeting with Apla command'

■ STAFF REPORTER

A meeting between the Government and the PAC's armed wing, the Azanian People's Liberation Army, is to be held later this month according to a story in today's edition of The Star's sister newspaper, The Sowetan.

The meeting, scheduled for October 28, is to discuss the "mutual cessation of hostilities", PAC sources said.

Libya, Uganda, Tanzania and Zimbabwe have been mooted as possible venues, with Zimbabwe the most likely. A neutral chairman is being sought.

The Government delegation would possibly be led by Law and Order Minister Hernus Kriel and include Police Commissioner General Johan van der Merwe and Army chief General Georg Meiring. Apla chief commander Sabelo Phama would lead the Apla delegation which would include its chief of staff, Barney Mzolo.

Goldstone speaks out

Star 5/10/93

Violence: evidence of SADF, SAP role

(252)

■ BY ESTHER WAUGH
POLITICAL CORRESPONDENT

There is "strong circumstantial evidence" of security force involvement in current violence, Mr Justice Richard Goldstone told the annual general meeting of the Cape Law Society at Sun City yesterday.

Referring to the Goldstone Commission's raid on Military Intelligence's Department of Covert Collection in November, he said almost 10 months after President de Klerk had dismissed 23 senior SADF officers the reasons for their dismissal had not been made public.

"To this already long list of relevant evidence I would add that the present head of Mil-

JUDGE believes there is circumstantial evidence of security forces involvement in political violence

itary Intelligence, General (Joffel) van der Westhuizen, less than a month ago refused to answer questions put to him at the Gonwe inquest on the grounds that the answers would tend to incriminate him."

Mr Justice Goldstone said his commission had followed up every lead given to it on an alleged third force and had interrogated many former and present security force members.

"As a lawyer and as a judge I have little doubt that a considerable cause of some of the political violence is the work of agents provocateur. But by applying the same logic and reasoning to known facts I do not know who is responsible for it."

Goldstone noted that there were substantial reasons for the Government and National Party to be opposed to the current destabilisation.

He said there was proof of covert, criminal activity having been undertaken by the security forces in the 1980s.

Evidence at the Gonwe inquest indicated further possible involvement by the SADF or SAP in violence during the 1980s.

Negotiators to unveil new bill of rights

By BARRY STREEK
Political Staff

A NEW bill of rights will be unveiled today and debated at the World Trade Centre, Democratic Party justice spokesman Mr Tony Leon disclosed last night.

The new draft bill was "a significant and substantial improvement on the previous draft published by the technical committee in July",

he said at a public meeting in his Houghton constituency.

The amendments to the new draft bill were the result of nearly 10 weeks of negotiations and commitments by the parties represented on the ad hoc committee appointed by the negotiators.

Mr Leon said the new bill now protected land owners from Zimbabwe-style expropriation and

made provision for a two-thirds parliamentary majority to approve a state of emergency which would be effective for three months.

The important aspect of the new draft bill was that it was a far more balanced, equitable and legally enforceable instrument than the previous draft.

However, it still offered too many "paper rights" which were incapable of enforcement and in some areas it was far too vague and lacked precision.

"Most seriously, the clause allowing affirmative action leaves open the possibility of race-based quotas receiving the constitutional green light in the new South Africa," he said.

The draft bill would, however, "help anchor our transitional

society in the rule of law and move South Africa away from the culture of authority and brute force to the culture of justification and persuasion."

"The new draft also provides for those dispossessed by apartheid of their property rights to make a claim to the government for compensation," Mr Leon said.

CT 7/10/93

Ban on gays

'goes against rights bill'

— Staff Reporter

BLANKET discrimination against any group of people is contrary to the spirit of the proposed Bill of Rights, an association representing gay interests said yesterday

Commenting on the SADF decision not to have gay people in the army, a spokesman for 6010 Community Centre — formerly known as the Gay Association of SA — said exclusion on the basis of sexual orientation was unjustified.

A human rights advocate who preferred not to be named said yesterday there did not appear to be any rational reason for the SADF's decision

The decision may be unlawful, he said

Attorney-general hits back after 'low bail' public outcry

☐ Innocent until proven guilty; other factors taken into account

ROGER FRIEDMAN, Staff Reporter

ATTORNEY-GENERAL Frank Kahn has hit back at criticism over the granting of bail.

He was responding to public outcries over the granting of R200 bail to two men accused of the brutal rape of an Observatory woman last month, and the release, on a warning to appear, of a Northern Cape farmer who appeared following the death of a labourer last week.

"The ill-disguised innuendoes of racism in the case of the Northern Cape farmer and sexism in the Observatory rape case are unfortunate.

"While the granting of bail seeks to protect the liberty of the untried individual, it has been turned into a political football," said Mr Kahn.

He referred The Argus to the 1991 Namibian Supreme Court trial of Donald Acheson, accused of complicity in the murder of Swapo lawyer Anton Lubowski.

Mr Justice Ismael Mohammed said "An accused person cannot be kept in detention pending his trial as a form of anticipatory punishment. The presumption of the law is that he is innocent until his guilt has been established in court."

The primary factors when granting bail were

- Did the accused represent a "flight-risk"?
- Was there a danger that an accused might commit similar crimes were he or she released?
- Would the accused hamper the administration of justice were he or she granted bail?

The most important element was the flight-risk one, and in this respect "although no system is infallible, the overwhelming majority of people granted bail over the years have stood trial," said Mr Kahn.

"To draw an inference whether an accused represents a flight-risk or not, the police and prosecutors are guided by a set of principles each carrying varying weights according to the different circumstances of each case."

Prosecutors relied largely on the opinions of the police investigating officers whose task it was to gather information on the ground.

In assessing flight-risk, cognisance was taken of a number of factors

- The seriousness of the offence, the charge and the likelihood of a severe sentence
- The strength of the State's case and the probability of a conviction
- Whether the accused was a foreign national
- The existence of extradition treaties with neighbouring, accessible countries
- The mobility of an accused and his or her access to foreign travel
- Attempts or threats to commit suicide
- Previous convictions
- Personal circumstances like age, business interests and property
- The personality of an accused

"The granting of bail in South Africa follows the examples of most civilised western countries and bail considerations are applied equally to all citizens.

"It is obvious from the above considerations that bail cannot favour any particular class or group.

"Whereas the very rich might constitute a serious flight-risk, the destitute often lack fixed places of abode."

"The objectivity of the system must be viewed in the light of the track record of all those who have received bail in the past."

AK47 11/01/93

(252)

Negotiators approve rights

(252)
CT 8/10/93

JOHANNESBURG. — Negotiators at the multi-party constitutional talks in Kempton Park approved a wide-ranging set of fundamental rights yesterday — including “one of the toughest limitation clauses in the world”.

The limitation clause — “one of the toughest in the world” according to a technical committee spokesman — prescribes how the approved rights may be limited

The clause says the rights can only be limited if “such limitation is reasonable ... justifiable in a free and democratic society based on freedom and equality and shall not negate the essential content of the right in question”

Presented with the 10th progress report by the technical committee on fundamental rights, the negotiating council rapidly approved clauses ranging from freedom of expression to economic and environmental rights

A clause on children's rights was also passed, including a pro-

Women slam equality plan

Political Staff

THE Women's National Coalition yesterday slammed constitutional plans to exclude African women from the policy of equality for all women.

The coalition — which represents 80 women's organisations, including the National Party's Women's Action and the ANC's Women's League — called on the Negotiating Council to ensure that the law recognises equality for all citizens.

“We reject completely the notion of the promise of immediate equality to white, coloured and Indian women to the exclusion of African women under customary law,” the coalition said in a statement issued by Ms Frene Ginwala and Ms Anne Letsebe.

“While we support the right of people to exercise their choice, we believe that in women's legal position customary law should be subject to the principle of equality.”

vision stipulating the right of the child to be treated “in a manner which takes account of his age” if detained

Technical committee chairman Professor Lourens du Plessis said this legislation would directly affect children already detained

A suspension clause — which apparently worried only the Pan-Africanist Congress, which reserved its position — was also passed

The clause states that entrenched rights can be suspended if a state of emergency is declared “and only to the extent

necessary to restore peace and order”

Such emergency could be declared if state security was threatened by war, invasion or “general insurrection” It should last for 21 days unless a two-thirds majority of the national assembly decided to extend it “for consecutive periods of no longer than three months at a time”

The PAC said the whole clause, especially the periods stipulated, were “draconian” and it reserved its position when the clause was approved — Sapa

Equality 'denied to black women'

LIBBY PEACOCK

Weekend Argus Reporter

CONSTITUTIONAL plans — in which African women living under customary law are excluded from the policy of equality for all women — have been slammed as going against the grain of what a Bill of Rights is all about

Traditional leaders placed an amendment to a clause before negotiators at the multi-party talks in Kempton Park on Thursday — after a compromise already had been reached on the issue

Angry Democratic Party MP Dene Smuts told Weekend Argus yesterday "For 10 weeks, an ad hoc committee sat to resolve the political problems between participants.

"The traditional leaders were part of that committee on this matter and, therefore, they were

part of the compromise

"Then, acting in what can only be described as bad faith, they went against the compromise and, at the eleventh hour, tabled an amendment to the compromise, an amendment which they thought would strengthen their position

"Because of what we consider bad faith, we think that the traditional leaders now must be given no quarter and that we must not tolerate a compromise"

The system of customary law — in which women were effectively legal minors with no standing in law — was exactly what a Bill of Rights was trying to change

Ms Smuts said "They (the traditional leaders) were trying to put themselves beyond the reach of the equality clause" by using culture as a framework

A committee will be sitting

again on Wednesday to resolve this issue

African National Congress negotiator and secretary-general of the National Women's League Baleka Kgositsile told Weekend Argus "The proposed text is couched in terms that are very problematic. The negotiating council decided to shelve the matter"

Lawyers for Human Rights' women's desk director Ilse Olckers — who is also a member of the National Women's Coalition — said it was a "completely untenable situation" to have the most oppressed sector of society — black women — excluded from constitutional equality guarantees

Ms Olckers said customary law as it existed today was "a complete distortion" of the African customs as handed down through the centuries

Slowly, surely, a rights bill takes shape

S/ Times [Buss]

10/10/93

NEGOTIATORS have culled a clause from the bill of rights that restricts landlords from evicting tenants after Chief Justice Mick Corbett warned it could destroy the property market. (252)

All but two sections of the chapter on fundamental rights in the new constitution were approved by negotiators this week after two months of hard bargaining during which the chapter was drastically revised to accommodate objections from the judiciary, and political parties

By RAY HARTLEY
Political Reporter

The two sections still under discussion are property rights and customary law.

The customary law section was sent back to various committees for reformulation following heated opposition from traditional leaders, who demanded that the protection of "cultural rights" be entrenched

The chapter was hailed by negotiators across the spectrum as a vast improvement on earlier drafts.

They agreed to a sweeping prohibition of discrimination on the grounds of "race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, creed, culture or language"

The technical committee said both "gender" and "sex" were included because sex was a biological definition, while gender referred to "the social constructs surrounding sex"

Justice Minister Kobie Coetsee, who represented the government during the session, expressed bewilderment at the distinction, but received no support from his fellow negotiators

The council approved a revised clause on affirmative action, which said the section on rights would not preclude the protection and advancement of people "disadvantaged by unfair discrimination"

DP negotiator Tony

Leon's attempt to persuade the council that the clause allow only "reasonable measures" was overruled. He assured the council that the DP was in favour of affirmative action.

Following a submission by the Council of University Principals, the right to "academic freedom in institutions of higher learning" was added to the right to "freedom of conscience, religion, thought, belief and opinion"

Another clause in the chapter entrenched the right to "freedom of the press and other media", and a new clause bound media financed by or under the control of the state to "the expression of a diversity of opinion"

The chapter also granted citizens the right to information "held by the state or any of its organs at any level of government" in so far as such information is required for the protection or exercise of any of his or her rights

A clause on personal freedom and security prohibits detention without trial

In terms of the chapter, people detained will have to be brought to court within 48 hours of being arrested, where they will have to be informed of the reasons for further detention, charged or released.

Provision is also made in the clause for state-funded legal representation of those arrested.

Powers withdrawn

By RAY HARTLEY

SI Times
10/10/93

NEGOTIATORS this week bade farewell to an era in which government used states of emergency to bludgeon political opponents into submission by suspending the rule of law, when they agreed to a comprehensive set of strictures limiting government powers during an emergency.

Clause 35 of the chapter on fundamental rights empowered government to declare an emergency "only where the security of the state is threatened by war, invasion, general insurrection or disorder or at a time of natural disaster". (252)

But the clause went on to say that the emergency could only be declared for 21 days, after which Parliament would have to agree by a two-thirds majority to extend it for a further three months.

After such a decision, Parliament would have to agree to the further extension of the emergency by a two-thirds majority every three months.

The chapter also empowered the courts to "inquire into the validity of any declaration of a state of emergency, any extension

thereof, and any action, whether a regulation or otherwise, taken under such a declaration".

State officials would not be indemnified against any unlawful actions undertaken during the emergency, another clause said.

While fundamental rights would be suspended during the emergency, detainees would not be without recourse to the courts, the chapter said.

Among the rights granted to those detained under the emergency are:

- A family member or friend should be notified of the detention "as soon as is reasonably possible"; (304A)
- The names of detainees should be published in the Government Gazette within five days of their detention;
- The detention shall be reviewed by a court within 10 days of the detention, and at any time after the 10 days have expired at the request of the detainee;
- A court can order the release of a detainee if it finds that the detention is not necessary to restore peace and order; and
- The right to access to a medical practitioner of the detainee's choice.

Tackling the traditions of inequality

South 15/10 - 19/10/93

Should a Bill of Rights apply to women who live in communities where customary law is practised?

QUENTIN WILSON looks at the debate.

HOW will customary law, as enforced in many rural African communities, be treated by a new constitution?

Customs, like polygamy, and the payment of "lobola" in exchange for a wife, have been controversial. Some say they are oppressive towards women and should be transformed to give women a better deal. (251) (252)

Others believe customary law to be important in African culture, and efforts to change it would amount to a colonial stripping of traditional heritage.

The debate has re-emerged at the multi-party negotiating forum.

Talk about the bill of rights has, from time to time, touched on whether it should shield women from the patriarchal nature of customary law.

Tradition ensures that in many "homeland" villages women have little say in running their communities.

Men are chiefs of the village and heads of households. They are decision-makers in traditional courts which mediate disputes.

If a man dies, for example, his land and possessions are normally



left to his eldest son, or his brothers, before the widow is considered.

Often even she would become the property of her late husband's brother, if he so wished.

The negotiating forum's present proposal says the Bill of Rights should for five years not apply to women in communities practising customary.

At that time, after thorough consultation, a decision will be made.

Ms Nomatyala Hangana, chairperson of the ANC's Women's League in the Western Cape, disagrees with the proposal.

"This cannot be allowed to happen," she says. "Customary law leaves women absolutely powerless. Their only role, as far as customary law allows, is to become breeding machines. They do not have any other power."

Hangana argues the decision would "seriously compromise" the struggles of women for equal rights and add to the wholesale marginalisation of African women in the rural areas for the next five years.

She admits there is no unanimity in the ANC ranks or in the Women's League.

The NP and IFP favour protection of customary law, as does the Congress of Traditional Leaders of South Africa (Contralesa).

This is a problem for the ANC. Their eagerness to cement the support of Contralesa could dampen the ANC's willingness to transform customary law immediately.

Ms Brigitte Mabandla, co-ordinator of the Gender Project at the University of the Western Cape, argues that there is "tremendous potential" for customary law to contribute towards a "richer legal system all round".

In a recent paper, which looks at the impact of the Bill of Rights on customary law, she argues for a Bill of Rights to protect women treated unfairly by customary courts.

"The exclusion of customary law from the scrutiny of a bill of rights will deny a substantial portion of the population, especially women, access to their rights as citizens of South Africa," she says.

She argues that it would, in effect, set up two states in South Africa, each with its own legal framework. One would be a "modern democratic state", and the other "an invisible traditional state".

"Particularly important here, is that culture, custom and religion should not be used to deny the rights and equality of women. It should be noted that many countries which have a strong cultural base to their society have prioritised equality over culture in their bills of rights, for example Uganda and Canada," says Mabandla.

She says apartheid has stifled the development of African customary law to incorporate a more democratic face. That route should now be open, says Mabandla.

Bring back the rope say farmers

(252)

APU 16/10/73

Weekend Argus Correspondent

BLOEMFONTEIN — Farmers want the government to lift the moratorium on the death penalty.

This is one of the most important issues to be debated at the annual congress of the South African Agricultural Union in Bloemfontein.

The conference is also to debate property rights and land issues, security in rural areas, labour legislation and marketing policies.

To be officially opened on Tuesday by the Minister of Water Affairs and Forestry, Mr J A van Wyk, the congress is expected to dwell at length on African National Congress calls for land redistribution.

Discussion is expected to centre on statements by the SAAU that private property rights to land should be entrenched in legislation and that land claims arising from forced removal policies should be settled through the courts.

Judge warns of public violence

St. Times

17/10/93

By CARMEL RICKARD

THE possibility of trials provoking "unprecedented violence" by a partisan public has been predicted by the Appeal Court judge chairing the Milne commission

Mr Justice John Milne strongly urged the retention of the rule requiring that Supreme Court lawyers take any case — no matter how unpopular the issue. He added that, in this "cab rank rule", lay the protection of the public and the legal practitioner

Mr Justice Milne is chairing a sitting in Durban in an inquiry into whether attorneys should be allowed to appear in the Supreme Court. (252)

This week Mr Michael Kuper SC summed up the position of the General Council of the Bar, which represents the country's advocates. He said it was not the right time to take such a step because of the transition through which the country, and its legal system, was passing

Mr Kuper said the commission's terms of reference had been strongly criticised by organisations representing black lawyers, which said the commission was ill-timed and should not continue its work

He said it would be inappropriate for the commission to recommend extending rights of audience to attorneys when black lawyers, on whose behalf such a move would largely be made, wanted nothing to do with the commission and urged it to shut up shop.

However, Mr Kuper said that, if the commission were to recommend attorneys be allowed to appear in the Supreme Court, it was essential that they observe the "cab rank rule" demanded of all advocates

This rule requires advocates to agree to appear in any case, provided they are offered "a proper fee" and are not already booked for other work.

Mr Kuper said public interest demanded that the rule continue. Society was at a stage where new Supreme Court practitioners would deal with cases in which the accused provoked public partisan outbursts, strong feelings and violence, he said

Mr Justice Milne interjected that such cases could see "absolutely unprecedented violence" and that it should be essential that new practitioners knew where "their duty and their protection lies"

The commission is expected to sit next week, to hear final summing up on behalf of the attorneys

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Call for 'Nuremberg' trials

Call for 'Nuremberg' trials

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Call for 'Nuremberg' trials

By PETER DENNEHY

WESTERN Cape ANC secretary-general Mr Tony Yengeni called yesterday for Nuremberg-type trials for those involved in killing ANC members after 1990 — the year the ANC was unbanned and gave up the armed struggle.

Speaking at a petrol price protest rally in Athlone, he said he would campaign for a future ANC government to carry out the death sentence imposed on convicted killers Janusz Walus and Clive Derby-Lewis.

He warned Mrs Gave Derby-Lewis — who was acquitted in the Supreme Court of the murder of Mr Chris Hanu — that "we are going to pursue her till she lands in prison or goes to Australia".

He said Walus and Clive Derby-Lewis got "a very good sentence".

"There are voices in the country that say they should not be hanged — by an ANC government", Mr Kader Asmal, an ANC national executive member, has noted that the ANC has consistently opposed capital punishment. Standing policy could not be changed to fit the facts of an individual case.

ANC spokesman Mr Carl Niehaus said the death sentence was a "paper sentence" as ANC policy meant they would not be executed.

ANC president Mr Nelson Mandela said last week a future government would decide on execution of sentence.

Mr Ronnie Mamoepa, another ANC spokesman, said calls for the death sentence by ANC members were made "in their personal capacities".

CT18/10/93

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CTIR/10193

Voter education 19

Human rights are for all

South 15110 - 19/10/93

252

IN ALL democracies, citizens decide political issues through majority rule. But to ensure democracy, majority rule has to be coupled with guarantees of individual human rights.

Human rights protect minorities, whether ethnic, religious, political or simply the losers in a political debate.

The rights of minorities do not depend on the goodwill of the majority but are protected by the existence of individual human rights.

In South Africa, rights have historically been abused. For decades black people were denied human rights while flagrant white privilege was rationalised on the basis of their human rights.

The result is that there is now a very distorted use of the term "rights" by some groups.

What are commonly referred to as "inalienable human rights" are those which governments do not create or grant. They are rights every person possesses simply by existing.

Inalienable human rights include freedom of speech and expression, freedom of religion and conscience, freedom of assembly and the right to equal protection before the law.

There are many more rights that citizens have in a democracy and they vary from one society to another.

Every democracy has to build the constitutional, legal and social structures that ensure the protection of inalienable human rights.

Freedom and democracy are often used interchangeably, but the two are not synonymous. Democracy is a set of ideas and principles about freedom, but it also consists of a set of practices and procedures that have been moulded through a long, often tortuous history.

Human rights are recognised as individual rights. A legacy of



THE RIGHTS STUFF: Demonstrators take the human rights message to the streets

apartheid is the perception of rights in group terms. People talk about the rights of whites and the rights of blacks.

Under apartheid, rights were conferred or withheld according to peoples' colour.

Human rights are protected on an individual basis, based on the idea that people are born equal, irrespective of race, colour, ethnic group, sex, religion, political persuasion or any other factor.

Groups in South Africa which demand, as rights, privileges that involve suppressing the rights of

others, do so because they do not see people as equal.

One method of allowing majority rule while not ignoring the minority view is the system of proportional representation.

According to this system, all parties with significant support will obtain seats in the constituent assembly or future parliament, where all will be able to state their views.

The number of seats they obtain will be in direct proportion to the percentage of support they enjoyed in the election.

The guarantee that ensures that valid and just points of view from minorities will not be suppressed, is that all these parties will have the freedom to canvass support for their views.

Under proportional representation it is possible to form alliances or coalitions. These might be long term, in the case of parties whose policy positions are very similar. They can also be short term alliances on burning questions.

There are also safeguards built into voting procedures on issues of crucial importance. For example, it

can be agreed on in advance what figure constitutes an absolute majority to pass a decision.

Once all parties are sitting in parliament together, what should matter most during debates is the validity of whatever view is being espoused, rather than the political identity of its proponent.

However, the dynamics of party politics in South Africa are such that it will probably take some time before people begin really listening to what opponents are saying, without prejudging it according to their party identity.

THE sentencing of Chris Hani's killers has once again thrown into relief the enormous difficulty most political parties in South Africa face in maintaining a coherent and consistent stance on the death penalty.

What is patently clear is that many grass roots supporters do not endorse their party's official policy on hanging, particularly when a member of their party is linked to a killing, either as a victim or a perpetrator.

In some cases (such as the ANC and the SA Communist Party in the past week) even senior party office-bearers fall back on the politicians' old favourite — the flexible principle or the double standard — when gripped by emotion, facing a difficult choice, or simply when expediency dictates that there is short-term political capital to be milked from the situation.

Although both the ANC and the SACP are officially vehemently opposed to the death penalty, a number of leading lights in the alliance — including Nelson Mandela, Joe Slovo, Charles Nquakula, Tokyo Sexwale and Tony Yengeni — gave overt or implicit backing to the death sentence handed down to Clive Derby-Lewis and Janusz Walus.

Some parties (witness the Democratic Party's recent national congress) recognise that their supporters are hopelessly divided on the death penalty and the right to life/abortion issues and allow their members a "free vote".

Any bid to develop a clear-cut stand on these sensitive matters would run the risk of alienating a sizeable chunk of the party's supporters, as a heated debate at the DP congress graphically illustrated.

Last week's National Party Cape congress also laid bare some divisions in the ruling party on the death penalty but the party leadership managed the conflict by fudging the issue.

In an exercise in obfuscation that would have done Chris Heunis proud, Justice Minister Kobie Coetsee adopted a classic "all things to all people" approach to the problem.

He explained to delegates that the NP supported the right to life but also the death penalty

Parties wrestle with coherent stance on the death penalty

CP 20/10/93 252



Midweek Politics

By ANTHONY JOHNSON

— as long as it was applied in a "humane" manner.

Inkatha also has an official policy opposing the death penalty but much of the IFP's rank-and-file supporters would clearly love to see the assassins of hundreds of their party office-bearers in recent years getting the noose.

Given the breakdown of the criminal justice system in areas such as Natal, revenge killings often pre-empt the work of the police and the courts.

The PAC, which refuses to distance itself from its military wing's practice of killing or executing civilians, is also officially opposed to the death penalty.

Cynics can be forgiven for wondering whether the PAC's opposition to hanging, ostensibly based on principle, might not also have something to do with saving the bacon of Apla killers once they have been apprehended.

Azapo's response to the death sentence imposed on Chris

Hani's killers showed the organisation has no clear principled position on hanging. Azapo said it would be opposed to the death penalty "in a truly democratic order" but that it was left cold by people who murdered leaders of liberation movements.

The Conservative Party — which for the record is for the death penalty — submitted that the ultimate penalty should not have applied in this instance.

Ironically, the CP attempted to bolster its argument by saying that ANC member Michael Phama last week was given 21 life terms, not death, after being found guilty of 21 murders, 16 of them when he gunned down Inkatha supporters.

Kobie Coetsee was apparently joking when he asked Nationalists whether they would like a referendum on the issue last week. But the minister knows that this is a contest which the NP could wipe the board with its major rivals.

A ROYAL row over a new Bill of Rights is brewing between tribal traditionalists and negotiators at the World Trade Centre.

The traditionalists — kings, chiefs and headmen — are worried that the proposed Bill of Rights, drawing heavily on western principles of equality, will undermine their authority.

Chief Mwelo Nonkonyana — a Transkei chief and deputy chairman of Contransa, an ANC-alligned association of traditional leaders — will lead a delegation to the World Trade Centre this week.

On the minds of his delegation will be a number of burning questions. Under a new Bill of Rights

● Can a woman demand to pay lobola for a man?

● Can a woman take more than one husband?

● Will women eventually demand the right to run circumcision ceremonies?

● Will women be entitled to attend burials from which they have traditionally been excluded?

● Will women be able to succeed over younger brothers?

We are not directly opposed to the fact that everyone is equal in the eyes of the law, but there are basic differ-

Royal row over Bill of Rights

S/Tiwed

24/10/93

By EZRA MANTINI

ences," said Chief Nonkonyana.

"There is nothing wrong if a traditional leader is brought to court for a criminal offence, because he is not above the law

"But there are serious problems if the law says all citizens, including chiefs, kings and ordinary people, are equal in status.

"There are also serious problems presented by the clause which says there shall be no discrimination based on race, gender and creed."

Chief Nonkonyana said the biggest

flaw in the proposed Bill of Rights was that it was copied from the US or Canada, which had no regard for the cultural and traditional realities of South Africa.

The traditionalists are again preparing to propose to the negotiating council that tribal leaders be represented at every level of government in a future constitution.

The suggestion — which has already been rejected by the council — is that there should be a House of Chiefs, such as in Zambia, Botswana, Swaziland

and Ghana. PAC spokesman Benny Alexander said this week that his movement supported the traditionalists.

But Sheila Camerer, the deputy Minister of Justice who also heads the ad hoc committee on the Bill of Rights at the World Trade Centre, said she was surprised at the concern of the traditional leaders.

She said "In our committee, we have Chief Gwadiiso, who was appointed by Chief Nonkonyana, to represent their interests.

"The chiefs had objected to an earlier version of the Bill of Rights pertaining to customary law, but we correct-

ed it and Chief Gwadiiso said he was happy."

As the Bill of Rights stands, every person who belongs to a community which observes a system of customary law will have the right to invoke that customary law as the legal dispensation governing the internal affairs of the community.

Mrs Baleka Kgotsule, secretary-general of the ANC Women's League, said her members would oppose the traditional leaders' head-on

She said she feared that the Bill of Rights would protect the rights of white women rather than their black counterparts.

252

Kangaroo courts pop up in Eastern Cape

SI Times 24/10/93

By DAWN BARKHUIZEN
KANGAROO courts, the scourge of the 80s, have re-emerged in the townships of the Eastern Cape.

Amid an incipient breakdown of law and order in the area, black residents of Port Elizabeth, Uitenhage, Hankey, Kirkwood, Despatch and Port Alfred are being subjected to self-appointed "lawmen" who make random arrests and hand down punishment in "people's courts".

In the last six weeks there have been reports of overnight detentions in "cells" and severe lashings. This week, two murder accused told the Port Elizabeth Supreme Court they were obeying the orders of "comrades at a people's court" when they attacked policemen in Despatch on April 27.

Top-level discussions are under way between police and political organisations in a bid to counter the trend.

Human Rights Committee figures show 11 people

were beaten in Port Elizabeth last month compared with two in August.

Fingers have been pointed at the South African National Civics Organisation (Sanco) aligned township anti-crime committees and at Azapo.

However, Port Elizabeth anti-crime committee chairman Fuzile Dyani vehemently denied his men were involved in assaults.

The PAC is discussing the matter internally and declined to comment.

Sources say they fear the emergence of fiefdoms, run by warlords hiding behind political affiliations, in the run-up to elections.

But they also believe the situation is symptomatic of a deeper rift between Sanco, with its anti-crime committees, and the ANC and its MK-staffed self-defence units.

However, ANC Eastern Cape security chief Dan Hatto denied divisions between the organisations.

He stressed that the anti-crime committees were not affiliated to the ANC,

but admitted to being concerned about the committees (252).

Mr Hatto said the ANC was discussing the matter internally, but had not yet talked to Sanco.

"We cannot afford a situation where groups of untrained people without legal backgrounds pop up everywhere and make arrests or hold people overnight," he said.

Meanwhile, Eastern Cape police and Sanco are also meeting to try to resolve the problem.

Police Colonel Louis Botha said Sanco proposals that anti-crime committees be given offices in township police stations in a pilot joint policing exercise, were receiving attention.

While adamant that his men did not assault "criminals", Mr Dyani conceded that more control was needed over the committees.

"We have 99 sub-branches in Port Elizabeth with 10 men in each. They only get a few hours training and have to use their exist-

ing skills to deal with about 20 cases each day.

"None of our guys are paid and they work around the clock.

"We tell our men they must go to the criminals and persuade them to give back stolen goods. The criminals always agree. If they keep stealing we invite them to visit us and motivate them to think of

the new South Africa.

"Cases like rape and murder we turn over to the police. We never discipline anyone," said Mr Dyani.

Sanco Port Elizabeth president Ernest Malgas confirmed his organisation was investigating allegations of kangaroo courts, but denied there was a clash of interests between the ANC and Sanco.

Judiciary will have to change - Mandela

(252)

ANC president Nelson Mandela yesterday called for the restructuring of the legal system, saying some of the "well-entrenched views and practices" of the judiciary would have to change

Opening the annual general meeting of the Law Society of the Transvaal in Rustenburg, Mandela said the majority of the country's population could not be asked to wait indefinitely for fundamental changes in the judiciary, "which is not perceived to be sensitive to the needs and aspirations of all the

KAIZER NYATSUMBA
Political Correspondent

people of South Africa"

"The appointment of judges from the ranks of senior counsel may have its merits (However) the historical exclusion of blacks and women from work which would have allowed them to reach that status cannot be allowed to continue the entrenchment of a white male judiciary

"Senior attorneys and academics will have to be consid-

ered for judicial office and included on the constitutional court," he said

A lawyer by profession, Mandela said that at the time of the worst excesses of apartheid, judges and lawyers on the whole remained silent "and enforced apartheid laws without protest"

That, he said, explained why the legal profession and the judiciary were often seen by the majority of the country's population "as institutions which upheld oppression rather than justice"

Mandela said the ANC shared the view expressed by Professor Tony Honore that most members of the constitutional court should not have links with the past He said changes in the way appointments in the judiciary were made would also have to be effected, just as the qualification and training of magistrates would have to change

"It may well be necessary to introduce training schemes not only for prospective judges, but even for some already on the Bench"

Sowetan 25/10/93

All must have equal access to the law

252

LAST week we discussed basic human rights

These included the right to equal protection of the law and the right to due process and fair trial.

In South Africa people have never been treated equally. The law was not applied equally.

The right to equality before the law and equal protection of the law are fundamental to any democratic society.

Whether rich or poor, ethnic majority or religious minority, political ally of the state or opponent — all are entitled to equal protection before the law.

No one is above the law and citizens must have a say in the drafting of the country's laws. Laws must be made by citizens.

But those who administer the criminal justice system hold power with the potential for abuse and tyranny.

In the name of the state, individuals have been imprisoned, had their property seized, and had been tortured, exiled and executed without legal justification — and often without any formal charges being brought against them.

No democratic society can tolerate such abuses.

Every state has the power to maintain order and punish criminal acts, but the rules and the procedures must be public and explicit, not secret or subject to political manipulation by the state.

The UN Universal Declaration of Human Rights states "All human beings are born free and equal in dignity

and rights"

Any government that claims to be democratic has to guarantee the protection of human rights by means of "the rule of the law"

Ironically, the doctrine of discrimination was brought about through an Act of Law, the Population Registration Act, which systematised racial classification as the basis of the apartheid system.

The UN Declaration also states "No one shall be subjected to arbitrary arrest or detention"

The arrests of people are only justifiable when it is necessary to protect society.

The police are not entitled to decide discretely who can be arrested, how and why.

Equal protection by the law means that no detention can take place without a trial, no banishments or house arrests are allowed.

The right to a fair trial means that persons charged with a crime cannot be held for indefinite periods. They must be charged or released.

After an investigation into whether charges are just or not, an independent judge must take a decision.

If there are no acceptable reasons for detentions, the court will order the person's release. Homes cannot be broken into without a court order providing

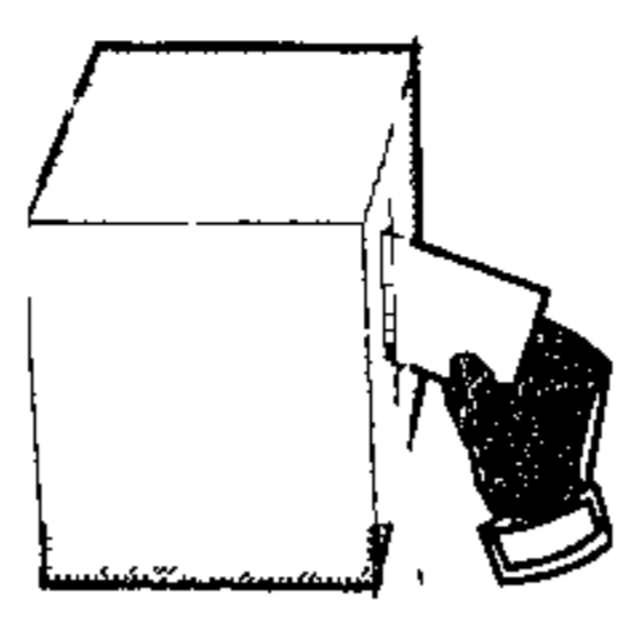
sufficient explanation

Equality before the law incorporates defence if the accused cannot afford a lawyer.

A common tactic of the security apparatus in this country was to charge opponents of the government with treason.

For this reason, the crime of treason must be carefully limited in definition so that it cannot be used as weapon to stifle criticism of the Government.

None of these restrictions means that the state will lack the power to enforce the law and punish offenders.



This is the 14th in the series of pages aimed at preparing readers for the elections in April next year. The series will cover topics concerned with the meaning of democracy, the value of the vote and what a constitution is with special reference to federal and unitary options. Closer to the election we will explain how to vote.



This voter education series is a joint project of Sowetan and Matla Trust on behalf of the Independent Forum for Electoral Education

Cosatu threatens protest

1428
252
CT 26/10/93

JOHANNESBURG — The Congress of South African Trade Unions, proclaiming a "life or death campaign" against a lock-out provision in the Bill of Rights, said yesterday it would muster 50 000 members for a demonstration on Thursday at the World Trade Centre

"It's a matter of life or death for the trade unions," said Cosatu's Northern Transvaal regional secretary Mr Joe Selau.

Cosatu has accused negotiators at the World Trade Centre in Kempton Park of trampling trade union rights by incorporating a clause on employers' rights to lock out workers in a labour dispute

The 1,3-million-member trade union congress has announced a programme of protests, culminating in a general strike, to compel the negotiators, including its ANC ally, to throw out the clause

Cosatu has been trying to win the support of the ANC in its campaign. — Sapa

Property rights plans opposed

CT 26/10/93

252

JOHANNESBURG — The National Land Committee (NLC) and the Rural Women's Movement have objected to the property clause and parts of the clause on customary law in the latest draft of the interim Bill of Rights, due to be discussed at the World Trade Centre in Kempton Park next week.

Explaining their concerns at a press conference here yesterday, the NLC said it believed there should be no property clause in the interim Bill of Rights, but a land claims court should be set up to deal with competing claims.

The NLC — an independent group of nine organisations dealing with rural and landless people — said the proposed clause would entrench unequal ownership and prevent significant land reform.

Communities would meet next month to consider land occupation if their concerns were ignored, said NLC chairman Mr Nicholas Matabese.

On the proposed clause on customary law, Rural Woman's Movement spokeswoman Ms Thelma Makoro said women objected to discriminatory aspects of the law, in which women are not allocated land except through men, and cannot inherit land. — Sapa

ANC opposes lock-out clause

JOHANNESBURG — The ANC made public its opposition yesterday to any constitutional guarantee of civil servants' jobs after the election and to the entrenchment in a bill of rights of the right of employers to lock out workers in labour disputes

ANC PWV regional secretary Mr Paul Mashatile called on ANC members to join Cosatu's protest march to the World Trade Centre tomorrow

(152) (752) CT 27/10/93
But he said a proposed general strike by the 1,3 million-member Cosatu was still being discussed

"It needs careful assessment," said Mr Mashatile, adding that the ANC was urging its negotiators at the World Trade Centre to stand firm against the inclusion of the two proposed bills in the interim constitution

He said after a new round of talks by the ANC/Cosatu/SACP alliance that guaranteeing civil

servants' jobs "will ensure apartheid remains with us"

Giving unequivocal backing to Cosatu's protest march, Mr Mashatile said the campaign would take to the streets the alliance's opposition to the protection of civil servants' jobs and the lock-out clause

Cosatu said about 50 000 members will march tomorrow, starting a series of protests in defence of worker rights — Sapa

Thousands in protest on lock-out

252
⑤

CT 29/10/93

Own Correspondent

JOHANNESBURG — In a show of strength yesterday tens of thousands of Cosatu members converged on the World Trade Centre to protest against entrenching a lock-out clause in the interim Bill of Rights and against the constitutional protection of civil servants.

The march went off peacefully but started very late, despite assurances by Cosatu to employers that it would not disrupt production.

Protesters — in buses, cars and on foot — were still arriving at 2pm when the march was due to end.

In an apparent move to counter claims that the march on the centre was not warranted as SACP and ANC negotiators had agreed to the inclusion of the clause in the interim Bill of Rights, SACP leader Mr Slovo told the crowd there had been a "misunderstanding".

Cosatu general secretary Mr Sam Shilowa said Cosatu expected the matter to be dealt with by the negotiating council on Monday.

A national strike is scheduled for November 15 if Cosatu demands are not met.

The Confederation of Employers of Southern Africa has called on employers to persuade workers they had the right to work on November 15 and the right to protection should they wish to work.

Make the law affordable *Fm 29/10/93*

Cape Town attorney Ian Slot believes market forces should replace restrictions in the legal profession, to make the courts more accessible to the middle classes and allow all lawyers to compete on equal terms.

The stage has been reached in the development of the judicial system where the legal profession must start paying more attention to the needs of the constituency it is meant to serve

If we are to be accepted as truly attempting to make a meaningful contribution to improving the quality of life in the new SA we, as a profession, must move on from old ideas that have nothing to commend them, except that "it's always been done that way" and must start to adopt more practical ways

Whether we like it or not, we must start listening to one of the most fundamental messages that society is sending us — that is, that people don't really have recourse to the law because they can't afford it

The courts are for the very rich or the very poor those who can litigate irrespective of cost, and those who have nothing more to lose and whose costs are usually paid by the Legal Aid Board or a charity

For the vast majority of people the law is just too expensive Large corporations can ride roughshod over their rights because they can't afford to fight, and if they do they run

the risk of losing everything they own

This should not be the situation There are hundreds of attorneys struggling to earn a living I am certain they would gladly take on cases on a contingency basis of no win, no pay, but if they succeed they get a percentage of the award (252)

The legal profession argues that this will result in attorneys losing their objectivity — which is nonsense Which attorney is not judged by his or her success rate? Which attorney does not want to win, and which attorney does not feel comfortable charging at the higher end of the scale where a case has been handled successfully?

The counterargument is that spurious and unwarranted cases will be taken to court I believe this is a lesser evil than denying citizens recourse to the courts In any case, it is a possibility that can easily be remedied by, for example, a cost order *de bonis propriis* (which would make the attorney liable for the costs of the action) If the attorney risks having to bear the costs or of not earning anything if the action is unsuccessful, he or she will certainly think carefully before litigating

Another area of our legal practice that tends to go unquestioned simply because "it's always been done that way" is how attorneys get their work Why, for example, should we not tender for work?

A potential client could advertise a course of action for a workload (for example, its collections), call for tenders and then award the work to the attorney who agreed to take it on for the most reasonable fee We are now precluded from bidding for work which interferes with normal market forces, but for what reason?

The situation is even more illogical when it comes to municipalities and State organisations These bodies deal with public money and it is well accepted that the most equitable way of placing work is to call for tenders But this most basic practice does not apply to legal work

Throughout the country certain favoured sons are handed all the municipal work which in many cases is a licence to print money Why can't all attorneys tender for this work, particularly conveyancing, where tariffs are now, in general, merely guidelines?

Given the economies of scale due to the volume of work involved, I am convinced that any number of lawyers could do the work profitably — but at a considerable saving to the already overburdened citizens

I hope that, as our country evolves and redefines itself, we will see these outdated aspects of the legal profession disappear and not simply be carried on by a few new faces at the feeding trough

Judiciary 'restructure'

ARG 30/10/93
RUSTENBURG — The
judiciary must and will
be restructured, African
National Congress presi-
dent Nelson Mandela
said.

(52)
Addressing the Law
Society of the Transvaal
in Rustenburg yester-
day, Mr Mandela said
"improved disposition in
law practice" could play
an important role in the
democratisation of
South Africa. — Sapa.

FOR months now, the politicians have been fighting, word by word, over the text of the interim constitution and its Bill of Rights.

The outcome of many of their struggles will have a decisive impact on how life is lived in the next South Africa. But on many questions the drafters will merely articulate general principles, and leave their specific content to be determined by the courts.

On the validity of the death penalty, for instance, the Bill of Rights is unlikely to say anything more explicit than that the right to life is fundamental. It will be left to the courts to decide whether capital punishment is a limitation on that right which is justified in a democracy.

The dominant influence on the decision will be the judges' convictions about constitutional interpretation.

The differences among judges about how to interpret a constitutional text are large, and very often decisive. It is quite possible for two judges to interpret the same constitution to produce opposite results. And it is equally possible for judges in different countries to interpret very different constitutions to produce the same result.

All of which makes the choice of constitutional judges — and therefore the method for selecting them — of paramount importance.

The Technical Committee for Constitutional Issues at the World Trade Centre has recently circulated a model for a constitutional court.

Under that model, the power to nominate constitutional judges is

Are we to have a bland constitutional court?

The choice of constitutional judges and the method of selecting them is of crucial importance, argue legal academics **Etienné Mureinik** and **Dennis Davis**

entrusted to a parliamentary committee comprising one member of each party represented in both houses of parliament (as we read what is an ambiguous provision).

The parliamentary committee's nominations have to be approved by a 75 percent majority in the constituent assembly, which is a joint sitting of both houses of parliament.

If the parliamentary committee fails to reach unanimity, any 75 percent of that committee can nominate nine constitutional judges, and a majority of the remaining 25 percent can nominate the other two judges.

An immediate problem is that the model is entirely silent on the deadlock.

If 75 percent of the parliamentary committee cannot agree to nominate any nine judges, or if 75 percent of the constitutional assembly does not approve the nominees (an eminently realistic possibility, because a parliamentary committee comprising one representative from each party is unlikely to reflect actual voting strength in parliament), the model offers no way out of the stalemate.

Since the technical committee has not included a deadlock-breaking rule, the best one can do to ascertain its thinking on the question is inspect its response to the same problem elsewhere.

Here some assistance can be derived from the deadlock-breaker favoured by the same technical committee for the adoption of a final constitution.

Under the committee's draft interim constitution, if a final constitution fails to win a two-thirds majority in the constitutional assembly to be elected next year, or a simple majority in the constitutional assembly plus 60 percent of the votes in a national referendum, there has to be another general election, and the new constitutional assembly so elected acquires the power to adopt a final constitution by an ordinary majority.

This deadlock-breaker is profoundly subversive of any attempt to find a constitution that commands broad national support. It invites any party with a simple majority in the constitutional assembly elected next year to block any draft final constitution,

force an election, and impose its own final constitution in the next constitutional assembly.

It is difficult to see how a constitution imposed by one political party can command the confidence of the nation.

Given the suspect deadlock-breaker thus suggested by the technical committee for the adoption of a final constitution, the committee's silence on the deadlock-breaking rule for appointing constitutional judges warrants anxiety.

If this silence presages another simple-majority rule, we will be back where we are now — with an untethered power in the government of the day to make self-serving appointments. We will remain without a constitutional court in whose independence all can have confidence.

Equally important is the principle underlying the proposed method of selection: appointment by political supermajority.

Political supermajority requires candidates to be acceptable to more than one political party, sometimes several. It consequently tends to

favour candidates from the political centre.

The effect can easily be to produce a bland court, unrepresentative of the range of opinions which ought to be brought to bear on constitutional questions. It can yield a court in comfortable agreement with itself, incapable of producing the kind of fierce internal debate that generates the most thoughtful judgments.

If, moreover, we have to entrust the appointment of our constitutional judges to politicians, it is surely essential that they be assisted by lawyers capable of evaluating the candidates' qualifications.

Curiously, the technical committee accepts precisely that necessity for the appointment of ordinary judges. Its Judicial Service Commission, which it proposes be given the power, in effect, to appoint the ordinary judges, comprises representatives of the bench (both ordinary and constitutional), the advocates, the attorneys, the law schools, government and the senate.

Judges appointed by such a body would be much more likely to be chosen for their ability to foster justice than for their political acceptability. They would enjoy confidence broadly across the community. It is strange that the technical committee has eschewed a similar system for the appointment of constitutional judges.

If such a system is good enough to select supreme court and appeal court judges — even the chief justice — why is it not good enough to select judges for the constitutional court? Why does the selection of constitutional judges have to be a purely political choice?



Two clauses mar the draft Bill of Rights

2572 Wm 15-21/10/92

The latest draft of the Bill of Rights is an improvement on others, but it contains some unacceptable clauses, particularly those regarding property and customary law, writes **Dennis Davis**

THE draft Bill of Rights which will govern South Africa during the next five years, was unveiled at the World Trade Centre last week. The negotiating council has approved all but two clauses, though details of other clauses might still change.

Under the circumstances of political compromise, the committee that drafted the Bill has done well. This is a major improvement over previous drafts. When implemented, the document will undoubtedly render South African government far more accountable than ever before.

But there are a number of unacceptable features, the most significant of which are in the two clauses not yet passed.

The first deals with customary law. As a result of objections by a number of traditional leaders, the technical committee was compelled to provide that the equality provision — which prohibits discrimination on the grounds of, inter alia, gender or sex — should not be enforced immediately in relation to customary law.

The draft clause is almost incomprehensible. It appears to mean that every person has a right to freedom of association and any person who exercises that right and belongs to a community government by African customary law shall have the right to ensure that customary law regulates community affairs.

Any court which applies a system of customary law can determine the extent to which customary law undermines the provisions of equality and decide when the rules of customary law should be brought into conformity with the Bill of Rights' requirements of equality.

In short, provisions of customary law, even though they may discriminate against women, are given greater weight than the provisions of equality. Any court could decide when equality becomes more important than customary law.

Imagine that Eugene TerreBlanche claims he is unable to comply with the anti-discrimination clause regarding race for a period of five years because his people will require time to adjust to the new standards. To accommodate him, the relevant Bill of Rights clause is suspended for five years to give him time to prepare for it.

Outrageous? Absolutely — but that is precisely what is envisaged for African women. Their chance to be protected by the equality clause will now be at the whim of any court.

The second objectionable clause relates to property. The protection of property in a South African Bill of Rights will cause two problems for South Africa

● The first relates to the scope of

the clause which allows the state to appropriate "rights in property" in the public interest. This phrase, "expropriation of rights in property", borrows the conception of new property developed by American academic Charles Reich and it protects a wide range of proprietary interests.

As a result, all these interests become constitutionally inviolate — and this can prevent significant programmes of social and economic reform. For example, this would allow one to challenge the validity of rent control, zoning regulations and environmental controls as well as labour rights.

All rights in property are covered by this clause. If environmental regulation infringes my right in property, I can bring a constitutional case against it.

● Then there is the issue of compensation. If a property clause requires the payment of market value as compensation, then land reform designed to address the legacy of apartheid becomes unfeasible. The drafters have attempted to

deal with this by guaranteeing "just and equitable compensation".

However, they also provide that the Bill of Rights should be interpreted in accordance with international law — which would probably mean market rates as this has been the case in most international jurisdictions. In one important case, the word "equitable" was taken to mean payment of the market value of the property and compensation for future loss of profits.

No division is made between the constitutional protection of property in general and a specific need to deal with programmes designed to redress the legacy of apartheid removals.

This is the least one could have expected to ensure that the Bill promoted the principles of an open and democratic society based on freedom and equality, as claimed by the drafters.

■ Professor Dennis Davis is director of the Centre for Applied Legal Studies, Wits University



Making peace pay The only thing this shop in Mayfair, Johannesburg wants to liquidate is stock and they encourage customers to forget mass action and turn 'trash into cash'
PHOTOGRAPH: PETER MCKENZIE

Just 5 powers for state in new NP proposal

Hoping to placate parties boycotting negotiations, government negotiators have proposed more powers for regions, writes **Chris Louw**

GOVERNMENT negotiators have drastically extended the list of powers for the regions in their latest proposals aimed at drawing back parties boycotting the negotiations.

If accepted, they will leave the future central government with only five areas of exclusive power

The proposals exclude from the scope of the regions those powers which can only be exercised by the central government: finance, foreign affairs, defence, citizenship and judicial administration.

Distributed confidentially to both present negotiating parties and those in the newly formed Freedom Alliance, they have been cautiously welcomed by the African National Congress although local government spokesman Thozamile Botha said certain points still needed to be "refined"

However, government plans to entrench regional powers so as not to allow an elected constituent assembly to change them will be met with strong resistance from the ANC

The present conflict in the negotiations — and the reason for the breakaway of Inkatha, the Conservative Party and the Bophuthatswana, Ciskei and kwaZulu governments — relate directly to the powers afforded to future states, provinces or regions (SPRs) in a democratic South Africa.

According to the government's latest proposals, the SPRs will, with a few exceptions, hold all powers. Central government will only be allowed to legislate in the areas of SPR competence under previously specified conditions and mostly only in order to set standards on a national basis

The proposals follow earlier statements by, among others, National Party negotiator Dawie de Villiers and government chief negotiator

Roelf Meyer that they were not satisfied that the concept of federalism was sufficiently entrenched in the technical committee's report.

Government negotiators were confident that their latest suggestions would go a long way to meeting the demands set by Inkatha, Bophuthatswana and Ciskei. Much progress was made in bilateral talks — until the sudden announcement last week by Bophuthatswana and Ciskei that they are withdrawing from the talks to join their Concerned South Africans Group (Cosag) partners in the Freedom Alliance.

In spite of the setback, government negotiators are persisting with their course of action, hoping to exploit the faultlines within the Freedom Alliance.

They maintain that the parties constituting the alliance have such diverse agendas and interests that they will find it impossible to operate as a single front for very long.

The negotiators have gained new confidence after it became clear that at least the ANC did not reject their plans out of hand in spite of ANC president Nelson Mandela's statement in Europe that his organisation had conceded enough on the regional issue

Sources close to the negotiators argue that government's new proposals go a long way to addressing the fears of the Freedom Alliance parties

In all cases, the regions will be able to challenge government actions in the constitutional court.

Botha said this week there were "broad areas of convergence" between the ANC and government regarding regional powers, although nothing has been finalised yet.

What is transpiring in bilateral talks with government, he said, was that they agree that the list of exclusive powers for SPRs should remain more or less as proposed by the technical committee, but that more "concurrent powers" should be afforded to the regions.

Central government will have no say in areas of regional exclusive powers — including the appropriation of revenue, planning and development, language policy, road traffic and

gambling laws

"Concurrent powers" are powers which will reside with the regions, but where central government will be able to legislate in the national interest and to set the parameters within which the regions can then legislate

The ANC's main concern is that legislative competence should not promote inequality among the SPRs. "We will have to take into consideration the implications on taxation, for instance."

The potential to redress existing imbalances should also not be curtailed, Botha said.

Sources close to the negotiations say the major problem is still the IFP's insistence that a future central government's powers should be listed — and thus limited — while all other powers should reside in the regions

"This is due to a faulty approach from Inkatha's American advisers and is reminiscent of that of the first 14 states of the United States 200 years ago," one source said.

Government negotiators argued that a way to meet Inkatha would be to entrench the powers of regions in the same way as the constitutional principles are presently entrenched

Inkatha negotiators have repeatedly expressed the fear that an elected constituent assembly may ride roughshod over decisions taken by the present negotiators and that they may relinquish powers now granted to the regions

Botha made it very clear, however, that the ANC would not be willing to entrench regional powers

The constituent assembly has to have the right to draw up a new constitution guided by the constitutional principles that have been accepted.

"But basically the same parties will sit in the constituent assembly as are present at the multiparty negotiating process

"Our aim is a government of national unity and we would certainly not want to create confrontation with anyone

Therefore it is hardly conceivable that there will be any major interference with the powers of the regions."

262 wmm 21/10/93

'Unjust' laws set for repeal

Own Correspondent

JOHANNESBURG — Negotiators yesterday adopted a cavalier and inconsistent attitude in deciding which legislation in SA and the TBVC states was to be repealed or amended in the runup to elections.

In a report to the council, the task group investigating discriminatory legislation that was likely to affect free political activity recommended legislation to be amended or repealed.

Negotiators mostly accepted its recommendations.

However, when it came to Bophuthatswana, Ciskei and Venda they adopted an inconsistent attitude, demanding that certain laws in these territories be repealed while taking a different stand on similar laws in SA and Transkei.

Laws slated for repeal include the laws which prohibit foreign funding for political parties, the banning of publications and the Parliamentary Internal Security Commission Act of 1976.

Negotiators did not concern themselves with how their decisions would be implemented. ANC legal adviser Mr Mathew Phosa said a new government would promulgate these.

(252) CT2/11/93

NMC meets on lockout today

THE National Manpower Commission is to meet today to discuss the disputed lockout provision in the interim Bill of Rights, NMC chairman Dr Frans Barker said yesterday.

"Our aim is to reach agreement on how the clause should read, or whether to reopen debate on the matter," he said.

The meeting follows six days after the Congress of South African Trade Unions led about 10 000 marchers to the Kempton Park negotiating forum with demands that the provision be scrapped. Sapa

Books go missing

Sowetan 4/11/93

By Josias Charlie

TWO books containing information on land and sites allocation of the Mamelodi City Council have gone missing, the commission of inquiry into alleged irregularities in the council heard yesterday

Giving evidence before the Krugel Commission, Mrs Joyce Msiza, deputy director of community services of the council, said she realised that the two books were missing when she wanted to make some enquiries

She told the commission five clerks were responsible for the safekeeping of the books and that she had not been able to get a satisfactory explanation as to how the books got lost

Msiza said the books were not locked

away in a safe. Files containing information which corresponds with that in the books were still available

She had been told that the key to the safe in which the files were normally kept was also missing and the only way to safeguard them was to lock the office

Great loss (252)

"It is a great loss but we have started a process of reconstructing the lost information"

Another witness, Mr Moses Lushozi, testified that according to his research, a company known as Chris Cook Builders, in which Mamelodi mayor Mr Simon Mokone is a shareholder, was allocated land in Mamelodi and built a number of houses in the township

The commission has been adjourned until tomorrow

Policeman warns of township chaos

THERE would be total chaos in black townships if the SAP's internal stability unit was withdrawn from such areas, Col Johan Deyzel told the Goldstone commission yesterday.

Testifying at an inquiry into attacks on police, Deyzel said common crime would skyrocket and politi-

B/Daw 5/11/93
LLOYD COUTTS

cal violence would still flare up (252) (25)

Deyzel said the SAP's new attitude to policing — which included negotiating instead of confronting crowds — was being conveyed to members of his unit at monthly meetings.

While one or two refused to adapt, most policemen were receptive to the idea.

He said the vicious cycle of mutual suspicion between the unit and the community would be stopped only through a concerted effort to restore police/community relations.

Entrench animal rights — Aga

Weekend Argus Reporter

IN the vast catalogue of rights being considered by negotiators at the World Trade Centre, the newly-constituted Animal Groups Alliance (Aga) is determined to keep animal rights high on the list of priorities

The organisation, formed on September 11, will launch a high-profile campaign and make representations to the negotiating council after a proposed clause was left out of the latest

(252) ARC 6/11/93
draft of the Bill of Rights

That clause said everyone had "the duty to ensure that all living creatures are treated in a compassionate, dignified and respectful manner, without the infliction of stress or suffering, and that they are able to satisfy their basic needs and natural and instinctual behaviour" The organisation recognises the autonomy of member organisations while providing a platform for united action in areas of common concern, according to Beauty Without Cruelty's Beryl Scott

■ A major pillar on which the new South Africa and its negotiated constitution will stand is the proposed constitutional court — but who will appoint the court and how will it be kept free of political influence?

FRANS ESTERHUYSE

Weekend Argus Political Correspondent

252

AR 6 Feb 11/93

CONCERN is being expressed in legal and political circles about the danger that the proposed constitutional court could become a political football.

If this should happen, the new constitution would run into trouble at an early stage, it is said.

Warnings have been given that if such a court is to succeed in its task of interpreting and upholding the constitution, effective safeguards would have to be created for ensuring its independence and impartiality. Much will depend on the composition of the court and on the mechanism for appointing its members.

One warning about such issues has come from Mr Justice Deon van Zyl of Pretoria.

Judge Van Zyl told Weekend Argus this week he was strongly against the concept of setting up a standing committee of politicians to appoint members of a constitutional court.

This, he said, could lead to political appointments and serious irregularities.

A constitutional court should be appointed by a judicial commission which could also be responsible for the appointment of judges.

Such a judicial commission should consist largely of lawyers, with a minimum of five judges nominated by the Chief Justice. It could also include members from the Department of Justice and academics from law faculties of universities.

Judge Van Zyl put forward some of his ideas at a recent conference of the World Jurist Association (WJA), held in the Philippines. He is the association's national president for South Africa and also served as chairman of a panel on the judiciary during discussions at the world conference.

Other members of the panel were judge Dan Winn (US), judge K Ramaswamy (India), and judge J J Campos (Philippines).

Judge Van Zyl has warned of the danger that a constitutional court could become too political if its judges were to be appointed by politicians.

From discussions at the WJA conference it appeared there was a worldwide trend towards politicising constitu-

tional courts, he said.

While such fears were expressed, there was also enthusiasm at the conference about the concept, now gaining ground in South Africa, that judges should be appointed by a commission in which lawyers were well represented.

It is known that a top-level viewpoint on such issues has been presented to Kempton Park negotiators by Chief Justice Michael Corbett on behalf of the judiciary.

There has also been intense debate behind the scenes involving the general council of the Bar, lawyers' organisations, academics, the Democratic Party and others.

Two broad issues are reported to be most controversial.

■ First, where the constitutional court will fit into the court structure, and,

■ Second, who the judges will be and how they will be appointed.

Legal sources say other tough issues include the question of legitimacy versus skills in the judiciary.

As recently as August this year Chief Justice Corbett and all the judges president were reported to be meeting in Pretoria amid demands by judges for a say in the debate over a new constitution and bill of rights.

The meeting was said to be an indication of growing concern among the judiciary.

Voices from South Africa's legal profession have from time to time expressed concern about the growth of officialdom and its powers, and about the need to maintain the proud tradition of fearless independence of the judiciary.

The Hoexter Commission, which investigated the structure and functioning of the courts, found that judicial appointments "sometimes betray an element of arbitrariness".

DO NOT WORRY ABOUT NEW COURT

Call for lawyers to have wider powers

By CARMEL RICKARD

THE Association of Law Societies has urged that the public should be represented on any body overseeing lawyers' rights of audience in the Supreme Court.

The association, which represents attorneys, was making its final submission to the Milne Commission Headed by Mr Justice John Milne, the commission is considering whether attorneys should be allowed to appear in the Supreme Court or whether this court should continue to be the sole preserve of advocates. (252)

The association said public representation would help prevent practices which conflict with the "best interests of consumers of legal services".

It also opposed the suggestion that only attorneys with LLB degrees should be allowed to appear in the Supreme Court.

The association said this would further discriminate against black attorneys, many of whom had opted for B Proc degrees.

The practical qualifications required before an attorney is given audience rights is another contention. The association argued against making attorneys undergo a period of "pupillage" as is required of advocates entering the profession.

The association said this would be unfair on its members. It would effectively prevent many suitable attorneys, particularly black attorneys in small firms, from trying to obtain audience rights as they could not afford to take time off for pupillage

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Right to judge and be judged

By CARMEL RICKARD

A HISTORIC case with major constitutional implications, as well as important consequences for press freedom, was argued in the country's highest court this week.

Two issues were at stake — the right of the media to criticise a conviction and sentence handed down by a judge, and the powers of a judge to sue for damages following criticism of a judgment.

The case was unique in this country's history. No record exists of any similar issue being argued in a court in any Commonwealth country this century. (252)

The case concerned an article written by the director of Lawyers for Human Rights, Brian Currin, which appeared in the Star in March 1990.

Mr Currin argued that some judges made racially biased decisions. He compared two murders in which the victims were tied to trees. One case, heard by Mr Justice Esselen, involved two black attackers and a white victim, the other, heard by Mr Justice Strydom, two white attackers and a black victim.

Mr Currin related the story of the two cases and the disparity in conviction and sentence. He said many judges were not influenced by the colour of those involved in a trial, but as long as even one judge was racially biased, the entire judiciary would be tarnished.

After the story appeared, Judge Esselen sued the Argus, the then editor of the Star, Mr Harvey Tyson, and Mr Currin for R120 000.

Arguing the case in the Appellate Division this week, Mr Gilbert Marcus said no reasonable person reading the article would believe Judge Esselen had been defamed.

He said it would be harmful to public policy if a judge could sue for damages in such a case.

Freedom of expression needed to be protected in relation to judges, who had wide powers over life and death but whose appointments were not part of the democratic process.

He pointed out there was no precedent for such an action this century. The only time a similar case had come to court was in New South Wales in the 1890s — the judge lost when the court decided public policy should prevent a judge from suing.

The administration of justice would fall into disrepute if judges, whose competence and integrity were at issue, could sue in their own courts in a personal capacity.

Mr Marcus said the public had to be convinced justice was being done and that all decisions were impartial. He asked who could be regarded as impartial enough to hear such a case if the judge suing the paper was a member of the Appellate Division.

He warned that academic criticism and debate on legal issues could be stifled if a judge was allowed to sue under these circumstances. Judges had so many legal protections already, that any court case brought by a judge against a member of the public would be unfairly weighted in the judge's favour, Mr Marcus said.

heated debate ● Age-old tradition

Customary law bone of contention

Sowetan 8/11/93

252

■ **HOT WORDS** *Proposed Bill of Rights*

'will not protect African women':

By Sizakele Kooma

THE debate on whether the equality clause should supersede customary law in the Bill of Rights has been the focus of heated discussion at the World Trade Centre

Traditional leaders and women delegates have been wrangling over the issue since it was tabled for discussion at the talks in July

The traditional leaders distributed their latest proposal to the Negotiating Council on the accommodation of traditional leaders in constitutional structures and protection for custom and culture as a right in the interim Bill of Rights

The recommendation is seen as oppressive by the women. They maintain that by excluding customary law from the Bill of Rights, women who live under African customary law, Muslim women and others will be denied human rights and the ability to enforce them

Objections raised against the customary law are that

- Women married under customary law were perpetual minor;
- Customary law marriages do not have the same status as civil law marriages,
- The customary law of inheritance denies women access to land and property,

● Customary law excludes women from decision-making in their homes and in the community; and

● Muslim women do not have equal rights under Muslim personal law

The Women's National Coalition, which represents 60 national women's organisations, has come out strongly against the retention of customary law in the Bill of Rights

In a statement presented to the Press the WNC stressed "The Coalition believes equality is indivisible. We urge the negotiating council to deliver equality to all women, irrespective of race, colour or creed

"The Coalition rejects completely the notion of the promise of immediate equality to white, coloured and Indian women to the exclusion of African women.

The NWC has urged women to make submissions to the Negotiating Council voicing their protest against the retention of the law. The submissions are to be addressed to the chairman of the planning committee, for the attention of the technical committee on the Bill of Fundamental Rights. Women's organisations and individuals can fill in the coupon below and address it to the World Trade Centre, Kempton Park, Private Bag X878, Pretoria 0001. Or fax to (011) 397-2211

Section 205 to change

PRETORIA — The contentious section 205 of the Criminal Procedure Act, which makes it an offence for a witness to refuse information in court, is to be amended by Parliament later this month.

Announcing this at the weekend, Justice Minister Mr Kobie Coetsee said the decision followed discussions with the Press Council of South Africa and other media interests. Mr Coetsee said the amendments

would reflect the following

● Judges of the Supreme Court, in addition to magistrates, may be approached to hear a matter under the section, and

● A person who refused to give required information in court would not be found guilty of being a recalcitrant witness unless he had no just excuse, or that the information was necessary for the maintenance of law and order.

(252)
**Women call for end
to all discrimination**

PRETORIA. — The Women's Bureau of South Africa says customary law and family traditions should be respected "but women must not be discriminated against".

CT 10/11/93
The bureau said yesterday in its submission to the World Trade Centre planning committee on the Bill of Rights "Whatever our government, we hope it will stand by the terms of the UN Convention on the elimination of all forms of discrimination against women."

The bureau supported in principle the Women's National Coalition's stance that recognition of culture should always be subject to equality. — Sapa

Inquiry told of bid to bribe

Star 11/11/93

■ OWN CORRESPONDENT

The mayor of Mamelodi and a local councillor approached a building contractor who had applied for 250 sites and demanded R500 for each house built in the township, a commission of inquiry was told yesterday.

Testifying before the Krugel Commission appointed by the Transvaal Provincial Administration, was contractor Maxwell Gordon (62).

Gordon said in 1989 he was approached by mayor Sydney Mokone and former executive committee chairman James Maluleka (252).

"They visited me at my home and offered me a contract to develop land and build houses in Mamelodi. They demanded that for each house built I should give them R500 which, in turn, was to have been shared with other councillors who needed to be fed," Gordon said.

Another witness, Hanuman Kumar Dinna, manager at the First National Bank branch in Rosslyn, testified that the bank had taken legal action against Mokone and Chris Cook, who had been in partnership in a building company.

He said Cook had disappeared after running a bank overdraft of R96 000. Mokone had signed two sureties, one for R55 000 and the other for R50 000. Cook had been unable to repay.

The hearing continues.

Detention without trial abolished

Political Staff ARG 12/11/93
JOHANNESBURG. — Yesterday was a special day for the Natal Indian Congress's Pravin Gordhan.

After having spent about a year of his life in jail in terms of section 29 of the Internal Security Act, the veteran activist presided over the session of the Negotiating Council which ordered the abolition of the notorious legislation providing for detention without trial.

"For me it was a unique occasion to chair the session in which this happened," he said.

Mr Gordhan became a victim of section 29 for periods during 1981, 1985 and 1990.

The clause was among a plethora of discriminatory legislation in South Africa, the homelands and the self-governing territories that will be purged from the statute books.

The repeal of this legislation will take place in the session of parliament beginning on November 22.

The Prohibition of Foreign Financing of Political Parties and Affected Organisations Act is also to be repealed.

Repressive legislation in the homelands is to be repealed, including sections of Bophuthatswana and Ciskei's Internal Security Acts.

Detention without trial: Law set to go

By BARRY STREEK
Political Staff

SOUTH AFRICA's notorious detention-without-trial law is to be abolished, 30 years after it was first introduced

The negotiating council at the World Trade Centre agreed yesterday that Section 29 of the Internal Security Act should be abolished

Detention without trial was first introduced in 1963, in the so-called 90-day law by the then-minister of justice, Mr John Vorster.

Section 29 of the present act allows a senior police officer to arrest a person who he believes "has committed or intends to commit terrorism" and then detain them for 10 days without trial for interrogation purposes

The council agreed that corresponding laws in the independent and non-independent homelands should go

● The negotiating council's decision will have to be ratified by Parliament later this month

Until then the police will still be able to detain people for up to 10 days

Seven suspected right-wingers are still being held under Section 29 in connection with the raid on an army magazine last week near Pietersburg

They are Mr Jakobus Vorster, 28, Mr Johan Nagel, 26, Mr Pieter Viviers, 25, Mr Wayne van As, 23, Mr Johan Kotze, 32, Mr Johan Moller and Mr Nico van der Walt

Shortly after the assassination of SACP leader Mr Chris Han, CP politician Clive Derby Lewis was also held under the act

Negotiators scrap detention without trial in SA and the

Bill of Rights

BILLY PADDOCK

THE negotiating council yesterday unanimously agreed to scrap Section 29 of the Internal Security Act, which provides for detention without trial.

The technical committee investigating laws which could be regarded as preventing free political activity in SA, the TBVC states and the self-governing states recommended the scrapping of the section so that SA's statutes could be regarded as "democratic and human rights orientated".

One committee member said that Olive and Gaye Derby-Lewis and Janusz Walusz would be the last people to have been de-

tained in terms of this legislation.

Welcoming the council's decision, chairman Pravin Gordhan — who has been detained under this section several times, the last time in 1990 for his involvement in Operation Vula — said many of the negotiators had been "victims of this 'offensive bit of legislation'".

SA Communist Party negotiator Essop Pahad's call for the law to go was supported by government and the Afrikaner Volksunie. No party opposed its demise. Currently, a person can be detained for 10 days without trial for interrogation pur-

poses, and a judge can order further detention periods on application by the police. However, before 1992, the law provided for indefinite detention starting with 180 days before any review was possible. Some detainees were held for more than two years.

The council agreed that corresponding laws in the TBVC states should also be scrapped. It agreed to scrap of amend a range of repressive laws in the self-governing territories, including Kwazulu. The Self-Governing Territories Constitu-

tion would be amended to allow the President to "repeal, supplement or substitute any law in the self-governing territories".

The committee recommended that the entire area of common law crimes against the state and statutory security crimes be investigated and amended or repealed to be in line with the Bill of Rights.

Sapa reports that the negotiators also agreed that security force members be prohibited from belonging to political organisations, but could join "bona fide" trade unions. The agreement proposed that members

of the SAP, SADF, Correctional Services and National Intelligence were required to be impartial and should "not be seen to be associated with any political organisation (but) should be allowed to be members of trade unions or similar organisations".

However, public servants outside these categories should be allowed to be involved in politics. The committee would investigate a proposal from Deputy Justice Minister Sheila Cammerer that judicial officers be precluded from belonging to political parties.

See Page 2

80 23 30

Homelands



A MERRY VISIT ...
African National Congress president Mr Nelson Mandela is flanked by Sowetan Editor Mr Aggrey Klaaste and staff members during a visit to the newspaper's offices in Industria, Johannesburg, yesterday.

Detention laws

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Sowetan 12/11/93

By Themba Molefe and Sapa

SOUTH AFRICA'S notorious detention-without-trial law and repressive legislation in the homelands should be scrapped, negotiators agreed at the World Trade Centre yesterday.

With these and other crucial agreements by the 21-party negotiating council, the road to the completion of multiparty talks was firmly put back on track.

This has also guaranteed that the final draft interim constitution is set to be adopted by the council today, setting in motion the last lap to transition.

The motion to scrap the entire Internal Security Act — and not only the infamous Section 29 — was not opposed after being proposed by South African Communist Party negotiator Dr Essop Pahad.

Section 29 allows a senior police officer to arrest a person whom he believes "has committed or intends to commit terrorism".

The person can then be detained for 10 days without trial for interrogation.

A judge may then order further detention periods which may be renewed on application by the police.

The council also agreed that corresponding laws in the TBVC states should be scrapped.

Negotiators also agreed to the scrapping of a wide range of repressive laws in the self-governing territories.

These include legislation on the statute books of KwaZulu — which is not part of the negotiations at the World Trade Centre and is presently spearheaded by the conservative Freedom Alliance.

The council began by quickly agreeing to

amend the Self-Governing Territories Constitution to allow the State President to "repeal, supplement or substitute any law applying in the self-governing territories", including Lebowa, Gazankulu, KaNgwane, QwaQwa and KwaNdebele.

It went on to endorse technical committee recommendations for the repeal of a wide range of laws judged either to impede political activity or to be discriminatory.

Security force members should be prohibited from belonging to political organisations but could join "any bona fide trade union", the negotiating council agreed.

The agreement, which impacts directly on the furore over the Police and Prisons Civil Rights Union and its alleged links with the African National Congress, followed a proposal by the technical committee on discriminatory legislation.

A plenary of the leaders of the 21 parties which sit on the negotiating council would meet on November 17 to endorse the "Kempton Park Package".

Once they have endorsed the interim constitution package, the go-ahead will be given for the establishment of the Transitional Executive Council, which in turn will then be able to activate, among other things, the Independent Electoral Commission and the Independent Monitoring Commission.

The package is then scheduled to come before Parliament on November 22 for final ratification.

● Recommendations for resolving outstanding regional boundary issues were also unveiled yesterday. The recommendations were the result of the work of a co-ordinating committee, chaired by Regional Affairs Minister Mr André Fourie, appointed recently by negotiators.

Without answers as deadline nears

252

ARG 13/11/93

FRANS ESTERHUYSE

Weekend Argus
Political Correspondent

THE crucial issue of the constitutional court, which will form one of the major pillars of the new South Africa, is still undecided and agreement seems to be eluding the negotiating council.

Questions on which the country urgently awaits clarity include such matters as who will appoint the constitutional court and what will be its powers, functions and composition.

This remained one of the vital issues still outstanding yesterday after a week of feverish activity at the World Trade Centre, Kempton Park, to beat the negotiations deadline which has now been moved to Tuesday.

A week ago Weekend Argus reported fears and warnings coming from the legal fraternity, including the Bench, about the dangers of the proposed constitutional court becoming a political football.

One of the warnings came from Mr Justice Deon van Zyl, who said there was a danger that such a court could become too political if its judges were to be appointed by politicians.

What do the politicians and other law specialists say?

Democratic Party leader Dr Zac de Beer told Weekend Argus this week there had been a "contest" at Kempton Park about the method of appointment of the constitutional court.

"Our negotiators were horrified when they encountered a proposal that parliament should appoint these judges — even though there was a special provision to give the opposition a say in the matter," he said.

"We believe that since the function of the constitutional court is to prevent the politicians from subverting or manipulating the constitution, the politicians are the very last people who should appoint its members."

Dr De Beer said emphatically that the DP would "certainly not accept any such proposal."

"And we are reasonably hopeful that others will meet us on this question and that an acceptable formula will be found."

"We expect that this formula will provide a major part for judges and lawyers to play."

Strong pleas have also come from the legal profession, including law professors and other academic lawyers, that the legal fra-

■ A cloud of uncertainty still hangs over the proposed constitutional court — the vital institution on which the success or failure of the new South Africa's negotiated constitution will depend.

ternity should be well represented in a constitutional court.

Bertus de Villiers, head of the Centre for Constitutional Analysis at the Human Sciences Research Council (HSRC), said yesterday a constitutional court, if not a separate institution, should at least be a separate section of the Appellate Division of the Supreme Court.

Its main functions should include decisions on human rights under the bill of rights and decisions on the implementation of federal principles in the constitution.

Dr De Villiers told Weekend Argus that with a view to the appointment of members of the constitutional court, serious attention should be given to moving away from the practice of appointing only senior advocates as judges.

He said South Africa had some outstanding attorneys and academics attached to the law faculties of universities who should also be able to serve as judges, especially in the constitutional court.

In some countries of Europe, including Belgium and Germany, academics from law faculties could serve on a part-time basis as judges. The introduction of such a system should be considered for South Africa. However, candidates for the Bench should have had a specified minimum period of service in practice or in a teaching capacity.

In the appointment of judges of a constitutional court, a certain balance should be struck. Three interest groups should be involved in the screening of candidates and the appointment of judges: the legal fraternity, the legislature and the executive arm of government (or cabinet).

Dr De Villiers suggested two options for the appointment process.

■ Firstly, appointments could be made by a single body such as a commission on which the three main interest groups are represented.

■ Secondly, nominations could be invited from the legal fraternity, evaluated by a parliamentary committee, and appointed by

the Cabinet on the recommendations from parliament.

He emphasised that he was in favour of primary nominations coming from the legal profession.

Dr De Villiers said his proposed procedure would also open the doors to a potentially large number of black candidates, people of colour, women, and senior academics, all of whom could become eligible for appointment as judges.

The idea that judges should be nominated by a judicial commission was put forward some time ago by Hugh Corder, of the department of public law at the University of Cape Town.

He cited a model followed in various forms by countries such as Israel and at least 12 members of the British Commonwealth. The model involves the creation of a Judicial Service Commission (JSC) which nominates up to three people to fill a judicial vacancy. The executive arm of government, which remains the formal appointer of judges, must then choose one of those names.

Professor Corder said the legitimacy of this process depended crucially on the composition of the JSC.

The pattern adopted in Commonwealth Africa was to have a fairly small body (three to four members), chaired by the Chief Justice. Others included the head of the Public Service Commission, a senior judge and one other person. The latter two were appointed by the head of state on the advice of the Chief Justice.

The existence of a JSC could ensure a broader representation of interests in the judicial appointments process, Professor Corder said.

Professor Corder told Weekend Argus that in his opinion a constitutional court should have some influential input by the legal profession, including judges. However, Parliament should have the final say in the nomination of judges, and the state president should make the formal appointments.

He noted that in the United States and Germany members of constitutional courts were appointed entirely by the legislatures.

Judges Shock

By BARRY STREEK
Political Staff

A CRISIS is brewing over a National Party/ANC proposals for the powerful Constitutional Court.

The centre of the row is the NP/ANC agreement on political appointments to the new court — which will be the most important legal institution in the country and entrusted with upholding the new constitution and Bill of Rights.

The NP/ANC proposal is for the court to have sole or exclusive jurisdiction over

- The validity of any Act of Parliament.
- Interpretation of the constitution
- The legal effect of the Bill of Rights
- Disputes between the central and regional governments

Judges have criticised the NP/ANC proposals, which have also been slammed by the advocates' body — the General Council of the Bar — and the Democratic Party.

The legal profession and the DP say the current plans will politicise the court and damage the credibility of all judges.

"I can give you the assurance that it is the general feeling among judges that politicians should not appoint judges," Mr Justice Deon van Zyl, the South African chairman of the World Jurists Association, said last night.

The DP last night described the plans as "extremely dangerous" and threatened to walk out of the whole negotiations process if they are adopted.

The DP's justice spokesmen, Mr Tony

Constitutional court row



CRITICISED PLANS

Chief Justice Mr Justice M Corbett

Leon and Mr Douglas Gibson, said the NP/ANC deal could result in the most important court ever created in South Africa being politicised, centralised and hand-picked by the new Government.

The proposals have been submitted to the technical committee despite criticisms put forward by the Chief Justice, Mr Justice Mick Corbett, on behalf of the

'The agreement makes no effort to guarantee the independence of judges . . .'

— *Democratic Party*

'Politicians should not appoint judges'

— *Mr Justice Deon van Zyl*



MAY WALK OUT

DP justice spokesman Mr Tony Legu

agreement is that it makes no effort at all to guarantee the independence of judges.

In the terms of the plan, six judges of the Constitutional Court will be appointed by the President with the agreement of the cabinet — and need not necessarily be judges or even practising lawyers — and four judges will be appointed

from the ranks of Supreme Court judges "in consultation" with the Chief Justice.

"Thus the composition and selection of the whole of the court is effectively in the hands of the president and the cabinet," the DP said.

The DP added that it was "entirely wrong that membership of so immensely powerful a judicial body as the Constitutional Court should vest entirely in the hands of the government."

Mr Leon said last night: "If this thing is adopted the DP will walk out of the negotiations and will have nothing further to do with this constitution."

Judge Van Zyl, said not all judges would voice their feelings, but the vast majority were totally opposed to the proposed method of appointment.

A judicial committee, representing the judiciary, practising lawyers and legal academics throughout the country, should appoint all judges.

Bought

The DP made a similar proposal but added that judicial appointments should be ratified by 75% of the new Senate.

It also said the Supreme Courts and the Appellate Division should have joint jurisdiction with the Constitutional Court on all constitutional issues, with the final appeal lying with the Constitutional Court.

Judge Van Zyl said the proposed procedure for the appointment of judges to the Constitutional Court would create the impression that appointees had been bought by politicians, and that it would not look apolitical, as it should be.

South African judges were held in high esteem throughout the world, "but if this happens it will truly bring disrepute on our judges," Judge Van Zyl said.

27/11/93

252

Dedicated lawyers bring power to the people

ONE headline said R1.5-m for Teen-ager Injured in Beach Protest. The story concerned a Supreme Court claim against the Minister of Law and Order on behalf of a Strand boy who had been injured by a rubber bullet.

This huge out of court payout after costly litigation to the son of a poor family — 16 people in three bedrooms — would have been the stuff of fairy tales a few years ago — something of an impossible dream.

Today it is no longer so uncommon. Any number of cases are coming before the courts as plaintiffs from poor communities seek justice against employers and police, and are defended when charged.

What has brought about this transformation? It is the emergence of law firms dedicated to the practice of human rights and public interest law. There are only a few of them in the country, but already their success in court has been nothing short of phenomenal.

One such firm is Chennells Albertyn of Stellenbosch. Walk into their offices and you will see a number of young men and women in casual dress, open necked shirts and jeans, going about their business. They are lawyers — ties and suits are reserved for court appearances and hang at the ready behind office doors.

The style is deliberate and designed to put their clients — farm labourers, factory workers and the disadvantaged in

■ Human rights and public interest law are emerging as powerful new factors bringing the law courts closer to disadvantaged people. Law firms specialising in this field are having phenomenal success. **IRVING STEYN** reports.

July 13/11/93

(25M)

poor areas who would normally have little recourse to law courts — at ease.

Chennells Albertyn was founded in 1980 in Durban by Roger Chennells and Chris Albertyn. The personalities in the firm are as diverse as one can imagine.

Five years ago Mr Chennells set up a practice in Stellenbosch which still has loose ties with the Durban practice. He is the senior partner.

Another partner is Glyn Williams, who has a commercial background and studied at UCT. He worked in England and Zimbabwe before returning to Cape Town in 1990.

The third partner is Johan van der Merwe. He did his articles with the firm and became a partner this year. As a law student he was a campus activist at Stellenbosch and co-ordinated the Helderberg advice office.

Senior clerk Rudolf Mastenbroek is also an executive member of the Stellenbosch branch of the ANC and former president of the Stellenbosch University branch of Nusas.

Senior clerk Kate Savage is a UCT

graduate, vice-president of the SRC and former editor of the campus newspaper Varsity.

Articled clerk Thabo Lehlo, originally from George, was employed by the national co-ordinating committee for the repatriation of South African exiles before joining Chennells Albertyn.

One characteristic they do have in common is their commitment to offering their services to rural communities, not only locally, but as far as Port Nolloth and Pofadder in the north and Richmond and Oudtshoorn in the east.

A large proportion of their work concerns civil action against the police, including assault, torture, procedural irregularities, wrongful arrest and malicious prosecution. They have had considerable success so far.

They also deal with civil cases involving the basic right of all to legal representation, the right to be released on bail, to be charged and released, not to be arrested without due cause and the right to have access to a lawyer when arrested or interrogated.

They also deal with racial and other discrimination which are the legacy of apartheid, and gender discrimination, especially against rural black women.

A large number of cases involved damages claims by workers against farmers for assault, unlawful dismissal and unlawful eviction.

A proud cornerstone is the firm's support for advice offices and para-legal workers in rural areas which they believe is fundamental to the prosecution of human rights cases.

Labour law fits right in with their activities and they act on behalf of a number of trade unions.

In turn, this fits in with alternative dispute resolution in the labour field, but also increasingly in community dispute resolution and voter education.

They act on behalf of civic associations, squatter advice centres and other community organisations, particularly in rural areas regarding better housing, land allocation and distribution of development funds.

It all costs money — which comes from a certain amount of external funding, which in turn depends on a high degree of efficiency and a good success rate.

Said Mr Williams, "We believe the continued funding of committed lawyers on human rights matters is of paramount importance to ensure that legal services are extended to disadvantaged people."

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12 11 43 25 28
 A political storm has erupted at the World Trade Centre over shock proposals from the National Party and the ANC for a constitutional court.

FRANS ESTERHUYSE
 Weekend Argus Political Correspondent

NEGOTIATIONS on the new constitution have been engulfed by a furious last-minute crisis

The Democratic Party has denouncing a National Party/African National Congress "plot" to politicise and seize control of a vital democratic mechanism, the proposed constitutional court

This shock development yesterday, during the final stages of negotiations at the World Trade Centre in Kempton Park, threatens to jeopardise the whole process for putting together a political settlement in South Africa

It now seems possible that Wednesday's proposed plenary session of leaders — to ratify agreements — will be put back to later in the week. It is understood that a decision on this will be made by the talks' Planning Committee on Monday

The DP's interpretation of the NP/ANC proposals turns to reality some of the worst fears of democratic-minded politicians, lawyers, judges, academics and others who have warned against any moves to turn the constitutional court into a political instrument

Only a week ago, Weekend Argus reported exclusively such warnings from members of the legal fraternity, including Mr Justice Deon van Zyl, who said there was a world-wide trend towards politicising constitutional courts

■ A "truly alarming" aspect of the NP/ANC agreement is a proposal that the state president and the cabinet will have a decisive say in the appointment and selection process of the constitutional court

■ The plan leaves the door open for political appointments to the bench

"The startling aspect of the bilateral agreement is that it makes no effort at all to guarantee the independence of judges," the DP says

"This, in turn, differentiates the new selection process very marginally — if at all — from the current and much-criticised process of potential political appointments to the bench. Both the discredited old system and the proposed new ANC/NP system maximise the ability of politicians to influence judicial selection"

The NP/ANC proposals include

■ Six judges of the constitutional court will be appointed by the state president with the agreement of the cabinet

■ Four judges will be appointed from the ranks of the Supreme Court by the state president (in consultation with the chief justice and the cabinet). On this point it is not clear whether "in consultation" would mean "with the approval of" or simply "after consultation with"

The DP says the protection apparently conferred by the requirement to consult with the chief justice could well be illusory because the chief justice, in terms of the proposals, will be himself appointed by the president with the agreement of the cabinet and, therefore, he may or may not be a strictly political choice

"Thus the composition and selection of the whole of the constitutional court is effectively in the hands of the president and the cabinet. Although that body will be constituted by proportional representation, it is clear that it will be controlled either by the ANC alone, or by the ANC plus one other party. Plainly, the NP is calculating that it will be that other party"

The DP suggests the NP's calculation could backfire, leaving the power to compose the constitutional court in the hands of the ANC alone, or in the hands of the ANC plus some other party

If the constitution is to guarantee any rights or liberties, its interpretation cannot be left in the hands of party loyalists, the DP says

The DP sets out a summary of proposals in terms of which the government will be obliged to appoint the chief justice and president

DP row over court 'plot'

From page 1 ARGUS 11/11/93

process and thereby potentially destroy the independence of the new judiciary before it has even assumed office"

■ The "bottom-line" of the proposals will enable the new state president to veto effectively the nomination of any person proposed for a seat on the new constitutional court

constitutional court strictly on the recommendation of a judicial service commission (JSC). The DP proposals will also oblige the government to appoint all other judges of the constitutional court on recommendation of the JSC, subject to confirmation by 75 per cent of the senate

The DP further proposes that all Supreme Courts, plus the Appellate Division, be given joint (concurrent) jurisdiction with the constitutional court on all constitutional issues, with a final appeal lying with the constitutional court, solely on a constitutional principle in dispute

The ANC's Mac Maharaj hit back at the DP, saying "under the banner of championing democracy Tony Leon is trying to whip up political fears among those who distrust the capacity of this process to bring about democracy"

He pointed out that in the past white presidents or prime ministers had appointed chief justices, while ministers of justice were responsible for appointment of judges — "and all the while this was accepted by the DP as not politicising this process"

Mr Maharaj pointed out that the new president would enjoy the credibility of the "overwhelming majority" of South Africans and sit at the head of a government of national unity

■ Fears for federalism
 ■ See page 16

When details of the NP/ANC deal became known at the World Trade Centre yesterday, the DP reacted swiftly with a lengthy statement saying the proposals were potentially "extremely dangerous" and could result in "the most important court ever created in South Africa being politicised, controlled and hand-picked by a new government"

The statement, followed by a news conference, was issued by DP justice spokesman Tony Leon, MP for Houghton, and deputy spokesman Douglas Gibson

The DP's main objections include

■ The NP/ANC proposals call into question the future of federalism, the independence of the judiciary, and the concept of separation of powers in the new South Africa

■ An effect of the proposals will be "to manipulate the judicial selection

■ To page 3

TWO YEARS DOWN THE ROAD: And many probes later, the Goldstone

Commission is still playing a major role in tackling the violence

Leaving no stone unturned

Steer 13/11/93

252

THESE days, the commission rarely makes the headlines. However, its work is far from done, and it has been suggested that it should be made a permanent structure, writes Chief Reporter JOHN PERLMAN.

ANY soccer referee will tell you that while "firm" and "fair" are compliments indeed, the highest accolade is anonymity. When your performance causes so little controversy and distraction that people leaving the stadium pause to say "great game who was the ref, by the way?" The analogy does not quite fit the Goldstone Commission — the judge, it should be said, has often felt more like the football than the referee.

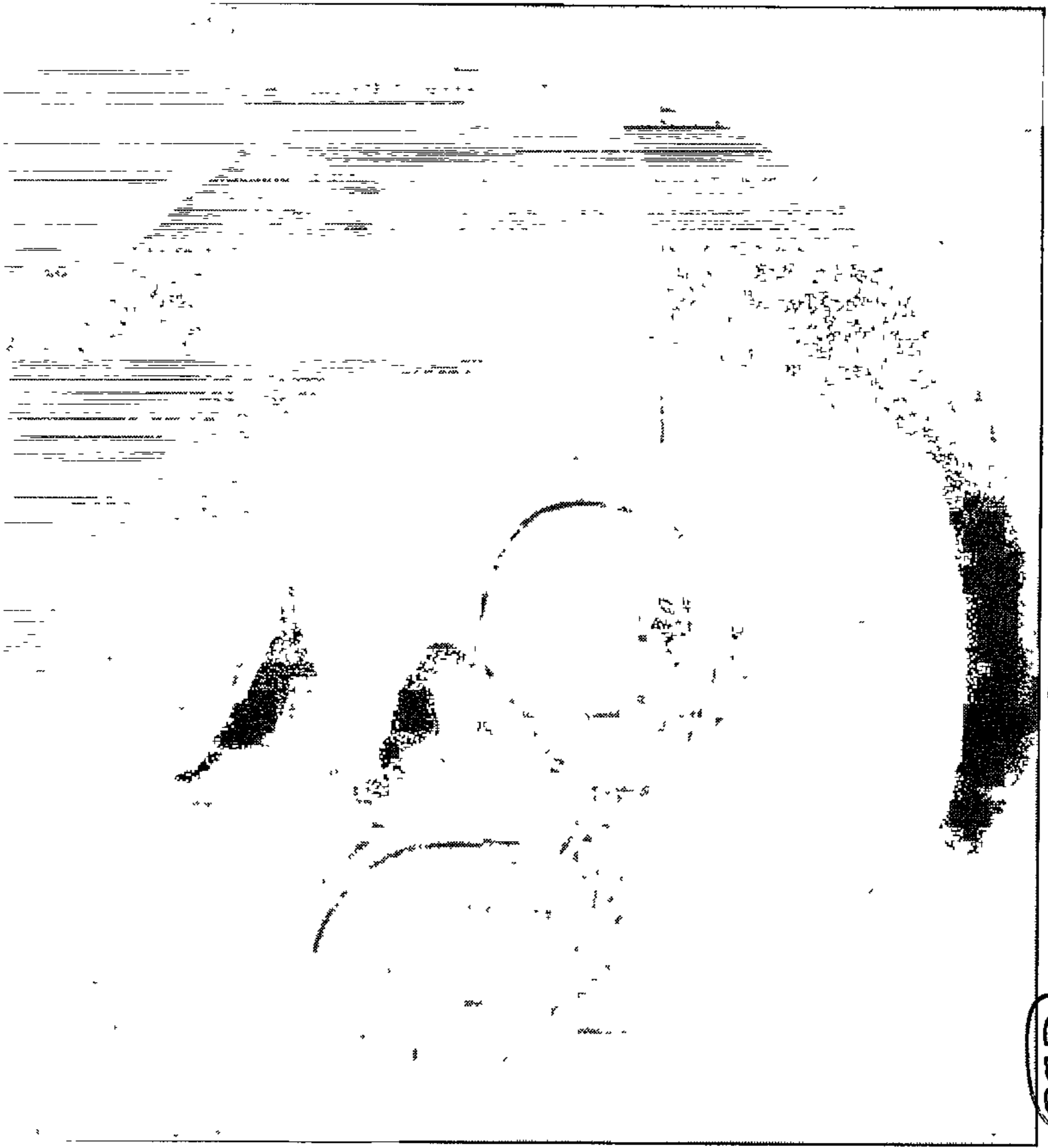
But the commission has, in less than a year, gone from being an institution that hit the headlines every other day to one that hardly makes the news. And that doesn't bother those involved in the heart of its work.

Thus time last year, Goldstone Commission investigators made a dramatic raid on a Pretoria building which housed a secret division of Military Intelligence called the Department of Covert Collection.

DOCUMENTS seized showed that this unit, 48 members strong, had been engaged in a campaign to discredit the ANC — with the full approval of MIF's leadership. It was pretty dramatic stuff, not least because of the aftermath, in which a number of senior officers lost their jobs. And thus, for many, was exactly what the Goldstone Commission was meant to do — investigate, bang on doors. Act.

Mr Justice Richard Goldstone, the commission's head, immediately asked President de Klerk for greater powers to probe thoroughly all public and private security forces and armies. De Klerk declined.

Twelve months later, and just more than two years since the commission was set up — it was appointed on October 24 1991 — there is only one major inquiry still in progress. It concerns attacks on policemen, and



successful at the level of detailed inquiries," says Johannesburg lawyer David Dison. He made representations at three hearings, appearing for civic groups at an inquiry into killings in Tokoza, and for the Weekly Mail and others during an investigation into the training of Inkatha members in Capri and a probe of claims that a police unit was using "safe houses" to launch hit-squad attacks.

"While we were busy with a hearing into the Tokoza massacre in 1991, 32 Battalion went into Phola Park. The commission was very good at dealing with that on the spot. They were very accessible for a major event and provided immediate arbitration. They could step in with an instantaneous justice mechanism.

"But on the in-depth stuff, the procedures have been too formal, using court-type procedures so that a lot of the black witnesses have just been demolished. High-powered teams of police lawyers have been able to demolish a lot of the positions that the anti-apartheid people have brought in. Sometimes it was allowed to become an adversarial procedure in which both sides got rubbished. Like every institution of change in this country, the Goldstone Commission is overstretched," says Dison.

HOWEVER, he believes that inquiry procedures are being changed and the probe units are getting more power and funds. "We haven't seen the effects of that yet — and don't forget that Goldstone came in with a three- or four-year mission in his brief

SA's top judges will be 'political lackeys'

By CARMEL RICKARD

PRESIDENT FW de Klerk and ANC president Nelson Mandela have been drawn into the growing row over joint ANC/government proposals giving politicians virtually exclusive powers to select members of the new constitutional court. *STimes 14/11/93*

Behind-the-scenes meetings are continuing over the weekend, with the DP meeting top officials of both parties to prevent possible walk-outs and boycotts if the forum is asked to rubber-stamp the proposals.

However, Justice Minister Kobie Coetsee defended the proposals, saying they continued the "until now proven" system of the present government under which the state president makes judicial appointments in consultation with the cabinet. *(252) (252) (116)*

The proposals were released on Friday after bilateral discussions between the government and the ANC. The technical committee is considering them this weekend, and a new draft that could endorse them will be put to negotiators tomorrow.

In response, Democratic Party leader Zach de Beer met Mr Mandela on Friday evening, and had separate talks with a cabinet minister representing Mr de Klerk.

Earlier he indicated to both leaders that the DP found the proposals "quite unacceptable" and would do everything in its power to ensure they were not passed.

The report contains a number of controversial proposals, but the most contentious would make all 11 members of the new court "political" appointments. They will be chosen by the state president in consultation with the cabinet, and after consultation with the chief justice or president of the constitutional court.

By contrast, judges of the Supreme Court will be chosen by a Judicial Services Commission, consisting of representatives of the judiciary and other branches of the legal profession, as well as politicians.

Chairman of the General Council of the Bar, Mr Wim Trengove, said the best-case scenario under the proposed system would be a court of judges seen by the public as political lackeys. "In the worst-case scenario, they would in fact be political lackeys," he said.

Judiciary is given a guarantee

STimes 14/11/93
JUDGES will keep their jobs when the new constitution comes into operation, in terms of an agreement understood to have been reached between the government and the ANC.

The government proposed the judiciary would be regarded as though appointed under the new constitution and as having taken the oath of office. It also proposed other officials such as attorneys-general would continue in office as though appointed under the new constitution. *(252)*

It proposed all court cases pending at the time of change-over would continue as though started under the new constitution. The ANC yesterday agreed to these proposals, which were intended to help ensure an orderly transition.



WATCHING ... MK members keep an eye on AWB members patrolling outside Rustenburg's Olympia Stadium yesterday, while a masked AWB man eyeballs ANC supporters, attending a rally, from a perch across the road. Pictures: JUHAN KUUS



Crowd boos 'kill' slogan
STimes 14/11/93

By JAMES BRITAIN

We may learn to forgive, but we will never forget

By BRIAN SOKUTU, Sunday Times deputy news editor, who was detained without trial for three years in Port Elizabeth from 1986. After his release in 1989, he was banned for six months from practising as a journalist (252)

AT LAST the notorious Section 29 of the Internal Security Act sees the scrapheap.

Former detainees — including those at the Negotiating Council, where the decision was taken this week to repeal the legislation and other repressive laws — still bear the physical and psychological scars of detention

Detained at the St Albans Prison in Port Elizabeth from 1986, I remember ANC negotiator Mohammed Valli Moosa and UDF stalwart Murphy Morobe being escorted by warders into the prison to join us before being transferred to Johannesburg.

We were cut off from the community, and were denied newspapers, radio and television. The staple diet was terrible, and some of us became ill

Electric shocks and being suffocated with a sack were some of the methods used by Eastern Cape security policemen at the time "to get the truth" from detainees

The Eastern Cape, where grassroots street and area committees began, was the hardest hit in the 1980s.

Section 29, to be repealed in the session of Parliament beginning on November 22, provides for detention without trial.

The fact that the statute books of the bantustans will also be purged of this

legislation should be a relief to activists detained in the homelands.

This law has for years empowered Bophuthatswana's Lucas Mangope and Ciskei's Brigadier Oupa Gqozo to deal ruthlessly with their political opponents

The repeal should bring to an end the ongoing harassment, under Mr Mangope, of University of Bophuthatswana students

The government resorted to the Internal Security Act in 1977 to crack down on its foes, protesting against the death in custody of Black Consciousness leader Steve Biko

Eighteen organisations — including the Black People's Convention, the Christian Institute and the SA Students' Organisation — were declared unlawful under the Act

Three publications, including the World newspaper, were prohibited, and 47 leaders — including World editor Percy Qoboza, Dr Nthatho Motlana, Daily Dispatch editor Donald Woods, Dr Beyers Naude and Weekend World news editor Aggrey Klaaste — were arrested.

In the interests of creating a climate of free political activity, peace and forging ahead with political transition, Mr Moosa has certainly forgiven his jailers... but he will not forget the horror.

Ten judges will hold reins of power

HUGH ROBERTON
Political Editor

252
APR 15 11 1996

WHATEVER final constitution emerges from the constituent assembly elected on April 27, the people who will decide — finally — whether or not the constitution is legitimate will be the 10 judges comprising the constitutional court

More power will be vested in them than in the constituent assembly, or the new South Af-

rican president, since they will be empowered to veto by majority vote any aspect of the constitution which, in their judgment, does not comply with the constitutional guidelines and agreements now being thrashed out in Kempton Park.

Under the government-ANC proposals, the constitutional court will have four judges appointed by the new president in

consultation with the Chief Justice and six appointed by the new president in consultation with the new cabinet

If present trends are any guide, the new president would be ANC leader Nelson Mandela, and the new cabinet would be dominated by the ANC. For all practical purposes, therefore, Mr Mandela and the ANC would be able to select a majority of the judges.

Top court could be govt lapdog

252

CTIS/11/93

By ANTHONY JOHNSON
Political Correspondent

THE Democratic Party has launched a last-ditch bid to prevent the supposed watchdog of the new constitution — the all-powerful Constitutional Court — becoming the lapdog of the ANC in a new South Africa

The late rally to block a government/ANC deal that allows for a politically packed Constitutional Court is being supported by elements in the National Party who feel the government has sold out on the cornerstone of the new constitutional order

As the DP held 11th-hour consultations yesterday with the ANC and the NP in a bid to change the provisions giving the next State President virtual carte blanche on the composition of the highest court in the land, divisions within the government continued to widen as a result of last-minute capitulations by NP negotiators to the ANC on a wide range of key checks and balances in the constitution

World Trade Centre negotiators yesterday claimed that as the pressure to conclude agreement in time for this week's plenary session of leaders mounted, the NP was "surrendering" on matters of principle after leading government personalities had secured jobs for themselves and

Bid to stop ANC control of top court

greater security of tenure for members of the civil service in the new order

As the row in political and legal circles over the proposed system of appointment to the Constitutional Court mushroomed at the weekend, the man at the centre of the storm, Justice Minister Mr Kobie Coetsee, defended the deal he proposed to the ANC

He denied charges that he had handed the 10-member Constitutional Court to the ANC "on a platter," adding that the government's proposal unveiled at the World Trade Centre represented "a favourable compromise"

In the agreement with the ANC, Mr Nelson Mandela, as the likely next State President, would have the authority to ap-

point six of the Constitutional Court judges in consultation with his cabinet

The State President would also be able to appoint the remaining four judges from the Bench after consultation with the Chief Justice

Mr Coetsee dismissed as "alarmist" charges by the DP that the court would become politicised, adding that the appointments proposal compared favourably with constitutional courts in other democracies

However, DP justice spokesman Mr Tony Leon last night insisted that there was very good reason for alarm when "one side" was able to appoint judges who would serve as citizens' most important constitutional safeguard in a new political order

"This is the bottom line because the Constitutional Court will have all the power to interpret the constitution, the Bill of Rights and to determine the degree of federalism we will have in the new South Africa," he said

The ANC said at the weekend that "an agreement is an agreement" and that the government, as the proposer of the latest plan, could not do an about-turn when the matter came up for debate at the multi-party talks

However, there are moves in some government circles to amend what is seen as yet another weak-kneed concession to the ANC

P 13 Aids: what is your risk?
Leaflet, [199?].

Location: PPA

P 14 Date Rape - think about it before going on a date.
Pamphlet, [19--].

Location: PPA

P 15 Facts about HIV & Aids.
Leaflet, 1989.

Location: RAPCAN

P 16 Fighting Aids - a handbook for a community group.

Last attempt to settle row over constitutional court

252

ARG 15/11/93

TOS WENTZEL
Political Staff

LAST-minute attempts are being made at the multiparty talks in Kempton Park today to resolve serious differences on the composition of a constitutional court

Minister of Justice Kobie Coetsee gave an indication today that the government would be prepared to modify proposals which will give the new president and cabinet wide powers in appointments to the court

The court will be the most important legal institution in the country and will be entrusted with upholding the Bill of Rights and testing laws passed by parliament

Mr Coetsee said the issue of how the court would be composed was an "ongoing issue".

The debate had only started

Bodies such as a judicial service commission could be drawn in to help with decisions on members of the court

Democratic Party spokesman Tony Leon said his party would continue to voice strong opposition to present proposals which created the impression that there could be political appointments to the court

The court should be appointed in a non-party political way as it would be the guarantor of freedom in the new system

The DP consulted with the ANC and the government on the issue yesterday

There is concern in some National Party circles about the present proposals in terms of which the government and the ANC have agreed to six members of the court being appointed by the state presi-

dent with the agreement of the cabinet

Four will be appointed from the ranks of the Supreme Court by the state president in consultation with the chief justice and the cabinet

Dr Zac de Beer, leader of the DP, said he believed that there would be changes, although these might not be entirely to the party's satisfaction

But today the ANC issued a statement dismissing the DP's objections

It said the DP's views revealed a startling ignorance of how constitutional courts were established and functioned in democracies

The ANC proposals followed the practice in many countries, including the US and the UK where the executive appointed the judiciary

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Top advocate opposes appointments

By Peter Dennehy

JUDGES of the Constitutional Court should not be appointed by the government because their primary role would be the protection of the individual against the government. This was said yesterday by Mr Wim Trengove, SC, chairman of the General Council of the Bar, the countrywide association of advocates. In his view the primary role of

the Constitutional Court would be the enforcement of the Bill of Rights. He said the draft constitution does away with the existing system of appointment of all judges, by the State President — except in the most vital instances of appointments to the Constitutional Court.

When the draft constitution is adopted, most judges will be appointed by an Independent Judicial Commission. However, the government and the ANC have tabled proposals that most of the Constitutional Court judges — who will decide on whether legislation is in keeping with the constitution, resolve disputes between central government and regions, and

decide on issues relating to the Bill of Rights — should be appointed by the State President and cabinet. Six of the 10 would be appointed in this way, and they would not have to be judges or even practising lawyers. The Chief Justice, Mr Justice Michael Corbett, declined to comment yesterday, but it is known from formal submissions that he is opposed to the ANC/NP proposal.

ices
Councils

Sample Questionnaires

Probe Sowetan team 15/11/93 checks houses

By Josias Charle

THE Krugel Commission of Inquiry into allegations of corruption and irregularities in the Mamelodi Council will inspect houses that were allegedly not built according to specification tomorrow.

Commission head Mr Willem Krugel indicated last week that the on-site inspection would be carried out on a number of houses which were built without plans being approved or without any inspection being carried out before occupants moved in. (252)

A Mamelodi resident, Mr Edgar Vukela, told the commission on Friday that he was paying off a R75 523 bond to the Perm Building Society at a rate of R1 200 a month without occupying a house that had been built by a company in which former Mamelodi mayor Mr Sidney Mokone is a shareholder.

The commission has also heard that building inspectors were handed money in envelopes ranging between R300 and R500 at a time not to inspect new houses.

The inquiry continues today.

Anger erupts over court appointments

AR4 16/11/93

(252)

DP meets today to consider talks walkout

Political Staff

THE government and the African National Congress are facing a growing wave of criticism over yesterday's acceptance by the negotiating council of their controversial proposal for appointments to the powerful Constitutional Court.

Political opponents slammed the agreement — thrashed out in government-ANC discussions — while it was greeted with widespread dismay in legal circles.

The decision was taken by sufficient consensus in the negotiating council in spite of vociferous opposition from the Democratic Party and the Afrikaner Volksunie in an extended and sometimes heated debate at the World Trade Centre.

DP leader Dr Zac de Beer is to discuss the party's reaction

Press freedom bid is foiled

Political Staff

JOHANNESBURG. — A last-minute bid to beef up press freedom provisions in the draft Bill of Rights was foiled in negotiations last night.

The Democratic Party's Tony Leon, with support from the PAC's Barney Desai, had urged that the "freedom of expression" clause in the bill, which includes the right to a free media, be upgraded.

with senior advisers today and it appears a walkout from the talks could be on the cards — a move that could undermine the credibility of the process.

Dr De Beer said the DP would have to see if anything could be done to change the situation for the better.

"Alternatively we will have to see how this decision may affect our attitudes in the last phase of negotiations or in parliament when the matter is raised there."

Hopes of a last-minute breakthrough in talks with the boycotting Freedom Alliance also appear to have been dashed by the agreement.

A last-minute appeal by 13 university law faculty deans for negotiators to "reject this ill-considered proposal" failed to divert the negotiating council.

After the debate and repeated bilateral discussions in the

Their intervention followed recent lobbying by a wide array of newspaper groups.

The freedom of expression clause is one of the so-called "bb" clauses — those with intermediate protection.

Mr Leon and Mr Desai called for it to be upgraded to "aa" status — the highest.

But opposition from the ANC, the government and the SACP scuttled the bid.

corridors outside the negotiating chamber, an amendment was accepted under which the Judicial Service Commission — the body that will make recommendations on the appointment of judges and will be consulted on the choice of the Chief Justice — would also be able to make recommendations on Constitutional Court appointments.

This was dismissed by DP justice spokesman and negotiator Tony Leon as a "fig-leaf", while the AVU's Corlea Kruger described it as "window dressing".

In terms of the clauses that will now become part of the interim constitution, four of the Constitutional Court judges will be appointed from the ranks of Supreme Court judges "by the President in consultation with the Chief Justice and the Cabinet".

The other six — who will include two experts on constitutional law — will be appointed by the President after consultation with the president of the Constitutional Court and "in consultation with the Cabinet".

Critics argue that the proposal gives the president too much power to appoint judges to the court, which could become politically loaded.

The Constitutional Court will effectively act as the constitution's policeman. It will have the critical task of ensuring that legislation passed by parliament is constitutional and of arbitrating in disputes between various levels of government.

NOW LOOK HERE: ANC negotiator Dullah Omar and Order Minister Kobie Coetzee discuss a point at the World Trade Centre yesterday.

Bulldozed

Court plan through

CP 16/11/93

(252)

Political Correspondent

THE controversial selection proposal for the all-powerful Constitutional Court was bulldozed through after heated and acrimonious debate at the World Trade Centre last night.

An irate Democratic Party spokesman Mr Tony Leon said after the DP's proposals for an independently selected court had been thrown out that "the ANC have now got exactly what they wanted — control of the judiciary". Parliament and the executive in the new order.

The government-sponsored measure, which was "steamrollered" through with only the DP and the

FAST-MINUTE MOVE BY FREEDOM ALLIANCE

PAGE 2

Afrikaner Volksunie objecting, was "draconian". Even a top government source acknowledged later that the checks and balances in the selection process of the Constitutional Court — the most powerful body in the new constitution — were inadequate. The court has to uphold South Africa's new constitution, including the Bill of Rights.

Academics from at least six South African universities yesterday condemned the proposal to give effective power to the government to appoint the majority of Constitutional Court members.

In a statement, the academics said there could be no constitutional democracy if the highest court in the land was not independent.

The government and the ANC — the main archi-



ANGRY EXCHANGE. Law and Order Minister, Mr Kobie Coetzee (left) and Mr Tony Leon of the Democratic Party discuss their differences yesterday at the World Trade Centre after a lunch break and bilateral discussions.

To page 2

Picture AP

Constitutional court row

252
27/11/93
fects of the proposal —
welcomed the agree-
ment

"This is not a party-political issue, but one which could endanger the future of democracy under the new constitution," DP national chairman Mr Colin Eglin warned last night

A senior government source said the State President and the cabinet would be publicly accountable if they did not appoint a "balanced" Constitutional Court

Asked what would happen if the President and cabinet ignored the sentiments of the public, Parliament and the media, the source said it would "spoil" South Africa's image

The ANC acknowledged there was strong feeling inside and outside the legal profession against the continuation of the present practice whereby the executive chooses the judiciary

"We also confirm that there are persons on the Bench today who would make a notable contribution towards developing a new human rights-based jurisprudence in South Africa"

However, "this has to be balanced out by the fact that the present judiciary and legal profession consists almost entirely of those who had successful careers under apartheid"

Only the best candidates should be nominated to the Constitutional Court, the ANC said

The Constitutional Court will comprise a president and 10 other judges

● Four judges will be appointed from the Supreme Court by the State President "in consultation with the Chief Justice and the cabinet"

Heated

● Six judges will be appointed by the State President after consultation with the Constitutional Court president and the cabinet

Negotiators had agreed the present judicial system would continue, thus ensuring the jobs of judges, attorneys-general and magistrates

Despite some support for Mr Leon's proposals by Justice Minister Kobie Coetsee, the proposal was adopted with relative ease after six hours of heated debate

Negotiators agreed the seat of the Constitutional Court would be in Johannesburg, and the Appellate Division of the Supreme Court would remain in Bloemfontein

As the scramble for agreements reached fever pitch, a number of outstanding issues remained, they include

● The deadlock-breaking mechanism with regard to writing the final constitution and the percentages required for decision-making in the cabinet

● The electoral system — some five clauses regarding the running of the election still have to be decided on

● The constitutional position of traditional leaders

● Some of the powers and functions of regions

Clause may break legal deadlock

CT 17/11/93
(252)

JOHANNESBURG — The Democratic Party yesterday gave its grudging approval to a proposal that the Judicial Service Commission should be empowered to make recommendations on some Constitutional Court appointments

A decision is yet to be taken on the proposal, which was presented to the Negotiating Council at the World Trade Centre, but it is understood it has been deferred because of top-level talks involving the leaders of the DP, the government and the African National Congress

DP justice spokesman Mr Tony Leon said the suggested clause would at least allow some adjudication by the commission

But he said the Constitutional Court was still the only body empowered to challenge the constitution, and the DP stood by its concern that the council was allowing the court to be politicised

Mr Leon had earlier described the "shabby deal" between the government and the ANC as "disingenuous, dangerous and damaging to democracy"

The ANC had responded in a statement

DP gives grudging approval

that the entire question of judicial appointments should be approached in a "sober" manner — not in an "unbalanced" and "deeply" emotional fashion used by the DP and the Afrikaner Volksunie

The new clause, the product of closed-door discussion between the government, the ANC and the DP, was contained in a proposal document which followed Monday's ruling on the way in which the Constitutional Court would be appointed

Despite stiff opposition from the DP, supported by the Afrikaner Volksunie, the council voted in favour of the ANC/govern-

ment proposal allowing the State President to make appointments to the court in consultation with the cabinet

The clause put to the council yesterday said "The Judicial Service Commission shall make recommendations on the appointment or the filling of vacancies of judges of the Constitutional Court which recommendation shall be taken into account by the appointing authorities"

Having noted the DP's approval of the clause, however, the council then agreed to Justice Minister Mr Kobie Coetsee's request that a decision on its inclusion be deferred

Mr Coetsee said the clause was presently "the subject of talks"

DP leader Dr Zach de Beer said earlier he was in contact with the ANC and the government on the issue of the Constitutional Court

Sources said the talks on this particular clause almost certainly involved the leaders themselves — President F W de Klerk, Dr De Beer and ANC president Mr Nelson Mandela — Political Staff, Sapa

● A time to stand firm — Page 8

Report on bail with Minister

Star 18/11/93

■ BY HELEN GRANGE

The contentious issue of bail, highlighted last week by the SAP's criticism of magistrates who grant bail to alleged dangerous criminals, has been investigated by the SA Law Commission and its recommendations have been handed to Justice Minister Kobie Coetsee.

It is understood that a number of changes to the bail system — effectively tightening it up — have been recommended.

The SAP last week said the courts frequently released murderers and robbers on bail.

One example involved

THE SA LAW Commission tries to find a balance between the two extreme positions on bail

(252)
three men arrested in connection with a R3,5 million bank armoured truck ambush in which three security guards were killed on the Pietersburg N1 highway in September.

The three had initially been granted bail of R40 000 for two of the men and R10 000 for the third. The amount was then reduced when it be-

came clear they could not afford this amount.

"The position now is that bail is granted even before investigations into an alleged crime have started," said Major-General Leon Mellet, head of police public relations.

An SA Law Commission source said yesterday: "There is the argument that a person should not be detained before trial, and another argument that dangerous criminals should be held with no recourse to bail. A balance must be found between these positions, and to do this is very complicated," he said.

► **Out in a jiffy**
- Page 19

Army plans shoved through

BIDA 18/11/93

Political Staff

IT TOOK the 21-party negotiating council just 90 minutes early yesterday to decide the shape of the SA police service and national defence force of the new SA.

The first sight that the vast majority of negotiators had of Chapter 13 of the interim constitution, which spells out the details of the new security services, was at 1am.

The document — the product of months of talks between the ANC and government — and the bewildering speed with which negotiators were asked to deal with its provisions angered some delegates.

There was also concern among delegates that neither Law and Order Minister Hernus Kriel, nor his deputy Gert Myburgh, attended the session.

Defence and Justice Minister Kobie Coetsee, left to carry the can, barked out

instructions to officials to try to round up specialists to help oversee the process

PAC negotiator Barney Desai said his party wished to register its strongest opposition to the procedure as he had only just been handed the document. The PAC later walked out of the chamber in protest.

DP negotiator Douglas Gibson wanted to know: "What happens if this document is endorsed by the plenary but is incomplete and erroneous in form?"

The interim constitution makes provision for national and regional police services and an a national defence force made up of all armed formations on an equal basis, with the existing SADF not enjoying — in theory, at least — special status.

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Farmers' union urges Bill of Rights change

BIDA 18/11/93

Own Correspondent

CAPE TOWN — The property clause in the draft Bill of Rights should be amended and the proposed composition of the Constitutional Court should be changed, the SA Agricultural Union urged yesterday.

The appeal was made by union president Boet Fourie in a letter to President F W de Klerk.

He said the government would be abandoning farmers and property owners and failing to honour a personal undertaking that title deeds would be guaranteed if the proposed property clause, agreed by the negotiating council, was passed by Parliament.

The property clause, supposed to protect property rights, "was in fact intended to open the door to large-scale expropriation of land without fair compensation", Fourie said.

It seemed some of the criteria written into the property clause had a political

motive — and could serve as loopholes for nationalisation.

The government had accepted the clause even though it had been rejected by the judiciary, the Bar Association and the Association of Attorneys.

Referring to the proposed composition of the Constitutional Court, Fourie said it could in effect still become a "political court" which would inspire no confidence.

The proposed property clause created uncertainties, and if it was to be adjudicated by the Constitutional Court as currently proposed, it would seem the majority of the court could be political lackeys of the government.

No appeal could be lodged against a Constitutional Court ruling, which meant farmers would have to accept the judgment.

MARKET.

AWAITING

ARE AS FOLLOWS

Conference and

3 000 sq m

1 000 sq m

Focus on local government

GAVIN DU VENAGE

BIDA

THE local government negotiating forum would meet today to consider the Local Government Transition Bill which the negotiating council passed on Tuesday.

It would be the first full meeting since June.

Various members of the forum — which represents extra-parliamentary organisations and the local government establishment — have accused the ANC and government of sidelining other parties.

Today's meeting would consider chapter 10 of the transitional constitution, which deals specifically with local government. Negotiators at the multiparty talks adopted the chapter, which included reserving some wards for whites.

The forum would also begin planning the implementation of new local government legislation, civic leader Lechisa Tsenodi, a convener, said yesterday.

It would concentrate on ensuring Tuesday's agreement was put into practice.

The civics had supported the reservation of council seats for minorities.

The CP-dominated Transvaal Municipal Association met yesterday to discuss the agreement.

essed unfulfilled' ● Housing confusion

Sowetans 18/11/93

Hearing adjourned

By Josias Charle

THE Commission of Inquiry into allegations of corruption and irregularities in the Mamelodi City Council yesterday heard that the council had no housing policy. Testifying before the Krugel Commission, the council's Director of Community Services, Mr Johannes Jakobus Pienaar, said when he joined the council in 1987 there was no written policy on housing and that projects came into being as a result of council decisions. (252)

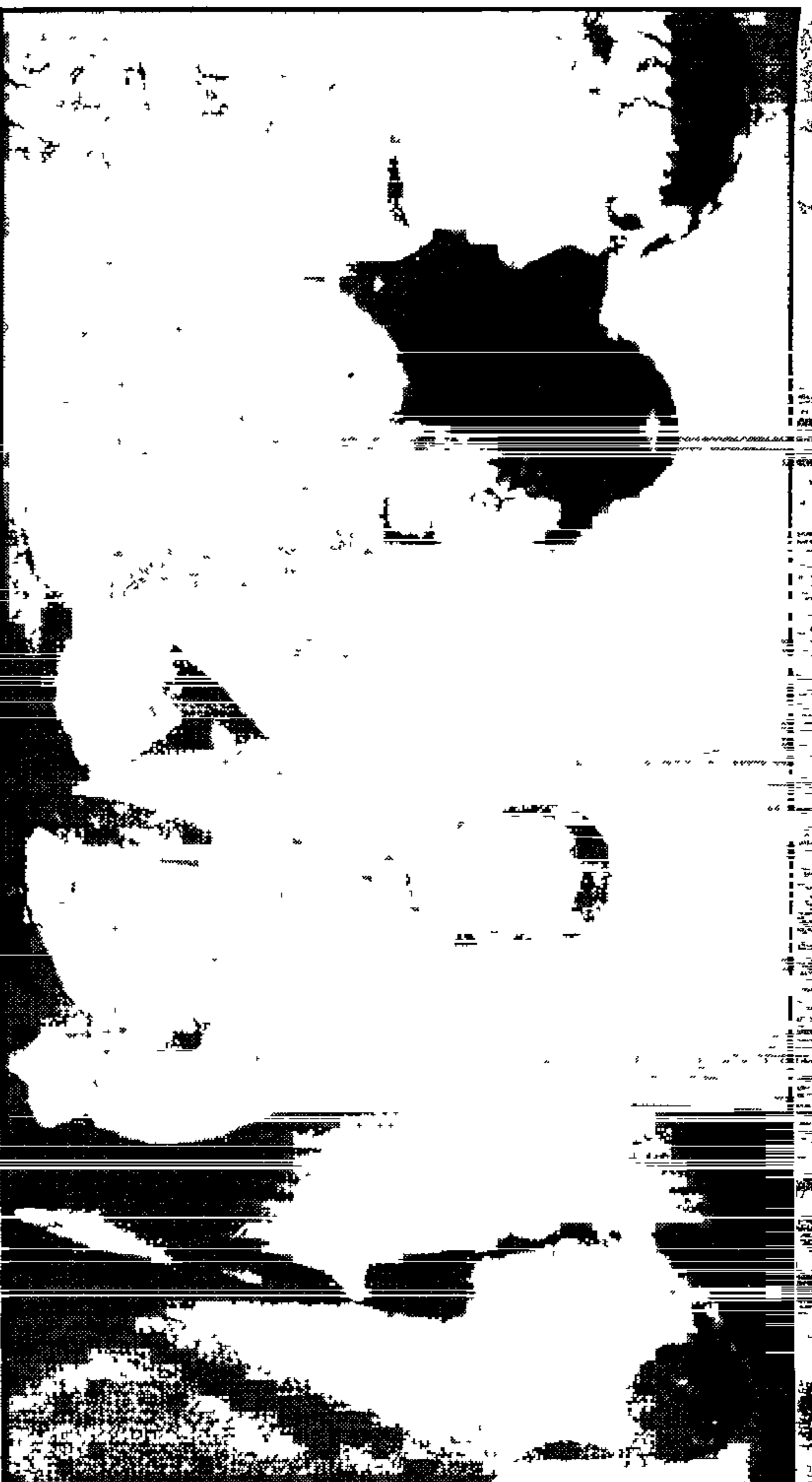
Pienaar said he decided to recommend

to the council that it should use the services of Metro Plan, a company which had carried out a housing survey in Atteridgeville.

He said his recommendation was accepted but soon thereafter he was instructed to stop involving himself in planning any land developments.

The commission also heard that resident Mr Billy Mokgothu had paid more than R14 000 for a residential site in 1987 but has never been able to develop it because another house had been built on it.

The commission was yesterday adjourned to November 30.



TIRED AT THE TALKS: Chief government negotiator Roelf Meyer briefs local and international journalists during one of the many delays in proceedings at the World Trade Centre yesterday

DP wins battle over constitutional court

ANC, government in 'miracle conversion'

APR 18/11/93

(252)

Political Staff
JOHANNESBURG — The Democratic Party has won its battle over the appointment of judges to the new constitutional court

A deal — struck last night after meetings between the DP, the ANC and the government throughout yesterday — gave the Judicial Services Commission (JSC) an influential role in the appointment of the judges

The JSC is a body of mainly legal persons which will also recommend judges for appointment to the Supreme Court

DP negotiator Tony Leon, who headed the party's campaign against the original proposals — described the com-

promise as a "fundamental breakthrough"

He and his party colleagues had argued that the original proposal gave the president too much of a say in the appointment of the 10 judges and could result in a politically loaded court

In terms of the new clause accepted by the Negotiating Council last night shortly before the plenary session was due to begin, the JSC will nominate 10 names for six of the court's judicial posts

These could be rejected by the new president and cabinet, but the judges would have to be appointed from a second list of appointments. Justice Minister Kobie Coetsee pointed out that in terms of

the agreement the JSC would "have regard for the need to constitute a court which is independent, competent and representative in respect of race and gender"

The ANC's Dullah Omar, who had vehemently defended the original provision, said the new deal gave his organisation "great satisfaction"

The PAC's Barney Desai remarked, to laughter, that the ANC and government backed down on this issue amounted to a "miraculous conversion on the road to Damascus"

The constitutional court will have a fundamental role in the new South Africa and will act as, in Mr Leon's words, "the guardian of democracy"

Call for bill of rights to recognise Muslim law

ET 18/11/93

Staff Reporter

(252)

H.13

Of the 26% of people estimated 11% have stand connections, an not have access to ad useholds, and 15% do

The way in which stan ferent for the PWV and the homelands. In the and pipe service is one where no more than 3 erefore any area where standpipe density is les to have an inadequate supply.

A NATIONAL Muslim organisation has submitted a memorandum to the Negotiating Council requesting the recognition of religious laws — particularly Muslim "personal law" — in a bill of rights.

Mr Sheriff Mohamed, regional chairman of the Dawah Foundation, said that Muslims, who have their own legal code under the Koran, were forced at present to regulate their personal affairs prescribed by Roman Dutch law.

He said a system of Islamic Courts with Islamic judges was envisaged.

In the homeland areas (Bophuthatswana and KwaNdebele) the information is collected using with the only differentiation being whether stand connections are available or whether safe water is available within 500 metres of the dwelling. No differentiation is made between boreholes and reticulated supplies with standpipes. Therefore broad assumptions have had to be made to decide what proportion of people have an "adequate" standpipe supply in terms of the definition used for this project.

Of the people in the region who do not have adequate supplies, most of them are in Bophuthatswana (6,1% of the region's population) with the balance in the PWV (3,0%) and KwaNdebele (1,7%).

4 3 EXTENT OF SURVEY COVERAGE

The method of collecting data is discussed in detail in the sections following this one. A summary of the survey coverage is given below.

Region	Population	Extent of survey coverage	
		%	Comment
PWV Black Towns	4 555 000	95	Extensive telephone interviews
PWV "White" Towns	2 460 000	100	Assumption that all have house connections
Bophuthatswana	1 234 000	85	Use of Bop Water Plan but no data for Bafokeng
KwaNdebele	494 000	70	Use DBSA database but some uncertainty
TOTAL	8 744 000		

4 4 PWV BLACK TOWNSHIPS

The method for determining the extent of access to water supply in the black townships of the PWV has been described briefly earlier in this report. The approach is described below in more detail:

Constitutional

(252)

C 18/11/93

Court: New deal

By PATRICK CULL
Political Staff

JOHANNESBURG — The Democratic Party scored a major victory last night when it succeeded in bringing about major changes in the way in which members of the Constitutional Court will be appointed

The changes follow two days of intense lobbying by the DP and were presented to the Negotiating Council at 9pm yesterday

In terms of the new proposals

● Four of the Constitutional Court's 11 members will be appointed by the Chief Justice,

● The court's president and its other six judges will only be appointed on the recommendation of the Judicial Services Commission (JSC), which must submit a list of nominees (The appointment of the court's first president will not take place in terms of this provision as he or she will be appointed by the State President),

● If some or all of the nominees are not accepted, the JSC must be informed and given reasons, and

● The JSC will thereafter submit further nominations

In making nominations, the JSC will have to take into consideration the "need to constitute a court which is independent, competent and representative in respect of race, and gender"

Proposing the amendment, Justice Minister Mr Kobia Coetsee said it left very

DP wins

battle on

judges'

selection

little room for interference by the executive

"It emphasises the independence of the judiciary"

The ANC's Mr Dullah Omar said it was a cause for great satisfaction that a model had been achieved of which all South Africans could be proud For the first time it was possible that an independent judiciary could arise

He stressed that the Constitutional Court would have to be representative The DP's Mr Tony Leon said he believed the change amounted to a "fundamental breakthrough"

He said the amendment went a long way to create a balance between the old system and the new invigorated one which would come with the new constitutional dispensation

Some elements in ANC and government ranks had been unhappy with the earlier

'BREAKTHROUGH'
Mr Tony Leon

LASHED OUT ...
Mr Tokyo Sexwale

NP/ANC deal on the constitutional court, in terms of which politicians would have had a decisive say in appointments to the court

The government/ANC deal was strongly opposed by the DP and was overtaken by yesterday's new deal

Within NP ranks, there had been considerable criticism of the approach of Mr Coetsee, but he had been backed by President F W de Klerk on the grounds that there would have to be a two-thirds majority in the cabinet for the appointment of judges

In Cape Town this week, ANC PWV chairman Mr Tokyo Sexwale lashed out at the jockeying for positions at the World Trade Centre, including the Constitutional Court

"Our Constitutional Court should not be a structure appointed for the politicians themselves," Mr Sexwale said

252 20
CT 18/11/73
'Change
clause on
property

Political Staff

THE property clause in the draft bill of rights and the proposed composition of the Constitutional Court should be changed, the South African Agricultural Union urged yesterday

The appeal was made by SAAU president Mr Boet Fourie in a letter to President F W de Klerk

He said the government would be abandoning farmers and property owners if the proposed property clause was passed by Parliament

The property clause, supposed to protect property rights, "was in fact intended to open the door to large-scale expropriation of land without fair compensation", Mr Fourie said

FREE SPEECH

Copies of a special supplement containing the full texts of speeches and illustrations from this year's FM Investment Conference will be sent to speakers and delegates. Readers who would like copies should telephone Stella Garson on (011) 497-2286

German society is homogeneous and it is precisely because SA is divided that the appointments should be seen to be nonpolitical. In the US, there are checks on this executive prerogative in the form of stringent congressional vetting (252)

It is true that political appointees to the Bench often confound their critics by showing an unexpected independence of mind. That could well happen here but how will they be perceived?

"It is important that the impartiality of the judges should be perceived as such," says prominent Johannesburg attorney and chairman of the Legal Resources Trust Charl Cilliers, in his personal capacity.

"If they're appointed by the government of the day, they will not be seen as impartial and this will prejudice the functioning of the court."

Another disappointment, he says, is that the Appellate Division will have no part to play in testing issues related to the constitution and Bill of Rights.

Indeed, some would argue that a major reason many support the negotiations is related to protection of the rights of the individual under the Bill of Fundamental Rights. Any perceived doubt on this score would be undermining.

The constitutional court will also play a key role adjudicating disputes between the central government and the regions or provinces as to what powers and responsibilities lie where.

Unbalanced

Something more in line with the high standards the negotiators have laid down for members of the Independent Electoral Commission should have applied in the case of the constitutional court.

The ANC claims the debate on the constitutional court has become unbalanced and deeply emotional. It churlishly points out that only the DP and the Afrikaner Volksunie oppose the proposal that has been accepted by the negotiations council.

A sober approach is needed that takes into account the hopes and fears of all South Africans, says the ANC. The organisation acknowledges there is "a strong feeling inside and outside the legal profession against the continuation of the present practice whereby the executive chooses the judiciary" and accepts that there are people on the Bench today who would make a notable

contribution towards developing a new human rights-based jurisprudence.

But "this has to be balanced by the fact that the present judiciary and legal profession consists almost entirely of those who had successful careers under apartheid. They should not be allowed sole control of their succession."

The proposed court will give "due weight" to the role of existing judges and allocates a particularly important position to the Chief Justice. Four of the 11 judges on the court will be drawn from the present judiciary, with others eligible for consideration.

The Cabinet, in appointing six judges, will receive a list from the Judicial Service Commission "and will certainly take it into account," says the ANC. It states that "only the best people" should be nominated to the court.

But pious words are no substitute for getting it right at the outset. Options should and can be considered, even at this stage of preparing the negotiations "package" for passage through parliament next week.

One would be to make the appointments subject to unanimous approval by the multi-party Cabinet of the government of national unity.

Another would be to give the major say to the Chief Justice, advised by an independent panel, composed of, say, the Judge Presidents and the Bar Council.

"A new country is being born and it is months and years of hard labour which are now coming to fruition," said President F W de Klerk in a surprise visit to the negotiating council at the World Trade Centre on Tuesday — the last day of scheduled negotiations and ahead of Wednesday's plenary session at which the package of constitutional Bills will be formally adopted by political leaders.

"Today is an historic day and that is why I am here," said the President. "This constitution can achieve the goal of ensuring a peaceful transition in SA and will lay the foundation for a proper democracy that can bring peace to our country."

De Klerk said the door was not closed on the Freedom Alliance, whose leaders he would be meeting later in the week.

Negotiators were confident that the political principles, if not all the details pertaining to the interim constitution, together with transitional arrangements would be ready for passage by the special two-week session of parliament starting on November 22. ■

CONSTITUTIONAL COURT Fun 19/11/93 Pious words

It is hard to resist the conclusion that the ANC envisages the proposed constitutional court as something of its poodle. Why else is it so anxious, as the likely next government, to want to appoint the judges who will serve on it, refusing even to consider a more impartial selection process? (252)

The furore over who will do the appointing — with DP threats of a walkout and an appeal by a number of law faculty deans for this "ill-considered" proposal to be dropped — has, arguably, sullied the reputation of this vital institution before its establishment.

Little wonder that the ANC had to say it "trusts that the best candidates for this important court will not be put off by the acrimony that has crept into the debate."

The constitutional court will, as the DP describes it, be the most important court created in SA.

It will be called upon to test whether the government of the day is in breach of the Bill of Rights and the constitution. That being so, it is inappropriate that the government should appoint the judges.

Comparisons with countries such as Germany and the US, where the executive does the appointing, are perhaps not instructive.

The Watchdog Judges

(252)

ARL 20/11/92

WITH many of my former colleagues, I believe that the Constitutional Court is a bottom line issue for all South Africans

We anxiously seek to live under the rule of law, secure in the knowledge that one oppressive system should never be supplanted by another, that we ought not be seen to legitimise a system with a renewed capacity to trample on the fundamental rights of the individual

This is as important to the majority as to the minorities

We need to understand the dangers inherent in a new dispensation, more particularly if the instruments through which our rights are to be protected are subjected to the unbridled authority of those who hold political power

Rendering with humour the dictum about the capacity of power to corrupt, Lord Shawcross said "power is delightful, absolute power is absolutely delightful"

The checks and balances that a constitution and a Bill of Rights impose on the political authorities are almost always anathema to those who govern

The will of the people should prevail. Lest we forget, I would remind readers of our own very recent history. The "volkswil" required that voters should be removed from the common voters role. A High Court of parliament" was created to achieve this objective to give judgement on constitutional issues. The Senate was packed (As the late Hamilton Russell observed it became a "house of ill-repute" peopled by gentlemen of easy virtue") The Appeal Court was enlarged

The selfsame "will of the people" and their protection was the justification for arbitrary detention and banings

This resulted in the torture and assassination of dissidents by a security apparatus operating beyond the law and outside of the supervision and control of the Courts. The provisions of the Group Areas Act were enforced and mass relocations under grand apartheid took place through administrative fiat

It is because of this painful history that we are about to enact a new constitution, agreed this week by the negotiators at

■ Why should the person in the street be worried about how the Constitutional Court is structured, how it functions and the impact its decisions could have on their lives? The court is not remote from the everyday concerns of John and Mary Citizen, writes former judge **JAN STEYN.**

Kempton Park, with a Bill of Rights

The manner in which constitutional provisions safeguard the principles of good government is subject to interpretative powers by the courts. They are the custodians of this socio-legal contract. This capacity places some constraints on the ability of the legislative and the executive to depart from its terms

Most importantly, however, the Bill of Rights has been "sold" to the public on the basis that it will be justiciable by an independent judiciary

To my mind, this means a court of law and not some semi-political creation. For this reason alone I believe that the Constitutional Court should be an integral part of the judicial system and fully integrated into its structure and framework

As long ago as the Sixties and early Seventies, both serving judges and leading lawyers urged the establishment of what is now referred to as a Judicial Services Commission

The provisions in the 25th report of the Technical Committee at the Negotiation Council at Kempton Park in this regard are accordingly to be welcomed. It creates a mechanism through which both judicial excellence and representativeness can be provided

The conventional judiciary can only be appointed on the advice of this body

It is puzzling that this desirable mechanism was not harnessed when the method was considered for appointment of judges of the Constitutional Court

Let there be no doubt that we as law-



Jan Steyn

yers must assume some responsibility for the unrepresentative nature of the system through which justice has been administered in South Africa. That this must be rectified is beyond dispute. However, the answer can never lie in conferring virtually unbridled power on the Head of State to appoint persons whom he believes will ensure such representativeness

Richard Nixon attempted to secure appointments complying with his political preferences with two symbols of mediocrity in Judges Carswell and Haynesworth in the 1970s. One notes also the damage inflicted on the status of the US Supreme Court in its present politicised structure with the controversy surrounding the appointment of Judge Thomas and the rejection of the appointment of Professor Bork

The contention that the present South African court system lacks "legitimacy" or "credibility" is a smokescreen

The Appeal Court under the leadership of Chief Justice Corbett has an exemplary record of competence and impartiality. It has also shown its determination to preserve and protect the fundamental values of a just society

Statements concerning "credibility" are sometimes made with genuine concern about representativity. In this context they need to be taken seriously

Views expressed that the court cannot be the "creation of the law barons" (Dullah Omar), or "we are primarily here for the interest of the majority" (Joe Slovo), tend to confirm that those who contend for the present proposals to be enacted, intend the Court to function not primarily as a court of judicial excellence

Instead, such views indicate an intention that the court should act in the interest of the State in giving expression to its mandate from the voters, against the rights, freedom and liberty of the individual, as an extension of the political will of the majority political party

Representation has to be addressed. The mandate to the Judicial Service Commission could well include targets to be achieved in pursuit of this goal

The latest proposals will, however, ensure that members of the Constitutional Court cannot be appointed by the head of State with no check or balance other than convention. Instead, the role played by the Chief Justice and by the Judicial Service Commission will now be paramount

The last-gasp amendments to the provisions of the constitution, dealing with the composition of the Constitutional Court and the appointment of judges, have gone a long way towards achieving the objectives I have outlined above

The capacity of the Chief Justice and the Judicial Service Commission to ensure quality appointments is considerable. Representativeness can and should be promoted through these mechanisms

Whilst I personally adhere to the view that the Constitutional Court should have been integrated into the existing court structure, South Africans can breathe easier in the knowledge that independence is bound to continue to be a hallmark of our courts, including the constitutional arm (Jan Steyn is a former Judge of the Supreme Court. He is a member of the Court of Appeal of Lesotho and is presently Chairman of the Independent Development Trust)

Our DEMO

21/11/93

CIPress

By **THEMBA KHUMALO**

WHEN this country's five-year transition period kicks off on April 27, South Africans of all races will for the first time enjoy basic human rights

The following are among the rights contained in the constitutional package adopted by 19 parties at the multiparty talks at the World Trade Centre on Thursday morning

- Every citizen who is 18 or above will be entitled to vote
- All shall enjoy the right to take any legal structure or authority to a constitutional court – consisting of a president and 10 judges – for legal redress should he feel that his/her basic rights have been violated
- This is consistent with the universal legal perception that no one, be it the head of state or an ordinary citizen, is above the law
- Everyone shall have the right to freedom and security and no one shall be detained without trial
- Every person shall have the right to engage freely in economic activity and pursue a livelihood anywhere in SA
- Everyone shall have the right to acquire and hold rights to property and to dispose of such rights
- Children shall have the right to a name and nationality from birth, to parental care, to security, basic nutrition and health and social services and they shall not be subjected to neglect and abuse
- All children shall have the right to basic education and equal access to educational institutions
- A state of emergency shall be proclaimed under an Act of Parliament only when the security of the republic is threatened by war, invasion, general insur-

Real rights for all in brand-new SA (252)

- rection, or a time of natural disaster
- There shall be a State President assisted by two of his executives as deputies
- The National Assembly shall consist of 400 members elected in accordance with the system of proportional representation of voters
- The State President shall be the commander-in-chief of the defence force
- The judiciary shall be independent, impartial and subject only to the constitution and the law
- There shall be a Judicial Services Commission whose main task will be to make recommendations regarding the appointment, removal from office, term of office and tenure of judges of the Supreme Court
- There shall be a Human Rights Commission which shall appoint a public protector who will have the function, powers and duties to investigate on his or her own initiative or on receipt of complaint of any alleged maladministration in connection with the affairs of the government at any level
- He or she will also investigate abuse or unjustifiable exercises of power

Odi 2	178 000			
Bafokeng	178 000			
WITHOUT BAFOKENG:				
Total	1 056 000	308 000	291 000	457 000
		29%	28%	43%
ADJUST FOR BAFOKENG				
Total	1 234 000	358 000	345 000	531 000

It is only the proclaimed towns which have on-site water supply. All the five towns in and Moretele districts have full reticulation to every stand, with the exception of Klippa only 10% of stands are connected

As mentioned in the introduction to this report, the decision as to what is adequate in this part of the region must be different to what it is in the more central parts of the region. The principle used by the Bophuthatswana Government is that water within 500 metres is adequate for the settlements other than proclaimed towns. This may well be a reasonable approach and it is not questioned here. However, in order to use the information within a classification which is consistent for the country as a whole, a broad assumption is made, dividing the population who have water within 500 metres is as follows:

Standpipes (> 1 per 25 households)	25%
Standpipes (< 1 per 25 households)	75%

CIVIL RIGHTS

Corruption everywhere

CIPress 2/11/93

By THEMBA KHUMALO
and Sapa

SERIOUS allegations of corruption, maladministration and mismanagement might speed up the reincorporation of KwaNdebele and Lebowa into SA.

On the eve of formal re-incorporation of all the homelands, damaging reports by commissions into the running of the two self-governing territories were released this week.

The weighty reports by the Parsons Commission on KwaNdebele, and the De Meyer Commission on Lebowa, were released to the media on Friday.

The reports were published barely a few hours after the euphoria that came with the news of an agreement of a constitutional package by 19 of the 21 multiparty negotiators at the World Trade Centre.

The two homelands are ANC allies and members of the Patriotic Front which consists of several organisations that agree on the major constitutional issues in a new SA.

ANC spokesman Ronnie Mamoepe has said the government should investigate homeland corruption fairly and should not only single out those homeland leaders who were outspoken against Pretoria (252). Mamoepe said although his organisation did not condone corruption by anyone, Pretoria seemed to have targeted only the bantustan leaders who were openly critical of the government while it gave a blind eye to "its allies".

Among the Parsons Commission recommendations were that KwaNdebele's Justice Department be placed under the control of the

same department in the central government to raise its justice system and administration to a more effective level.

The commission found that appeals by convicted prisoners had received no attention and review cases were seldom sent to the Supreme Court in time. There was "barely a semblance" of correspondence or a system for filing completed cases.

The commission also found that the disposal of exhibits in criminal cases was seldom carried out.

The fourth De Meyer's Commission findings on Lebowa have justified the taking over of the homeland's financial matters by the South African authorities.

An earlier report on the homeland revealed that R1-billion disappeared through mismanagement and corruption.

Stricter controls proposed for debt collectors

DAVID YUTAR
Staff Reporter

DEBT collectors may come under stricter control, if proposals by the SA Law Commission are accepted.

The commission has published a working paper containing tentative proposals for control over the activities of debt collectors. The commission hopes to elicit comment on the propos-

als to enable it to make "substantiated recommendations" to the Minister of Justice.

The working paper also suggests measures to simplify the judicial procedure for the recovery of debts.

These include amending the Magistrate's Court Act so that debt recovery will "involve considerably fewer formalities, requirements and notices". The proposals also aim to

scale down the "prominent role played by clerks of the court" in the recovery procedure and to create a greater balance between the interests of creditors and debtors.

The proposals stem from the awareness that "no judicial control... is exercised over the activities of debt collectors, contrary to those of attorneys and debtors are alleg-

edly prejudiced by the lack of control in many instances".

Those wanting to comment may write to the commission for a free copy of the working paper c/o The Secretary, SA Law Commission, Private Bag X668, Pretoria, 0001, or can contact Mrs. P. Kotze, at 012/332 6440.

The closing date for comment is December 31.

252

REC 2211193

ANC 'against death penalty'

THE ANC remains opposed to the death sentence — in spite of claims by ANC leader Mr Nelson Mandela that the organisation would reconsider its policy on hanging (252)

Spokesman Mr Carl Niehaus said the ANC was clearly opposed to capital punishment.

"That is our adopted policy Mr Mandela was expressing a personal opinion" ET 23/11/73

Referring to the violence in Natal, Mr Mandela had said the ANC could not allow the slaughter of innocent people by those who believed they would not be hanged. The ANC would have to rethink its policy on the death sentence



Death penalty: 'ANC has double standards'

(252)

THE African National Congress's egg dance about the death penalty illustrated the movement's double standards and depended on which person was giving their standpoint, National Party spokesman Marthinus van Schalkwyk, said yesterday.

"For many years the ANC labelled the death penalty as being barbaric while it was the NP standpoint that it was justified in extreme cases. Now suddenly ANC President Nelson Mandela says the organisation will reconsider its policy on the matter," he said in a statement.

"The admission that this adaptation to policy would be considered only when the ANC feels its has been touched by certain occurrences leaves serious doubt on the organisation's process of formulating policy" — Sapa

ARC 24/11/93

SELF...

House of Reps schools to take HIV children

ARC 24/11/93

□ Department issues a new Aids policy

JOHN VILJOEN
Education Reporter

CHILDREN infected with the HIV virus will be accepted in House of Representatives schools and colleges, in terms of a policy on Aids issued by the House's department of education and culture.

And these children will be entitled to all rights, privileges and services accorded other pupils and students.

Principals and rectors are responsible for the effective implementation of the programmes and procedures contained in the policy, published in a special edition of the department's *Education Bulletin*.

According to the bulletin, an official policy on the disease was needed because school communities were being overwhelmed with "an avalanche of conflicting information about the dangers of Aids".

An Aids policy for schools and colleges was necessary and appropriate since it would help principals, rectors and others to be prepared to address community fears relating to the disease in schools and colleges.

A policy would enable colleges and schools to deal with decisions about infected pupils, students and staff in a standard way.

The department was seeking to do what was "legal and morally and ethically right and acceptable".

Children who were known to be carriers of viruses which lead to potentially life shortening medical conditions were now part of the primary school intake. *Education Bulletin* said.

There are many more children who might be carriers but remained unidentified.

According to the new policy "every pupil student and member of staff

shall be viewed and treated as a potentially HIV-infected person, as though they were carriers".

Barring special circumstances, children and students known to be infected with the HIV virus will be admitted to the school or college to which they apply.

They are entitled to all rights, privileges and services accorded other pupils and students.

All schools and colleges should provide a sanitary environment and establish routines recommended by health care workers, medical institutions and nursing services, for handling body fluids.

School regions must administer a vigorous programme of on-going education about HIV for pupils, students, their families and all school and college employees.

Education in first aid as well as techniques for preventing the spread of infectious diseases will be provided for all staff.

Training will include the handling and cleaning up of body fluids such as tears saliva faeces, cuts and accidents with needle.

Large blood spills such as those from nose bleeds should receive particular attention. Latex gloves are of extreme importance.

Pupils and students may participate in contact sport and other school activities if they wish so long as this is done in consultation with and on the advice of their doctor.

Universal precautions in connection with injuries involving blood must be adhered to.

The school and college must ensure that maximum confidentiality is maintained when it becomes known that any pupil, student or staff member is infected with HIV. *Education Bulletin* said.

Death penalty: 'ANC has double standards'

(252)
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"The admission that this adaptation to policy would be considered only when the ANC feels its has been touched by certain occurrences leaves serious doubt on the organisation's process of formulating policy" — Sapa **ARLT 24/11/93**

Von Lieres digs in over duty 'in interest of justice'

'Journalists must testify'

Star 26/11/93

■ BY HELEN GRANGE

Witwatersrand Attorney-General Klaus von Lieres und Wilkau is still fiercely defending the contentious section 205 of the Criminal Procedure Act, although this legislation is expected to be amended by Parliament within days

The section, which makes it an offence for a witness to refuse to give information in court, has been the subject of

hot debate for years.

Addressing the Johannesburg Press Club yesterday, Von Lieres reiterated his long-standing assertion that all citizens, including journalists, have a duty to give evidence in the interests of justice

He denied that section 205 threatens press freedom. It was used with a great deal of discretion and when journalists' evidence was vital

Von Lieres further suggest-

ed that newspapers' stand against section 205 was motivated by a desire for political protection. He questioned how they would react to it under a new government (252)

Amendments will be

■ Judges — in addition to magistrates — may be approached to hear a matter

■ A person who refuses to give information would be found guilty of being a reluctant witness if he did not have a

just excuse for the refusal; or if the information were necessary in the interest of justice or of law and order

■ Every matter under the section will be attended to personally by an Attorney-General or a person designated by the Attorney-General

The amendment will, in effect, give the courts the discretion to decide whether a journalist should be forced to reveal his sources.

(253)

No death sentence — ANC

JOHANNESBURG — Capital punishment would be abolished under an ANC-led government, ANC president Mr Nelson Mandela said here yesterday

“Hanging is a barbaric form of punishment. Its failure to stem the increasing wave of violent crime has been demonstrated,” he said

Addressing the first PWV

“people’s forum”, he said the ANC would examine the merits of those cases in which the death penalty had been handed down in the knowledge that an ANC government would be opposed to the death sentence

Mr Mandela said at the week-end the ANC would re-evaluate its policy that the death sentence should be abolished in view of the “senseless” murders

in Natal, especially those of ANC members

Mr Mandela also said yesterday radical economic policies to uplift blacks and redress past imbalances would be possible only if the ANC achieved a clear majority in the election

He appealed to businessmen to encourage black business development.

CT 25/11/93

OK to be gay in a new SA

DALE KNEEN
Weekend Argus Reporter

GAY and lesbian couples could soon be allowed to be legally married, adopt children and pay the same tax and get the same housing and medical-aid benefits as heterosexuals.

This is the interpretation of legal experts and homosexual-rights activists to the the chapter on fundamental rights in the new constitution approved by negotiators at the World Trade Centre

In this chapter in the Draft Bill of Rights, discrimination on the grounds of "race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, creed, culture or language" is prohibited.

Groups representing the lesbian and gay minority are now planning to meet in Cape Town next month to formulate a strategy to press for a speedy end to all discriminatory legislation

A meeting to be held on December 11 at the Gardens Presbyterian Church has been arranged by the Organisation for Lesbian and Gay Activists (Olga) and will be open to the public. At least 13 organisations representing homosexuals around the country will be attending the meeting, which will be preceded by a march

Olga spokesman and meeting organiser Derrick Fine said the meeting would culminate in the adoption of the first lesbian, gay and bisexual rights charter for South Africa

■ Gay and lesbian communities in South Africa may find themselves with constitutional protection in advance of that achieved by many Western countries, including the United States.

"Developments in the constitutional negotiations have overtaken gay and lesbian communities.

"The country could be one of the leaders in the world in terms of homosexual rights," said Jack Lewis, a spokesman for the Association of Bisexuals, Gays and Lesbians (Abigale).

Legislation which would have to be changed because it infringes these rights includes:

■ The repeal of all laws criminalising sodomy and other sexual acts.

■ The age of consent for homosexual acts to be the same as for heterosexual acts (at present heterosexual sex is legal at the age of 16, but homosexual sex only at 19)

■ Legal recognition of gay and lesbian partnerships, including such partnerships obtaining the same housing benefits, tax concessions, adoption rights, hospital visiting rights and other rights as heterosexual partnerships

252 ARG 27/1/93

Walters Dr in one of

THE REVIEW

NOV 1983

Goldstone units in 254 cases

By CARMEL RICKARD

SPECIAL Goldstone units have conducted 254 investigations over the past year, according to an annual report released on Friday.

The investigation units report, compiled by co-ordinator J J du Toit, says the units played an important part in curbing public violence.

Mr du Toit lists several former "flash points" where peace has prevailed for several months since the intervention of the Goldstone units. (252)

The units also helped investigate the possible role of Military Intelligence in public violence, an investigation which was continuing.

The report notes the serious problem caused by mistrust between certain communities and the SAP or the Kwazulu Police, saying the refusal of many witnesses to speak to these forces has made the work of the Goldstone units more difficult.

With the exception of one incident, the massacre at Power Park which is to be investigated by a special commission chaired by Advocate Solly Sithole, the units found no evidence of direct police involvement in violence, although this was the most frequent allegation made to the units.

The five units include 13 SAP officers, 10 practising attorneys and five international observers.

ANC and IFP blamed

THE fight between the ANC and IFP was still "a primary trigger" behind South Africa's violence, the Goldstone Commission Regarding Public Violence and Intimidation said in its first annual report

The ANC has criticised the findings. The commission said socio-economic factors and negative perceptions of the security forces continued to be contributory factors

"It remains clear that a primary trigger of current violence and intimidation remains the rivalry between, and the fight for territory and the control thereof by, the Inkatha Freedom Party and the African National Congress"

Working with five investigation units

Sowetan 29/11/93
stationed in Johannesburg, Durban, East London, Port Elizabeth and Cape Town, the commission conducted 254 investigations between October 1 1992 and September 30 1993

The commission's Transvaal and Orange Free State unit had performed 21 investigations into allegations of security force involvement in violence and had found that "the majority of matters in this regard resulted from a breakdown in police-community relations, a lack of communication between the police and the community and the resultant lack of trust in the police" (252)

"With the exception of one investigation, which is still pending, there has been no evidence of direct police in-

volvement in political violence"

In two of the instances where it was alleged the police were involved, there was evidence the accusers had been coerced into making false allegations

The commission said it was literally impossible to investigate every specific incident of violence and "little significant advantage is to be gained by multiplying inquiries into specific incidents of violence"

The time had come for broader inquiries such as those into the unlawful importation of firearms, alleged intimidatory activities by the security forces, private armies and security firms, the taxi industry, and, train violence — Sapa

Law career?

DAVID YUTAR
Staff Reporter

THINKING about a career in law but unsure whether to commit yourself to university studies?

The full-time one-year diploma in paralegal studies being offered for the first time in South Africa by a Cape Town paralegal school may be your solution.

Increasing demand for paralegals has prompted the school to introduce the course which runs for the first time in February 1994.

School of Paralegal Studies director Colin Fortes said the school had had "overwhelming support" for the course from the business community.

Mr Fortes said the diploma course was aimed not only at students hoping to find employ-

Check out the paralegal studies diploma

ARL 29/11/93

ment as legal support staff in firms of attorneys but also those hoping to work in the legal departments of banks, financial institutions and private corporations.

"The course will also be of immense value to students who are contemplating professional careers in law but who would like to spend a year investigating this option before committing with university legal studies.

The diploma course will require students to attend morning lectures for a period of 10 months before sitting for an exam. Successful candidates will be awarded the diploma.

Students have to complete eight "core" courses and elect four out of eight optional courses, giving them a total of twelve credits.

The core courses include an introduction to the study of law, litigation procedures, contracts and computer literacy.

Family and business law, wills and estates and criminal, labour and tax law are among the optional courses.

No previous knowledge of law is required by candidates wishing to enrol for the diploma but only students with matriculation (university exemption not required) will be admitted.

Paralegals are legal assistants who, although not qualified to represent clients or give legal advice, perform invaluable administrative and quasi-legal functions.

First introduced in the United States in the late 1960s, paralegalism is rapidly becoming one of the fastest growing oc-

cupations in that country.

In South Africa, until very recently, paralegal training was largely limited to secretarial programmes and on-the-job training.

In August last year the School of Paralegal Studies was established in Cape Town, its aim being to provide paralegal training for aspirant and mid-career legal assistants.

Since then more than 270 students have attended part-time certificate courses at the school.

Mr Fortes said the school was confident the newly-offered diploma course would fulfil an important and growing need in the private sector.

Further information can be obtained from the school's student adviser at 45 1329 on weekday mornings.

Amnesty for most 'political' crimes before the election?

ARC 29/11/93

Political Staff

(252)

A GENERAL amnesty for almost all politically-motivated criminals could be implemented before the April 27 general election to "wipe the slate clean of past bitterness."

Sensitive negotiations are being conducted on this by the government and the ANC.

There are still major issues to be agreed to but a general amnesty would be far-reaching and dramatic.

It would mean that people who have committed politically-motivated crimes — but have not yet been convicted — would not be convicted. People in jail for such crimes would be freed.

The government has to convince the ANC that a general amnesty should be implemented before the present constitution comes to an end and not afterwards.

Government sources said today that setting a date for a general amnesty was always going to be difficult. At present, people who committed political crimes before October 8, 1990 could apply for release from jail or for indemnity from prosecution. The release of political prisoners was one of the preconditions set by the ANC for talks with the government.

There is great sensitivity in government and ANC circles that the new date must be set before April 10, 1993 when Clive Derby-Lewis and Janusz Waluz murdered Chris Hani, and certainly before the St James church massacre of July 25.

There is thinking in government circles that a general amnesty would apply only to parties that took part in the April 27, 1994 election. This means that the estimated 100 Inkatha Freedom Party members in jail would only be freed under a general amnesty if the IFP agreed to take part in the election and be bound by the result.

Government sources said today: "A general amnesty is a major matter that must still be addressed and finalised. The government would find it very difficult to move into a new dispensation if members of its establishment, including the armed forces, were open to any kind of prosecution after a transition of power. A new system should begin with a clean slate."

Government sources pointed out that more than a thousand ANC members had benefited from early release from jail and indemnity already — including people involved in acts of terror and necklace murders.

"Underlying the whole process of negotiation right from the beginning was that this would be successful only if all the parties could be assured that in the new constitutional dispensation everybody would be able to begin with a clean slate," a government source said today.

Is this a new era for human rights?

252

ARC 29/11/93

**ALAN DODSON and
RAYLENE KEIGHTLEY**

WITHIN months the South African legal system and especially the new Constitutional Court could be grappling with unprecedented challenges to laws and actions which offend people's fundamental human rights

After months of intensive debate by the political players at Kempton Park, South Africa will soon have an interim Bill of Rights

After years of opposition to a Bill of Rights by the Nationalist government, its introduction will be a truly historic moment

The range of rights included in the latest draft is diverse

Many are standard rights to be found in most constitutions of the world, such as the right to life, to privacy, to freedom of expression, freedom of assembly and political rights etc

Some reflect a concern for popular issues of the day, such as "the right every person has to an environment which is not detrimental to his or her health or well-being" and children's rights

Other rights have been included as a direct response to past inequities

A good example is the right of people who were dispossessed of their land to obtain

redress which has just been added to the Bill

Human rights lawyers who tried in vain to persuade the Appellate Division to read safeguards into state of emergency legislation in the 80s will welcome the many explicit protections for emergency detainees

Similarly the Bill of Rights makes provision for affirmative action measures

Although the term "affirmative action" is not specifically used in the document, the equality clause opens the door to policies aimed at assisting to overcome the disadvantages suffered by them as a result of apartheid

The Bill is clearly a product of political compromise

Certain highly emotive issues, in particular abortion and capital punishment, have not been specifically dealt with

There is simply a clause guaranteeing the right to life

No attempt is made to lay down the extent to which this right precludes abortion and capital punishment

This is not surprising given that many of the political parties involved in the negotiations process have not committed themselves on these issues

Instead it will be left to the Constitutional Court in cases before it to decide whether a woman has a right to abort a foetus she is carrying and whether the state may lawfully execute death row prisoners

Other rights contained in the Bill will affect the court's decision, such as, in the case of abortion, the right to privacy and, in the case of capital punishment, the right to freedom from cruel, inhuman or degrading treatment or punishment

Recently the High Court of Zimbabwe set aside death sentences on the grounds that long periods on death row offend a similar clause in their constitution

Clause 8, the Equality Clause, may be the greatest source of constitutional litigation, given the inequalities which pervade South African society

It outlaws all direct or indirect discrimination, whether on the grounds of race, gender, ethnic or social origin, sexual orientation, age, disability, conscience and so on

Many examples of existing laws which offend the Equality Clause spring to mind extra service for conscientious objectors, continued call-up for white campers, rules which deny married women in the public service housing subsidies

The Bill will apply vertically (against government) and not horizontally (between citizens)

A practical example will explain this

A developer who does not make his building user-friendly for the disabled cannot be challenged in court, but a disabled person (or society for the dis-

abled) could use Clause 8 to challenge the city council's decision to approve the building plans

Dramatic changes have been made to the laws of "legal standing"

Societies and interest groups such as the Wildlife Society, which previously had great difficulty in proving a right to seek a ruling from courts on public interest matters, are now expressly given the green light

Accused persons in criminal proceedings will also benefit

Their right to remain silent is enshrined in the Bill and if defending themselves will be too complicated a task, they will be entitled to legal representation at the state's expense — something the Appellate Division recently ruled against

Where the State is not obliged to provide a lawyer, legal costs will remain a serious hurdle for individuals trying to enforce their fundamental human rights

Legislation to protect bona fide litigants who lose will be necessary if the Bill is to have credibility

The role of human rights lawyers and organisations such as the Legal Resources Centre, SALDEF, Lawyers for Human Rights and the Legal Aid Board will also be crucial in helping litigants bring their cases to court

■ Alan Dodson is a director of the Cape Town firm of attorneys, Mallinck, Röss, Richman & Cloenberg Inc and Raylene Keightley is a senior lecturer in the department of Roman-Dutch and private law at the University of Cape Town.

General amnesty before election on the cards

BY CHRIS WHITFIELD
POLITICAL CORRESPONDENT

Cape Town — A general amnesty for most politically motivated criminals could be implemented before the April 27 general election to wipe the slate clean of past bitterness, Government and ANC sources

confirmed yesterday that discussions on the issue were taking place.

The Government apparently hopes to have legislation making provision for a general amnesty through the present sitting of Parliament.

A senior source said the Government would find moving into

a new dispensation "difficult" if members, including those in the security forces, were open to prosecution after a transfer of power. A critical issue is the "cut-off date" — the last day on which such crimes could have been committed to qualify for amnesty.

Complicating this are the assassination of Chris Hanon

April 10 and the St James Church massacre in Cape Town of July 25. It is almost certain that if a date is agreed to it will be before these incidents.

As things stand, people who committed politically motivated crimes before April 10, 1990 can apply for release from prison or indemnity from prosecution.

There is also discussion on whether members of organisations that do not commit themselves to elections should be eligible for amnesty.

The ANC's Matthew Phosa said talks with the Government on this issue were at an exploratory level. There is no agreement at this stage.

Star 30/11/93

252

IFP supports concept of political amnesty

Political Staff

INDICATIONS that the government and the ANC were planning a general amnesty for political prisoners, to wipe the slate clean ahead of the April 27 election, were given a guarded welcome by Inkatha last night

IFP spokesman Mr Ed Tillet said a sweeping amnesty for all political crimes should be granted only once the ground rules had been determined by all interested parties

He said the IFP was concerned that

CT30/11/93 (252)
the government had linked amnesty only to those members of parties participating in next year's election

ANC spokesman Mr Carl Niehaus last night confirmed that discussions had been held, but said no firm decisions had been taken

If the general amnesty included Clive Derby-Lewis, convicted of murdering SACP secretary general Mr Chris Hani, then the ANC would oppose it, Mr Niehaus said

A Justice Department spokesman declined to comment

Inkatha welcomes amnesty moves

Political Staff

CAPE TOWN — Indications yesterday that government and the ANC were discussing a general amnesty for political prisoners to wipe the slate clean ahead of the April 27 poll were given a guarded welcome by the Inkatha Freedom Party last night. **BIDAY**

While Justice Minister Kobie Coetsee refused to comment, government sources confirmed that there were six amnesty formulas on the table.

But Inkatha spokesman Ed Tillet said a sweeping amnesty for all politically related crimes should be granted only once the ground rules had been determined by a round-table conference of all interested parties. **30/11/88**

He said, however, that while it was important that criminals who committed crimes "within a political context" should be given consideration, Inkatha would resist linking amnesty only to members of parties taking part in next year's election. **(252)**

ANC spokesman Carl Niehaus said last night discussions had been held but denied that any firm decisions had been taken. Any agreement that included amnesty for Clive Derby-Lewis — who was found guilty of murdering SA Communist Party chief Chris Hani in April — could not be considered.

Tillet said Inkatha would press for a cutoff date some time in 1993.

The notorious section 29 has been scrapped, but detention without trial loopholes must be closed

252) Wm 19-25/11/93

Thousands of homes around South Africa, last week's announcement of the agreement to scrap the notorious section 29 of the Internal Security Act (ISA) must have been greeted with mixed emotions. Jubilation at this symbolic highpoint in the struggle against detention without trial, and a rush of painful memories about a profound deprivation of basic human rights — of liberty, freedom from arbitrary arrest, the right to a defence in a public court and freedom from torture and other degrading treatment.

Eighty thousand people — those who are still alive — will have recalled how they were removed from society, from their communities and from their families for up to two and a half years. They will recall how they became victims of a system of isolation and interrogation which was tailor-made for torture, assault and other abuse.

Over 15 000 of them were children, some as young as seven. By now they will be approaching adolescence and adulthood, carrying with them bitter memories. Around 10 000 were women.

Ngudle, Haroon, Tlhol, Mdhluli, Biko, Aggett,

Max Coleman, national chairman of the Human Rights Commission, argues for the scrapping of other harmful statutes



Radisela, Nchabaleng, Madisha — the list continues for 73 names, while a procession of inquest courts pronounced their deaths as being due to suicide by hanging, jumping from a high building, slipping in a shower, falling down stairs, against a wall, a desk, a chair.

A few were reported to have escaped, never to be seen again, like Stanza Bopape. About 1 000 will recall how, after entering their third year in detention, they forced their release by embarking on a mass hunger strike. Even then, their detention was extended to their homes, when most were served restriction orders often amounting to house arrest.

No one was immune: students, headmasters, professors, ministers of religion, workers and union leaders, actors, writers and poets, nurses, doctors and lawyers, journalists and editors — all were caught in the net. All that was needed to qualify for detention was a rejection of apartheid in word or deed.

Does the announcement about section 29 spell the end of detention without trial? It is not yet clear. There is agreement to scrap section 54 (2) of the ISA, which deals with subversion, but nothing has been said of section 50, which provides for up to 14 days' "preventive detention".

More seriously, there has been no reference to the Public Safety Act, which provides for the declaration of a state of emergency and unrest areas. Section 3 of this is still being used in unrest areas, and probably unlawfully in other areas, by the security forces to detain and interrogate members of these communities.

In addition, each of the TVBC homelands has its own security legislation patterned on the ISA.

If we are to root out the cancer of detention without trial once and for all, each of these loopholes must be closed. Better still, all of the statutes mentioned above should be scrapped in its entirety, since they have been the cornerstones of apartheid repression.

A final point is that we need to be on our guard against the future reintroduction of detention without trial in "special circumstances".

While recognising that any state must have the right to declare a state of emergency if an abnormal situation arises, the Human Rights Commission nevertheless rejects the notion that the individual's right of access to the courts should ever be denied.

Those who suggest that a detainee can be protected from abuse by instituting safeguards — such as periodic reviews and visits by state officials such as magistrates, district surgeons and the like — need to be reminded that we have been that route many times in the past, and that detainees continued to suffer torture and to die.

No, we must put detention without trial firmly behind us and become unequivocal adherents of the Universal Declaration of Human Rights, which states (Article 9) that no one shall be subjected to arbitrary arrest, and (Article 10) that everyone is entitled to a public hearing on any charges.

Strike: Ball is in the negotiators' court

If the World Trade Centre negotiators scrap a draft Bill of Rights clause on lockout rights, Cosatu will call off Monday's planned general strike, report Paul Stober and Jacque Golding

THE question of whether the economy comes to a standstill on Monday lies in the hands of the negotiating council at the World Trade Centre.

The Congress of South African Trade Unions has already decided that Monday's planned strike will go ahead if the forum does not scrap a clause in the Interim Bill of Rights which allows employers to lock out workers during labour disputes.

A joint government-African National Congress proposal to be tabled at the council today guarantees workers the right to strike for purposes of collective bargaining. Another clause will prevent any future labour legislation which bars employers from using lockouts during labour disputes. The legislature will have to consult the National Manpower Commission (NMC) which has representatives from labour, business and government before passing any labour legislation.

On Thursday, the Cosatu leadership was consulting its affiliates about the proposal which was due to be tabled at the World Trade Centre today.

An alliance statement issued early yesterday, said "The alliance leadership unanimously endorsed an amendment to the Interim Bill of Rights proposed by Cosatu. The amendment unambiguously upholds workers' right to strike for collective bargaining as a fundamental right. Employers' recourse to the lockout is not considered to be a basic human right but a measure which is subject to labour relations legislation."

As an alliance we stand fully behind Cosatu's call for a general strike. However, we remain confident that the multiparty negotiations process will endorse our proposal in the next 48 hours thus averting the need for a recourse to action.

On Wednesday night, ANC secretary general Cyril Ramaphosa and Manpower Minister Leon Wessels were confident Cosatu would accept the compromise proposal. Ramaphosa said "Cosatu has said once it's resolved there's no need for a strike."

The ANC has been hell-bent on averting the strike, as the organisation's leadership wants to wrap up negotiations and start directing its energies toward the April 27 election. There has been surprisingly little sympathy for Cosatu's demands in ANC ranks and the organisation seemed to be more concerned with extricating the alliance from the strike.

Senior sources in the alliance were of the opinion that Cosatu had placed it in an "awkward position" by insisting on going ahead with the strike if the negotiating forum did not give

In to its demand for the scrapping of the lockout clause. But although clearly annoyed by Cosatu's obduracy, the alliance resigned itself to backing the strike if Cosatu was unable to secure a face-saving deal which would allow it to retreat from the threatened action.

By late Wednesday, representatives of Cosatu, business and government, who had met in the NMC to try and come up with a way of placating Cosatu, had failed to reach a solution. They chose to let the multiparty forum decide on what to do with the contentious clause.

Cosatu fears that during labour disputes the lockout clause will give employers the right to force workers off the factory floor — and keep them without pay — until workers give in to their demands. Employers are insisting they



Cyril Ramaphosa

should have the right to lockout to balance workers' constitutional right to strike. If the multiparty forum decides to keep the clause in the Interim Bill in its present form, Cosatu will proceed with Monday's stay-away.

"We are going ahead with the national strike on Monday," said general secretary Sam Shilowa after a central executive meeting called to debate the issue.

"The only thing that can avert the strike is for the negotiators to accede to our demand that the employers' right to lockout is not constitutionally entrenched," he added.

Shilowa is reportedly being pushed into taking a hard line by critics to his left in Cosatu. They see him as being too much of a South African Communist Party man and are using

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the strike issue to test his commitment to trade union independence.

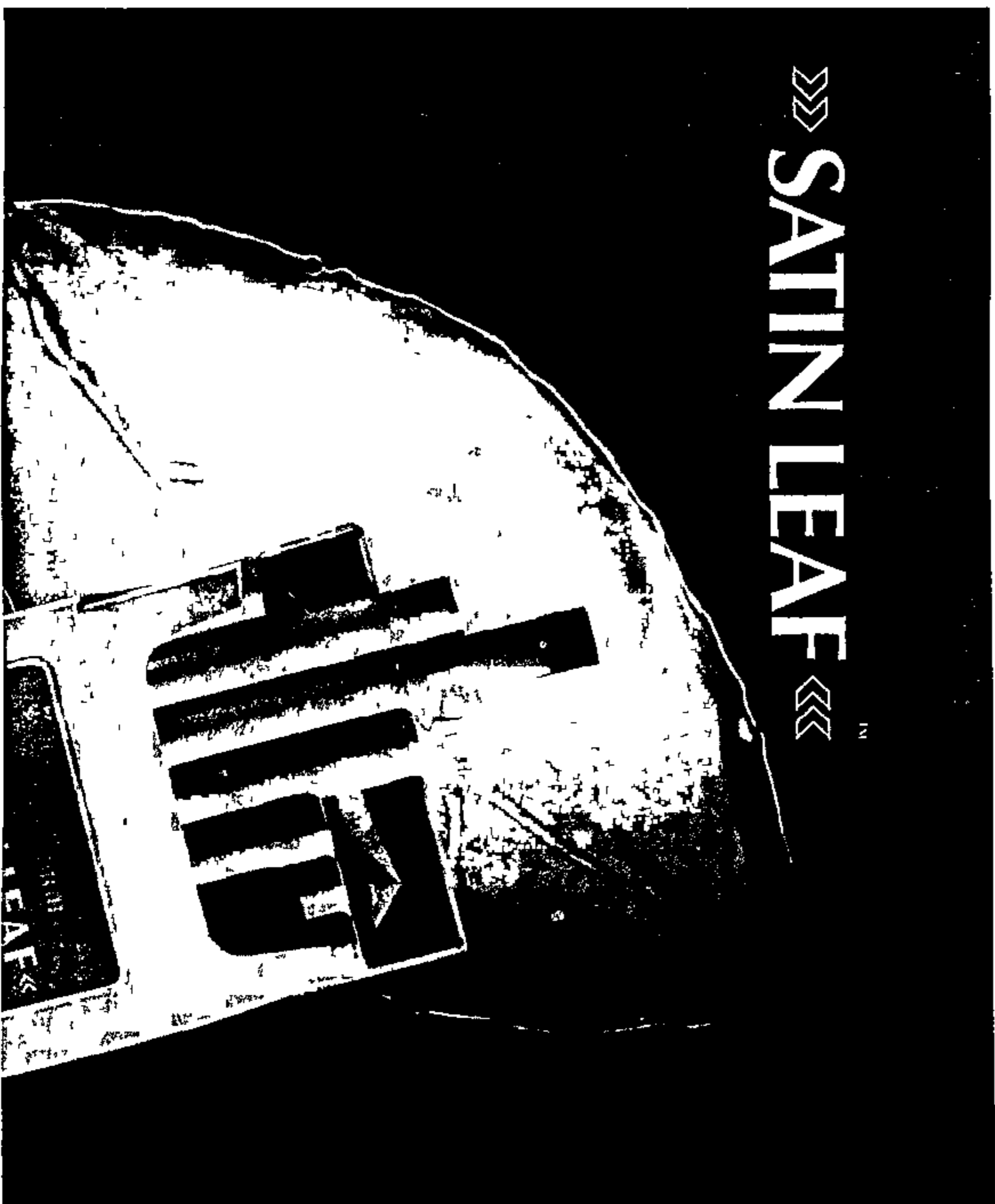
At the beginning of the week, Cosatu accepted a deal, struck between the ANC and the government, on a clause in the constitution which guaranteed civil servants their jobs under the new dispensation. Cosatu had also used its objection to this clause to bolster its strike call.

Under the agreement, the jobs and pension rights of civil servants will be entrenched, but this is qualified with a clause calling for a future civil service "broadly representative of the people of South Africa."

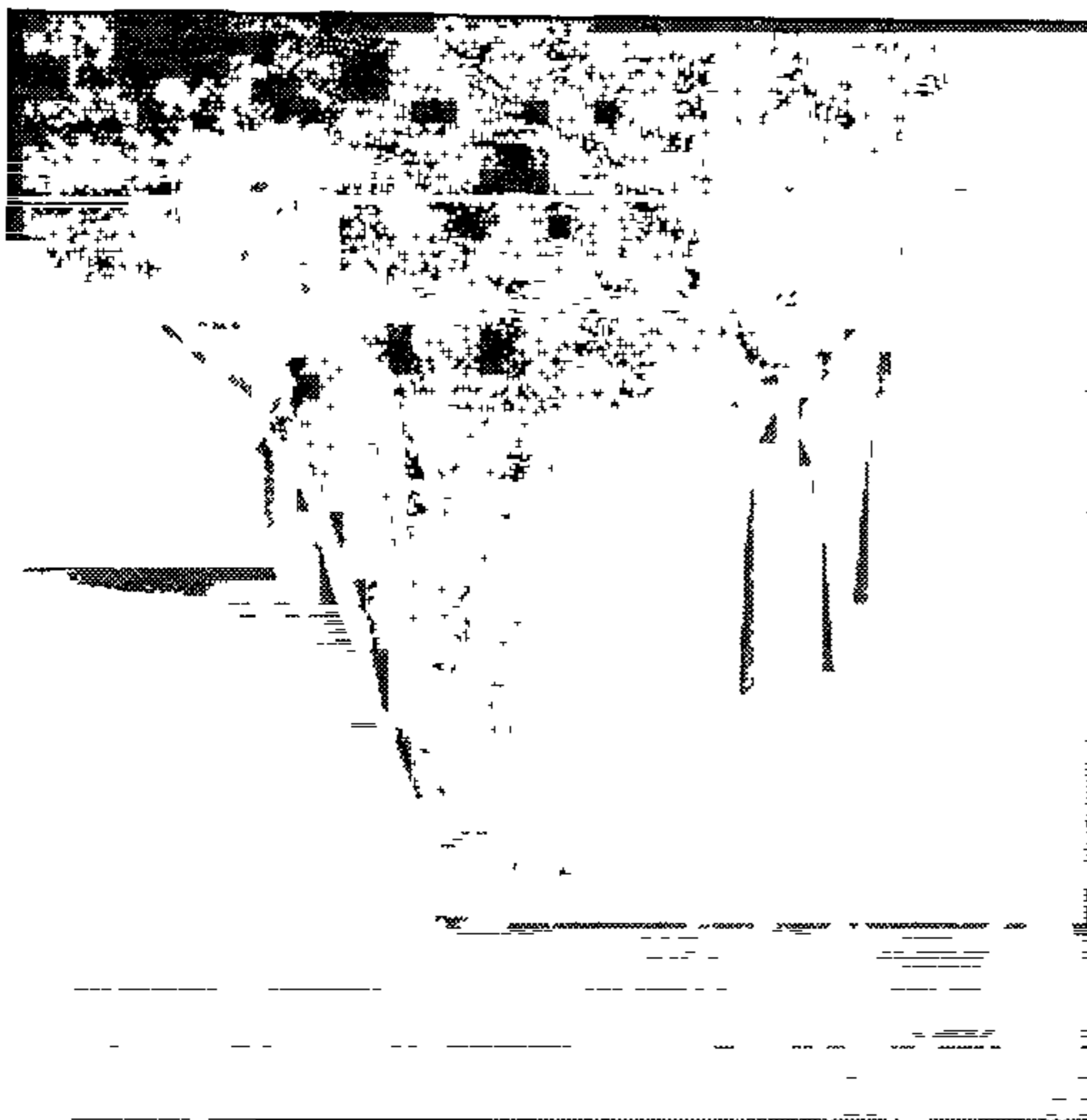
The agreement provides for the Public Service Commission to "reverse the conditions of employment" of any public servant whose appointment was found to be "not proper" after review.

Public servants will not be able to take labour issues to the constitutional court.

See PAGE 22



LOUW reports on the frantic late-night trade offs and concessions made by negotiators



Take on it ... The NP's Roelf Meyer and the ANC's Cyril Ramaphosa

The reality is that South Africa now has nine provinces. Each province will get its own government on April 27 next year. Once these politicians have tasted power, it will be almost impossible for the central government to undo what the talks established.

What needs to be done in the next two years — up until the end of the transitional process — is to phase out the old system, including the homelands while the new system is being phased in. NP spokesmen are lamenting that a new cohesion will not be achieved in the regions as provincial boundaries take root.

Federalism will be entrenched, they say, in spite of a worldwide tendency for central governments to grab as much power as possible. Mechanisms such as the constitutional court have been built into the process to ensure that a new government cannot encroach on the functional areas of the regions. The courts will in turn be bound by the constitutional principles agreed upon by the Kempton Park negotiators.

In spite of criticism by (among others) the Freedom Alliance that federalism isn't entrenched in the

constitution, government negotiators are satisfied that the competences of the provinces are extensive and substantial. The powers of the central government to overrule legislation passed by the provinces are strongly qualified. And in the case of conflict, the constitutional court will have the final say.

The FA's main objection was that exclusive powers for the regions were removed and replaced by concurrent powers, held by both regional and central government. The government argues that the FA refuses to look beyond the word "exclusive", concurrent powers, with built-in checks and balances, will be more effective than the original proposals, which allowed the regions only a limited number of exclusive powers.

The principle of asymmetry, in which regions may choose which powers they want to exercise and which functions they want to fulfil, is equally seen as a way of ensuring that those regions which feel strongly about their autonomy can demand the maximum, while others need only apply those executive functions they deem necessary. This should allay the fears of the Inkatha Freedom Party, say NP negotiators.

How Coetsee foxed his own negotiators

WM 19-25/11/93

252

SOUTH AFRICA'S constitutional court, which will act as watchdog to ensure that the new political dispensation complies with the lofty intentions of the Kempton Park negotiators, has been almost completely depoliticised by a last-minute agreement.

An earlier decision that judges for the court would be appointed by the state president in consultation with the cabinet was reversed on Wednesday after impassioned resistance by the Democratic Party's Tony Leon.

The approved draft constitution now gives the judge-president the choice of four of the 10 judges and the president and his cabinet the right to select six more from a list of 10 provided by the Judicial Service Commission. Another clause limits their term of office to seven years.

Justice Minister Kobie Coetsee had originally handed the African National Congress the opportunity, once it takes power, to appoint judges to a constitutional court. His decision, it emerged this week, flew in the face of a carefully planned strategy by his cabinet colleagues at the negotiations to build in mechanisms ensuring that an independent body would protect the constitution agreed to in Kempton Park.

Even the ANC was taken by surprise by Coetsee's offer that a new state president would appoint not only the judge-president but also 10 more judges to the constitutional court.

It seems Coetsee's faux pas was the result of a misunderstanding on how the cabinet would function after the elections. He seems to have believed until last week that all cabinet decisions would be taken on a consensus basis, allowing the NP a full say in the appointment of judges.

The Democratic Party at one stage threatened to walk out of the negotiations because of the "politicising" of the constitutional court. Accusing the ANC of "power-grabbing", Leon warned the ANC-NP deal would "result in closed-door decision-making on judicial

appointments"

The agreement was also condemned by the law profession, while one of the government's own advisors, Professor Johan Kruger, branded the original deal "the worst of all the available options".

Details emerged this week of how Coetsee thwarted carefully laid plans by his colleagues at the negotiations by insisting on having his own proposals accepted. Indications are that his colleagues were left completely in the dark about his plans until less than a week before the proposals were finally accepted.

The Department of Constitutional Development, which was the driving force of the government's negotiating strategy, apparently learned only at a very late stage that Coetsee had insisted on tabling judicial proposals, arguing that it was his department's responsibility.



Kobie Coetsee. Even the ANC was surprised

Members of the technical committee on constitutional affairs, who normally take instructions from the negotiating council, were dumbfounded when Coetsee produced his own set of documents at a meeting last week, showing little interest in the proposals they had prepared.

The ANC jumped at the opportunity and immediately accepted Coetsee's proposals. They defended them spiritedly, claiming in a press release that they allowed for

"a principled and orderly way" to open up judicial appointments.

It is understood that Coetsee's proposals were discussed at a cabinet meeting on Tuesday, November 9. It was probably endorsed by cabinet because of the absence of two key players in the negotiations — President FW de Klerk and government chief negotiator Roelf Meyer.

On Wednesday Coetsee put a brave face on his humiliation in announcing in the negotiating council that his original proposal would be replaced by one agreed to with the DP and the ANC.

Both the DP's Leon and the ANC's Dullah Omar expressed satisfaction that the constitutional court's integrity would be safeguarded.

New court will guard civil rights, liberty as never before — Tebbutt

DAVID YUTAR
Staff Reporter

UNDER the new Constitutional Court South African courts would become "the guardians of civil rights and liberties as never before", says Mr Justice Pat Tebbutt.

The introduction of the Constitutional Court meant an end to the era in which Parliamentary sovereignty had allowed the promulgation of "dreadful laws" with "oppressive and draconian provisions which so adversely affected the lives of so many of our people."

Judge Tebbutt, who was speaking at a Graduate School of Business Association lunch in the city yesterday, said previously courts had been obliged to apply those laws "whether they approved of them or not and whether (they) were just or unjust."

"Unlike the position in America, the courts had no testing powers of legislation passed by Parliament and the ability to declare them invalid, either on grounds of lack of fairness or

Constitutional changes safeguards package

justice or the impairment or removal of individual rights."

This powerlessness of the courts had a "disruptive effect" on the economy and adversely affected business by discouraging overseas investment and leading indirectly to the imposition of sanctions.

Under the new Constitutional Court all this would change.

The court and the newly-created Bill of Rights would "safeguard and guarantee the rights of all."

These rights included the right to equality before the law and the right not to be discriminated against on the basis of race, gender, ethnicity, religion or culture.

"A future Parliament will not be allowed to pass laws which will make inroads into those rights and liberties."

"Should it do so, the Constitutional Court will be able to declare them invalid."

Judge Tebbutt said this change "within the framework



Mr Justice Tebbutt

of the (present) legal system" would profoundly benefit business.

The court would become a bulwark between "legislative and executive authority" on the one hand and individuals or groups of individuals in business on the other.

The Bill of Rights also guaranteed every person the right to freely engage in economic

activity and to pursue a livelihood-of choice wherever he or she wished.

Referring to the fact that the Supreme Court in South Africa was "almost exclusively" composed of white males, Judge Tebbutt said the appointment of more black and women judges could be expected.

He said that blacks and women had only recently begun to enter the legal profession — and still not in great numbers.

This had resulted in a limited pool of candidates with the necessary experience for appointment to the bench.

But he warned against over-compensation, quoting Chief Justice Gubbins when he stressed that judges "should be appointed on merit alone and not merely in order to make the judiciary more representative of the population."

He agreed with the Chief Justice on the "manifest dangers of lowering standards."

Judge Tebbutt said he opposed wholesale changes to the South African legal system because they would "be likely to create uncertainty and anxiety" about the guarantees it had until now provided of "fairness, justice and the protection of rights and interests."

Referring to criticism of the legal system as "a colonial heritage" the system of the oppressor and a relic of the apartheid system, Judge Tebbutt said "Apart from the fact that none of those descriptions is true, our legal system has been very effective."

The system was "flexible rich in its intellectual content — civilised" and had a "wide and unique reference framework."

Trying to change a "deeply-rooted, well-tryed and widely-trusted system" for another one "would only lead to bewilderment and resultant chaos."

● Judge Tebbutt, who was appointed a permanent judge of the Cape Supreme Court in June 1981, is due to retire in January.

Married women can now charge husbands with rape

252

ARGT 11/2/93

THE Prevention of Family Violence Act, which enables a married woman to lay a charge of rape against her husband, becomes law today

The Act also enables victims of family violence to settle their disputes without going to court

Other important provisions of the Act include empowering a judge or magistrate to issue an interdict through a simplified procedure forbidding certain violent acts in a home and compelling anyone suspecting child abuse to report the matter to a social worker or the police

A statement by the Department of Justice said that although people guilty of these offences were criminally responsible for their actions, few had been charged because family members were hesitant to give evidence against one another in court

"The greatest advantage of the Act is to enable victims of family violence to settle their differences outside court and eliminates the trauma and stigma of appearing in a civil court," the department's statement added

The situation would be more realistic because an interdict would forbid violent parties from intimidating victims — Sapa

Goldstone hits out at police, squatter leaders

Biday 11/2/93

Political Staff

CAPE TOWN — The Goldstone commission has criticised the police and squatter leaders for their role in the violence in the Crossroads area of Cape Town

The commission's report, which was released yesterday, examined violence and intimidation at Crossroads between March and June this year (252)

"In the collective mind of the community of Crossroads the firm perception existed (and may still exist) that members of the security forces, including the police, themselves shot residents and burned down their houses," the report said

"This perception reinforces mistrust of the police and casts the police in the role of an enemy of the community."

With these perceptions and others about the efficiency and reliability of the police, law enforcement could possibly have been more effective

But the commission believed the police themselves could have done more to rectify the situation.

The report criticised the suspended ANC chairman in Crossroads, Jeffrey Nongwe, for his autocratic leadership

"A singular lack of democratic structures, which resulted in exploitation by squatter leaders of the needs of the people for their own political and economic ends", was one of the factors that had a negative effect on the situation

As Crossroads grew, squatter leaders imposed their own laws and enforced these in their own areas. "The areas were not efficiently policed and the impression was

that the police saw them as no-go areas or were not interested in protecting people against common law crime"

The police were not seen as being neutral and were regarded as having intervened on the side of squatter leaders such as Johnson Ngxobongwana and Nongwe

"It must be stated that law enforcement is notoriously difficult in densely populated areas "When such mistrust exists, law enforcement becomes impossible.

"There was evidence that the capability of the police force was stretched, that 52 men out of a complement of 80 are themselves under threat because they live among the community."

The commission said law enforcement would have to be more effective and it was imperative that a change of outlook took place in the police.

Sapa reports Law and Order spokesman Capt Craig Kotze said yesterday the Goldstone report highlighted the difficulties of policing the SAP had in squatter areas such as Crossroads and Phola Park on the East Rand.

Complaints mentioned by Goldstone were being urgently attended to and investigations were being conducted under the supervision of the attorney-general.

Kotze said the negative perceptions of the SAP were also being addressed as part of a long-term implementation of the bridge-building policy of community supported policing.

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Police 'cannot offer protection'

CT 2/12/93
JOHANNESBURG. — Witnesses living in townships cannot be protected once a trial is over, Western Cape police spokesman Colonel Raymond Dowd said (252). Col Dowd was reacting to a statement by the Goldstone Commission that the police were not doing enough to protect witnesses. Col Dowd said the police would nevertheless take note of the commission's suggestions. — Sapa (277)

Amnesty for earlier political criminals?

PRG 3/12/93

252

□ Negotiators to decide on crucial cut-off date

Political Staff

SOUTH Africans who committed politically-motivated crimes before November 10 last year could qualify for a general amnesty in terms of proposals to go before the Negotiating Council on Monday.

The session of negotiators in Cape Town on Monday will have to take the crucial decision on the cut-off date for a general amnesty for people who committed politically-motivated crimes

Negotiation sources have indicated that current thinking favours November 10, 1992 — the date on which the Further Indemnity Act became law

In terms of the amnesty all those serving jail sentences for political crimes committed before that date would be pardoned, while others who had carried out such crimes would be free from prosecution

President De Klerk is understood to be adamant that members of Apla allegedly responsible for a series of attacks in December last year should not go free

This also means that Janusz Waluz and Clive Derby-Lewis, sentenced to death for the assassination of SA Communist Party leader Chris Hanu on April 10 this year, would not be freed

Details of the general amnesty are being worked out in bilateral discussions between the government and the ANC

The first public move on this came in the early hours of yesterday morning when Constitutional Development Minister Roelf Meyer signalled, during the marathon session of the Negotiating Council, that the government intended raising the issue of "reconciliation" at Monday's Cape Town session

Among the controversial decisions that negotiators must take on Monday is whether or not to demand full public disclosure by people who claim that they fall under the amnesty provisions. The alternative is for the applications to be heard by a court "in camera" — without public access

It is understood that the amnesty provisions will prevent victims of political violence from being able to sue for compensation in a civil court

Another decision to be taken will be whether a law should be passed during the current sitting of parliament making provision for the general amnesty. The alternative proposal is for this to be part of the interim constitution

As things stand the indemnity legislation allows perpetrators of politically-motivated crimes before October 8, 1990, to be freed from jail or to be given either complete or temporary indemnity from prosecution

PEOPLE'S LIVES New law advances women's battle for rights and gives them equality

Sweeten 3/12/93

Better legal 'legs' for women

By Pearl Majola

THE women's struggle for rights and equality advanced further this week when remnants of marital powers legislation were scrapped and the Prevention of Family Violence Act became law

The scrapping of marital powers means that a married woman will now have equal management powers with her husband and will in future not need her spouse's permission to sign contracts

A woman will also no longer have to declare her marital status, except in cases where the same information would be required from the man.

The Prevention of Family Violence Act enables a married woman to lay a charge of rape against her husband and for victims of violence to settle their disputes outside the court.

Interdict

Through this law a judge or magistrate can issue an interdict, through a simplified procedure, forbidding certain violent acts being committed in the home and compelling anyone suspecting child abuse to report the matter to a social worker or the police.

Various organisations to do with child abuse and violence against women have reacted positively to the law.

SAD CASES Impertunate

husbands may be charged with rape :

gally redressed in the past."

Welcoming the new law, Ms Jackie Lofell of the Johannesburg Child Welfare Society said that the test would be in implementing protection for the women

252

and children to match what is on paper. "In general the new law is promising because it reflects concern about violence in families

"The challenge is the implementation

tion and action on the ground to match what is on paper," Lofell said.

She said that in addition to the protection of children and battered women, there was an urgent need for back-up services like government funding for organisations concerned so that they can provide the necessary service.

The Prevention of Family Violence Act

enables a married woman to lay a charge of rape against her husband

"I'm very excited about the law," said Childline manager Ms Ashley Liss.

"It's been needed for a long time and now that there is an obligation on doctors, nurses, teachers and others to report abuse, more cases will come to the fore and nobody can deny that the problem exists."

Problem

Liss added that there was now a need for education to ensure that people can recognise the problem

People Opposing Women Abuse chairman Ms Lisa Vetten said she was optimistic that the law would effect change in terms of women reporting rape.

"The law is very welcome but its effectiveness will be seen only when people start laying charges," she said commenting on women being able to press charges of rape against their husbands

Vetten also said she hoped the problem of women being embarrassed by abuse would decrease with the new law.

Children

Legal Assist manager Mr Wets Beukes said. "Organisations dedicated to protecting battered children and women have long been hampered by the extremely costly and time-consuming procedures required to bring a case to Supreme Court.

"The new Act will change the circumstances under which many sad cases of child abuse or wife battering have not been le-

Crucial cut-off date for 'political' crimes known on Monday

Nov 10 '92 amnesty date?

Star 3/12/93

■ BY CHRIS WHITFIELD
and MARTIN CHALLENOR

Cape Town — South Africans who committed politically motivated crimes before November 10 last year could qualify for general amnesty in terms of proposals to go before the Negotiating Council on Monday.

Negotiators will have to take the crucial decision on the cut-off date for a general amnesty for people who committed politically motivated crimes. Negotiation sources have indicated that current thinking favours November 10 1992, the date on

which the Further Indemnity Act became law.

In terms of the amnesty, all those serving jail sentences for political crimes committed before that date would be pardoned, while others who had carried out such crimes would be free from prosecution. (252)

This means that Janusz Waluz and Clive Derby-Lewis, sentenced to death for the assassination of SACP leader Chris Hani on April 10, would not be freed.

Details of the amnesty are being worked out in discussions between the Government and

ANC.

It is understood that the amnesty provisions will prevent victims of political violence from being able to sue for compensation in a civil court.

Another decision to be taken will be whether a law should be passed during the current sitting of Parliament making provision for the general amnesty.

The alternative proposal is for this to be part of the interim constitution.

The Government is anxious to ensure that no soldier, policeman or official will be prosecuted after the general election for

what they might have done in the apartheid era.

Government officials did not apply for indemnity in terms of the Further Indemnity Act after ANC warnings that it did not recognise the legislation.

The present indemnity legislation allows perpetrators of politically motivated crimes before October 8 1990 to be freed from prison or to be given either complete or temporary indemnity from prosecution. A Patriotic Front source said yesterday that it would probably view a general amnesty favourably.

Unwed mothers to be legal guardians of minor children

(252)

ARG 4/12/93

MARTIN CHALLENOR

Weekend Argus Political Staff

UNMARRIED mothers will be the guardians of their minor children born out of marriage in terms of the Guardianship Bill tabled in parliament today

The Bill sets out to change aspects of the guardianship laws. It is the latest measure by Justice Minister Kobie Coetsee to remove statutory discrimination against women and to bring about legal equality between the sexes.

Provision is made to allow a mother to be the guardian of a minor child born out of marriage, unless the Supreme Court directs otherwise.

As the guardianship law stands at present, a married woman occupies a subordinate position compared to the father. In terms of common law, the father is the

natural guardian of a minor child born in wedlock

The Bill proposes that either the mother or the father can independently and without the consent of the other exercise the rights and powers arising from guardianship of a child born in wedlock.

However, the consent of both parents is needed if the child wants to marry while still a minor, goes up for adoption, is removed from South Africa by one of the parents or a person other than a parent, if the child is included in the passport of one of the parents, and in controlling immovable property that belongs to a minor child.

At present the father of a legitimate minor has the power to make a testamentary appointment of a third person, who, after his death, acts as joint guardian with the mother. Changes will be made so that only the surviving parent can appoint a testamentary guardian.

Victims to get cheaper help

CT 4/12/93
252

Staff Reporter

VICTIMS of family violence who previously had to go to the Supreme Court to obtain an interdict to prevent offenders from assaulting them can now apply to the Magistrate's Court without having to go through costly court procedures.

In terms of the new Prevention of Family Violence Act an interdict can be issued to victims of violence by a magistrate or judge within hours.

Also, the act makes it an offence for people who suspect a child is being abused to fail to report this to the police or child welfare authorities.

Interdict

Mr Pieter Durant, a spokesman for the Department of Justice, said previously victims of violence had to go through criminal procedures in court.

The act now provided for a process that victims could use easily and that was less cumbersome and less costly.

The act now empowers a judge or magistrate on the application of the victim to grant an interdict against the offender not to commit violent acts.

In terms of the new law a man can now be tried for the rape of his wife.

Victims applying for an inter-

Reporting child abuse obligatory

dict must provide the magistrate with an affidavit or supporting affidavits, he said.

Should the interdict be granted, the offender can be prevented from entering the premises of the victim or assaulting a family member.

The interdict is accompanied by an order authorising the issue of a warrant of arrest but suspending the execution of the warrant conditionally.

The respondent is afforded an opportunity to apply for an amendment or setting aside of the interdict.

However, a breach of a condition of suspension will result in the execution of the warrant.

This may lead to the imprisonment of offenders for a period not exceeding 12 months following a trial.

The spokesman said following an interdict being served on the accused the prospect of their arrest would act as a strong deterrent.

People who have reason to suspect that a child has been abused now have an obligation to report their suspicions to the police, commissioner of child welfare or social worker.

Failure to do so is now punishable as an offence and people convicted can be fined or jailed for three months.

This also applies to social and clinic workers who work with children.

The spokesman said although people guilty of these offences were criminally liable for their actions, few offenders have been charged in court because members of the family are reluctant to testify against them in a criminal court.

'Significant'

Minister of Justice Mr Kobie Coetsee said the implementation of the act brings about drastic changes in respect of child abuse as well as marital rape.

It was a significant step in view of 1994 being declared the International Year of the Family.

A social worker from the Family and Marriage Association of South Africa (Famsa) said many underprivileged people could not afford the legal costs of obtaining interdicts.

"The victims of family violence need free legal representation," she said, adding that she needed more time to study the act before commenting further.

New 'equal guardianship' bill

THE Guardianship Bill, a further important measure to abolish discrimination against women, was published yesterday

The bill, which provides for equal guardianship over minors, is the latest measure in a series of acts initiated by Justice Minister Mr Kobie Coetsee in his campaign to remove statutory discrimination against women

According to the present common law position on guardianship, a married woman is subordinate to the father, who

is the natural guardian of a minor child born within a marriage

The result of the bill is that both parents can exercise the rights of guardianship independently

Unless a court orders otherwise, the consent of both parents will still be necessary for

● Permission for the marriage of a minor

● Adoption

● Removal of the child from the Republic by a parent, or anyone else

● A passport application by one parent on which the minor child would be specified

● The alienation or encumbrance of immovable property belonging to the minor

The law regarding the mother of an illegitimate child having sole guardianship remains unchanged — Sapa

4/4/12/93

252

their victims will not be able to sue for compensation. And anyone disclosing details about the granting of amnesty to a killer can be sent to prison.

Among those who will be eligible for release or indemnity in terms of the proposals are some of the most cold-blooded killers in the country's history. They include:

- Clive Derby Lewis and Janusz Walus, sentenced to death for the assassination of SA Communist Party leader Chris Hani in April this year.

- The murderers of 26-year-old American student Amy Biehl in Guguletu in August. Miss Biehl was dragged from her car and stabbed to death by a mob shouting racist slogans.

- Gunmen who murdered 11 churchgoers during a service in Cape Town's St James Church in July this year. The killers fired on worshippers with automatic rifles and hurled grenades into the church.

- David Petrus Botha, Eugène Marais and Adriaan Smuts of Richards Bay, the AWB killers who gunned down seven people in a vicious revenge murder in Natal on October 9, 1990, and who were each sentenced to death seven times and jailed for more than 300 years.

- ANC member Michael Phama, believed to be guilty of the most murders committed by one man in the country's history. He is serving 21 life sentences.

Those responsible for apartheid crimes such as the murders of Cradock activist Matthew Goniwe, Wits academic David Webster and ANC member Ruth First will never be brought to book.

The truth about these and hundreds of other crimes will never be disclosed.

In terms of the proposals, the new parliament would pass a law within six weeks of convening which would grant amnesty for all criminal and civil acts committed or associated with political objectives inside and outside South Africa.

Political objectives are defined as acts or omissions committed on the instructions of someone in authority in government or a political party to promote his political beliefs, with the belief that a political aim or interest would be served — or during politically inspired group action.

Any prisoner who would have benefited from an amnesty law if it had been in force before the prisoner was sentenced would qualify for amnesty. The prisoner could apply for his pardon and release to a Supreme Court judge, or this could be left to the discretion of the Minister of Correctional Services.

A person would not have to apply for the amnesty. Neither would he have to acknowledge or disclose any offence unless brought

□ To Page 2

Amnesty plan to free killers

□ From Page 1
to court in a criminal or civil action

At that point he could claim he qualified for amnesty. A decision would be made by the trial judge after hearing evidence in secret. If an amnesty was granted, the criminal or civil action would be dismissed. *5/12/93*

The ANC has rejected the government's proposals, but the amnesty issue will be decided by the negotiating council at its last meeting in Cape Town tomorrow. *5/12/93*

The ANC does not

oppose the idea of an amnesty, but wants a Truth Commission to be set up to establish who perpetrated offences, how they were carried out, who gave the orders and the fate of the victims. The families of victims, it insists, must receive some form of compensation. *(252)*

In terms of the ANC proposal to the government this week, there would be a clause in the interim constitution proposing that there would be an amnesty law for political offences.

But the law would be decided by a future govern-

ment, which would decide the cut-off date, the procedures to be followed for the amnesty and the crimes it would cover.

To discourage people from committing violence in the expectancy of being granted amnesty, the ANC proposed that any offences committed after December 1 this year could never fall within the category of offences inviting amnesty.

The target date of December 1 was proposed as it was the day the negotiators expected to conclude their amnesty agreement.

Rapee in the bedroom

Prevention of Family Violence Act: the women's point of view

'Notwithstanding anything to the contrary contained in any law or in the common law, a husband may be convicted of the rape of his wife.'

GORRY BOWES TAYLOR
Staff Reporter

THE enactment last week of a sensitive new law, the Prevention of Family Violence Act, enables a married woman to lay a charge of rape against her husband, and victims of family violence to settle their disputes outside the court

porting customary tribal law at Kempton Park. They did so because it suits them.

"I can't believe the government has passed this bill without consulting the people so directly affected by domestic violence."

Sheila Camerer
Deputy Minister of Justice

According to Democratic Party MP Dene Smuts, surveys of university students show distressing evidence that some of them regard battery as a cultural right. The Rape Crisis Shelter in Cape Town says that in six women in the Western Cape is battered by a partner. A Nicro survey in Wynberg, Athlone, Bellville and Cape Town found 423 cases reported in one month. Battery was the most-reported crime in Mitchell's Plain.

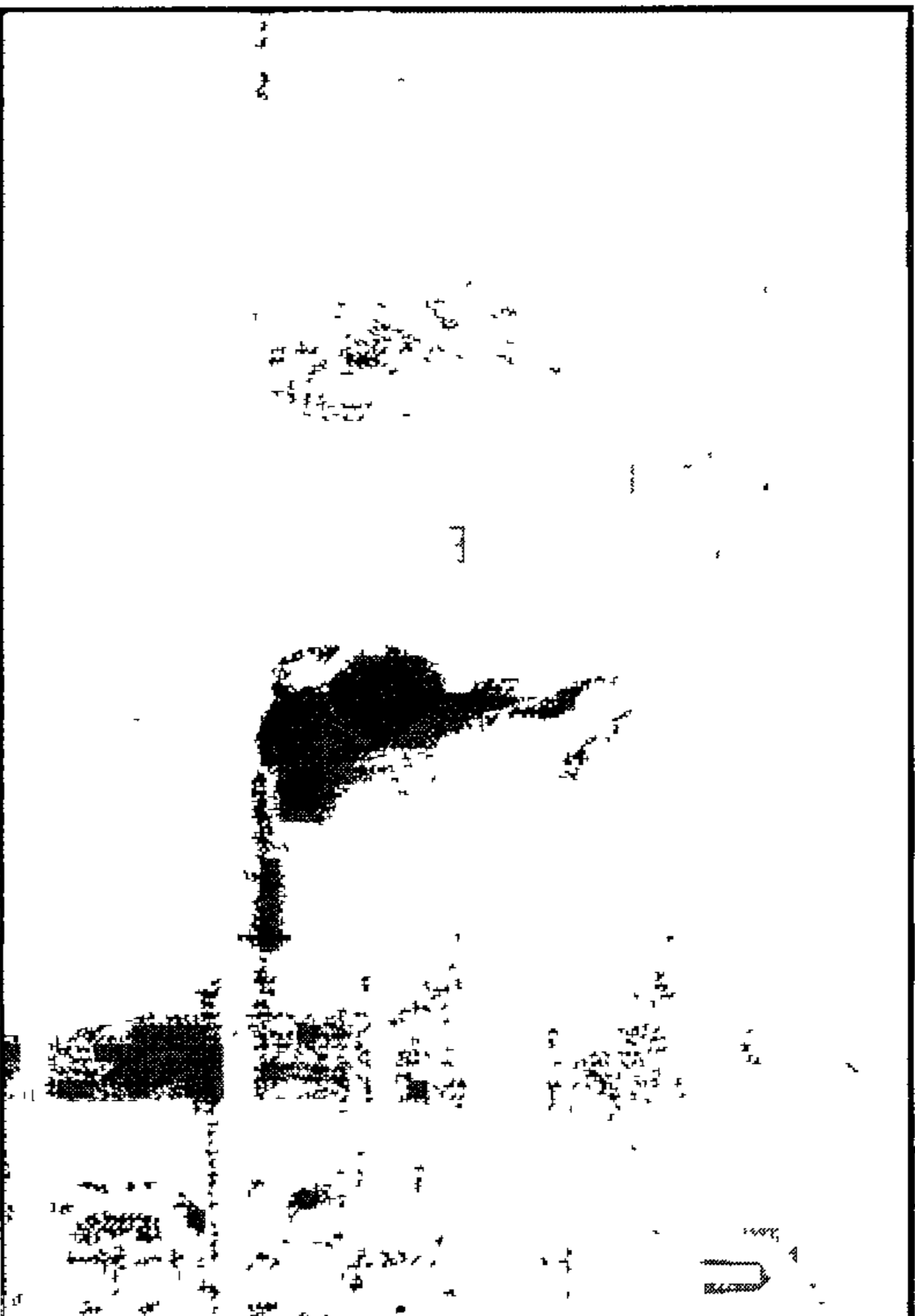
The new Act grants a magistrate or judge the right to impose an interdict restraining a man (or woman) from assaulting or threatening a spouse.

According to a Ministry of Justice statement, few perpetrators of such violence, or of child abuse, had been charged because family members hesitated to give evidence against each other in court.

Now those guilty of marital rape or child abuse will be made criminally responsible for their actions.

The greatest advantage of the Act is that it enables victims of family violence to set-

PRIME MOVER: Deputy Minister of Justice, Sheila Camerer, who piloted the Bill through parliament



that the Bill will empower a woman who has decided that she's had enough to be able to go to the magistrates' court or the Supreme Court, to apply for an affidavit, for protection against her abuser.

"In other words, she can obtain an interdict herself, without the assistance or expense of a lawyer. And it's quite a simple form for her to fill in."

"Another positive thing is that any interested person can fill in the form for her. It could be her mother, or a social worker. It's quite novel that someone else can apply."

"Simultaneously with the granting of the interdict, a

warrant of arrest is immediately issued. It is suspended on condition that he doesn't breach any of the terms of his order. This is a big change from the old system.

"If he does, she can go to the police station and fill in another of these forms, with medical evidence, and he's immediately arrested. She doesn't have to go back to the court."

"If people are worried that it's going to be too easy to lock up men on a whim, there is also provision in the Bill for the defendant to come to court to have the order either changed or set aside. There is thus provision for both parties

to be heard without huge legal costs.

"Nonetheless, this bill won't be effective until society is properly trained and aware of the problem and, in a way, police the police to see that they are arresting people when the complainant is laid."

"But the big thing about this Act is that you can be convicted of rape if the complainant is your wife."

Use Ockers
Desk Director, Lawyers for Human Rights

"Firstly, battering wives. The promulgation of this new Act has tremendous potential to

(252)

ARG 6/12/93

radically address the levels of domestic violence in our country. The success of the Act, however, will depend on the extent to which the broad public, including all our communities, are educated and informed about the provisions and mechanics of the Act.

"Secondly, the level of commitment and sensitivity of all the state role players in implementing the Act will be critical in order to engender enough trust in the public to make use of these new, far reaching procedures.

"This would include the need for education of presiding officers with regards to women's social realities. We commend the department for dispensing with the need for formal legal representation in obtaining the interdict (which would have put it out of the reach for the majority of South African women) and for devising a pro forma set of documents to facilitate easy access in bringing an application in terms of the act.

"In terms of the marital rape section, we commend the department for scrapping all the conditions and qualifications included in the various draft bills, and for recognising unequivocally that rape within marriage occurs.

"The conservative statistics remain one out of 20 actual rapes to eventually be reported and even fewer incidents eventually prosecuted. Unless and until the criminal justice system is made women-friendly changing the laws, however important, will only be symbolic."

Abused wife
Cape Town

"I have no hope, I don't believe this is going to work. I

have no faith in the courts or in the police any longer. What protection can they give me if I lay a charge of rape against my husband? He's been raping and beating me for eight years and he will kill me if I lay the charge. What do you do, lay a charge and go on living in the same house as the man? Where do you go? I think he will kill me and that's that."

Dene Smuts
Democratic Party MP, Groote Schuur

"The important thing now is to reach, through women's and welfare organisations, those women who can benefit. And if a battered woman can't help herself, the new bill makes provision for a person with a maternal interest in her, to act on her behalf. A lot of women are beaten into a situation where they don't have the resources to help themselves.

"There are thousands of women who need help, which I sincerely hope they will now get, with the easier procedure. In the past churches have turned a blind eye to family violence. Priests have been in the impossible situation of trying to protect family sanctity, as have friends and other members of the family. Society does not easily believe in the phenomenon of family violence.

"Now we can use this legislation to look after battered women, abused children, and men, though they are not often the victims of violence. The unity of the family no longer comes first.

"No woman needs to feel that rape and battering are normal. We hope this law will make it easier to get relief from the courts, but we should monitor it for the next five years and change it if anything needs changing."

Argus 6/12/93
252

tle their difference; out of court, so avoiding the trauma and stigma associated with appearing in court. The situation will introduce more realistic controls, because an interdict can forbid violent parties from intimidating victims.

Leading campaigners for the new Act comment

Nomatyala Hanganu
Regional Chairwoman, ANC Women's League

"It's infuriating when the South African government passes a Bill at this time in our history — when the ANC will be in place soon — without consultation with the ANC. It's disgusting. We were never consulted about this issue — compare that to the National Party and the Democratic Party, sup-

and these remedies really help. It's only the second Bill I've piloted through parliament, so I'm thrilled."

Naomi Hill
One of the co-ordinators of the Nicro Women's Support Centre.

"We campaigned for a separate domestic violence protection order, and we welcome the new legislation. We feel it's an improvement in that it will make interdicts more accessible to those women being abused by their husbands and boyfriends. And, most importantly, it provides for a mandatory arrest policy."

Lee-Anne de la Hunt
Director of UCT's Legal Aid Clinic.

"My first positive thought is

No. (252)
of 6/12/93

amnesty for Hani killers

THERE was "no way" the ANC would agree to the release of Clive Derby-Lewis and Janusz Walus in a further amnesty deal for political prisoners, ANC spokesman Mr Carl Niehaus said yesterday.

The two were sentenced to death earlier this year for the murder of SA Communist Party secretary-general Mr Chris Hani, and could be eligible for release as part of an amnesty deal, Minister of Correctional Services Mr Adriaan Vlok said yesterday.

He was responding to a Sunday report that the government was pushing to extend the October 8, 1990, cut-off date to December 1 this year.

'Not considered'

The killers of American exchange student Ms Amy Biehl and the St James Church gunmen who killed 11 church-goers could also be considered, along with the killers of some 10 000 people in the past three years.

Mr Vlok said during a media briefing on Robben Island. "I think there will be a further amnesty."

But Mr Niehaus said the Hani killers, the Biehl murderers and the St James Church gunmen would not be considered in the amnesty deal by the ANC because their crimes "were beyond politically motivated murders".

He said ANC member Michael Phama, serving 21 life sentences for murder, would not be a candidate for amnesty — Staff Reporter, Political Staff

Hani's killer to go free?

Sowetan 6/12/93

THE GUIDELINES BEING negotiated for a possible amnesty would determine whether convicted murderer Clive Derby-Lewis would be freed, Correctional Services Minister Mr Adriaan Vlok said at the weekend

Derby-Lewis and Polish immigrant Janusz Waluz were sentenced to death for the murder in April of South African Communist Party general-secretary Mr Chris Hani

Speaking at a media briefing on Robben Island, Vlok said there were still prisoners in jail convicted for political crimes

Asked about a possible amnesty and if it would affect Derby-Lewis, he said "I hope there will be one. The Derby-Lewis case will depend on the criteria of the guidelines of the possible amnesty being negotiated"

Vlok said the prisons department was pre-

■ NEW AMNESTY Correctional Services

Minister says guidelines still to be negotiated:

pared for the new dispensation

"If it is going to be necessary to act in a stricter way against criminals, we must be prepared to accept more prisoners. As the receiving department, we have a role to play and intend doing so

New dispensation (232)

"We are looking at how we will fit into the pattern of the new dispensation

"After the election the department will be geared to carry on in the same professional way. We are geared to serve the new government as an apolitical department."

He said despite the poor ratio of warders to prisoners, the department was proud of there being remarkably little trouble in prisons

General Henk de Bruin, who will become the new Commissioner of Prisons in January, said the new dispensation would provide a tremendous challenge to the department to "take the TBVC states back into the system"

He said South African prisons used systems which those prisons did not. It would therefore be a major challenge to bring them on to par in areas like parole and correctional supervision, financial systems and labour relations, he said — Sapa

Hani killers unlikely to be eligible

Amnesty date tops the agenda

Star 6/12/93

252

BY PAUL BELL

The Negotiating Council will meet in Cape Town today with the critical issue of a cut-off date for amnesty for political offences at the top of its agenda

While reports yesterday suggested that the Government would try to persuade the ANC to accept December 1 1993 as the cut-off date, it is reliably understood that this was only one of six options to be considered.

November 20 is also regarded by the leading negotiating partners as the most widely acceptable date, and therefore most likely to be set.

In terms of the amnesty, those serving prison terms for political crimes committed before the cut-off date would be pardoned, while others who had carried out such crimes would be freed from prosecution.

Clive Derby-Lewis and Janus Walusz, sentenced to death in October for the murder of South African Communist Party general secretary Chris Hani in April, would not be eligible. Derby-Lewis is to apply in the Rand Su-

NOVEMBER 20 is regarded as the most acceptable cut-off date for deciding who will get pardons for political crimes

preme Court today for his case to be reopened.

Sapa reports from Cape Town that Correctional Services Minister Adriaan Vlok said on Saturday the guidelines being negotiated for a possible amnesty would determine whether Derby-Lewis would be freed.

Speaking at a media briefing at Robben Island, Vlok said there were still prisoners in jail convicted for political crimes.

Vlok said the Prisons Department was prepared for the new dispensation.

"If it is going to be necessary to act in a stricter way against criminals, we must be prepared to accept more prisoners

"We are looking at how we will fit into the pattern of the new dispensation.

"We will remain as a national department but will have regional commissions to allow maximum devolution and for the community to get more involved.

"After the election, the department will be geared to carry on in the same professional way. We are geared to serve the new government as an apolitical department."

He said that despite the poor ratio of warders to prisoners, the department was proud of what he called the small amount of trouble in prisons

General Henk de Bruin, who will become the new Commissioner of Prisons in January, said the new dispensation would provide a tremendous challenge to the department to "take the TBVC states back into the system"

He said South African prisons used systems which those prisons did not, so it would be a major challenge to bring them up to standard in areas such as parole and correctional supervision, financial systems and labour relations

English version was available
lay and 56 pages of the Afri-
ersion were available yester-

se pages contained mostly
ons of words and could have
iscussed informally without
to take any decisions"

Shake-up at wildlife body

MARIANNE MERTEN

THE Wildlife Society, which is in a financial crisis, is to restructure its top management by the end of the year

CE Tony Ferrar will stand down and management responsibilities will be devolved to regional branches. Ferrar will take up a position on the society's board of directors

A society spokesman said yesterday that membership had declined steadily during the past two years of recession. Membership contributions were an important source of income

Management consultant Peter van Ryneveld would be responsible for the organisation's business management on a contract basis, she said

FW will support shift in amnesty cut-off date

CAPE TOWN — President F W de Klerk indicated yesterday he would reluctantly agree to shifting the cut-off date for granting amnesty for politically motivated crimes until not later than end-1992

He said the reason for shifting the date was that some parties argued they were not part of negotiations at the existing cut-off date, October 1990.

The existing October 1990 cut-off date was only really in the view of these parties, a consequence of negotiations between government and the ANC

He criticised the way the issue was presented in the media. SA was involved in a process of reconciliation. The worst possible way to do that was to say that there should first be a process of retribution

"Reconciliation means starting with a clean slate," he said, adding that what was being suggested was really "rounding off" something that was already in place.

Setting the cut-off date at the end of 1992 was justifiable because full multiparty negotiations had begun by then, and therefore the moral basis for violent political activities fell away at that point

Sapa reports from Durban that DP leader Zach de Beer said the party would fight a proposal, expected before the nego-

tiating council over the next two days, for an amnesty cut-off date to be extended to December 1 1993, as speculated by week-end newspaper reports. (252)

Addressing a DP meeting, he said this new move threatened to further undermine the interim constitution. The NP government wanted the date to be December 1 1993 and did not want the crimes of the people concerned to be disclosed.

"To allow criminals, who have caused innocent people harm and suffering, to be released without disclosing their crimes on top of it, is not acceptable to the DP"

MARIANNE MERTEN reports Lawyers for Human Rights national director Brian Currin said yesterday a general amnesty for politically motivated offences could be resolved only by a democratically elected government. (3074)

He said it was inappropriate to hold discussions regarding a general amnesty for politically motivated offences on the eve of the Transitional Executive Council's inauguration. Currin reiterated the organisation's call for the establishment of a truth commission to investigate who was responsible for past atrocities

Popcru task group explores merger with Sapu

THE Police and Prisons Civil Rights Union (Popcru) established a task group last week to explore unity talks with the SA Police Union (Sapu), Popcru deputy president Enoch Nelam said yesterday. BIDAN

Acknowledging that differences between the two unions existed, Nelam said Popcru had decided the SAP needed a single, strong union to build a credible police force with a composition which reflected that of the community. 7/12/93

"There are stark differences between those who benefited under

ERICA JANKOWITZ

apartheid and those who didn't, but we must rise above these. Popcru is committed to looking at forming a single union, although we would never force Sapu to merge with us," Nelam said

Sapu national secretary Maj Peter Brandt welcomed the Popcru move, saying the two unions differed on two matters of principle. However, these could probably be resolved through discussions

He said the biggest difference was

the matter of political affiliation, which Sapu opposed as it served to divide the police force

The other point of dispute was the right to strike.

"Sapu believes the police are an essential service and we therefore have no right to strike. Under the new regulations, we can address unfair labour practices in a responsible manner," Brandt said

Sapu was launched in Welkom at the end of last month with mostly white members, unlike Popcru, which has mostly black members

Political criminals to go free

MICHAEL MORRIS
Political Correspondent

A FRESH wave of political criminals will be given amnesty by South Africa's first democratic parliament in a gesture of national reconciliation thrashed out by negotiators late last night

The Negotiating Council accepted a final section for the interim constitution under the heading, "National unity and reconciliation", which will empower the new parliament to grant a general amnesty with a cut-off date between October 8, 1990 and yesterday, December 6, 1993.

The proposal says "In order to advance reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives, committed in the course of the conflicts of the past."

The parliament is empowered to adopt a law providing for the "mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed"

However, it was made clear that the killers of Chris Han — Clive Derby-Lewis and Janusz

Walus — would not be freed.

The controversial proposal provoked impassioned debate in the final hours of the Negotiating Council

Constitutional Development Minister Roelf Meyer said it was appropriate to conclude the constitution with a chapter emphasising reconciliation

Describing his "painful" decision to back the amnesty, SACP chairman Joe Slovo said that "the past cannot hang like an albatross around one's neck and one has to look at the future".

The Pan Africanist Congress fiercely rejected the amnesty.

252

APU 7/12/93

Amnesty: Parliament to decide

252 CT 7/12/93

A GENERAL amnesty would be granted for political offences committed in the course of conflicts in the past, the multi-party negotiating council decided early this morning.

The ANC/government proposal, which will be included in the interim constitution "to advance reconciliation and recon-

struction" was adopted by sufficient consensus with fierce opposition from the PAC, DP and traditional leaders.

In terms of the deal, a new Parliament will adopt a law determining a cut-off date, between October 8, 1990, and December 6, 1993, for political offenders.

The new Parliament will also determine the mechanism, criteria and procedures through which such an amnesty will be dealt with after the law has been passed.

Opposing the measure, the DP's Mr Colin Eglin said negotiators had failed to determine the date for amnesty, the extent

to which it should be accompanied by exposure and the criteria for political crimes.

South African Communist Party chairman Mr Joe Slovo said that under no condition should amnesty provisions allow for the freeing of the murderers of SACP secretary-general Mr Chris Hanu.

Amnesty talk 'not on'

Sowetan 7/12/93

It was unacceptable that discussions on a possible general amnesty for politically motivated offences were being held on the eve of the Transitional Executive Council's inauguration, Lawyers for Human Rights said yesterday.

In a statement issued from Pretoria the LHR responded negatively to Correctional Services Minister Mr Adriaan Vlok's statement that guidelines being

negotiated for a possible amnesty would determine whether Clive Derby-Lewis would be freed (252)

Derby-Lewis and Polish immigrant Janusz Waluz were sentenced to death for the murder in April of SA Communist Party general secretary Chris Ham.

The LHR questioned how the Government could be considering extending the cut-off date for indemnity — Sapa

New political amnesty planned

Star 7/12/93
Cape Town — A general amnesty for politically motivated crimes will be granted by the new Parliament, according to a proposal put before the Negotiating Council last night.

In terms of the proposal the cut-off date for amnesty will be sometime between October 8 1990 — the existing date for indemnities — and the adop-

tion of the new constitution.

The decision on the cut-off date will also be left to the parliament to be elected on April 27. (252)

In effect the amnesty will free all those convicted of political crimes and protect others yet to be charged against prosecution. — Political Correspondent.

Call to reduce rights abuses

LONDON — Amnesty International appealed yesterday to the Transitional Executive Council and President F W de Klerk to implement measures to reduce human rights abuses which would jeopardise elections next year (252)

The human rights organisation said here it had sent letters to top government ministers and ANC officials

It said problem areas were the conduct of some members of the internal stability division in the East Rand and Natal, and the Bophuthatswana and KwaZulu police forces — Sapa

Sowetan 2/12/93

'Hit squad' exposed

Isaac Moleli, Lulama Luti and Sowetan Correspondent

THE GOLDSTONE COMMISSION announced yesterday it had uncovered a suspected hit squad of KwaZulu police members who had probably assassinated at least nine people, including leaders and members of the ANC.

Mr Justice Richard Goldstone disclosed that three men had been arrested and more arrests were expected. The probe was continuing, he said, and investigators were looking into the possible existence of other hit squads.

The ANC yesterday said the Goldstone Commission's findings of the existence of a suspected KwaZulu police hit squad in the region did not come as a surprise.

The deputy regional secretary of the Southern Natal region, Mr Mpho Scott, said the findings reinforced the organisation's belief that the slaying of such top leaders as Mr Reggie Hadebe and Mr S'khumbuzo Nqwanya was the work of hit squads.

The judge noted that the head of the KZP, Lieutenant-General Roy Doring, had been instrumental in blowing the whistle on the alleged hit squad. He had called in the SA Police and they had notified the Goldstone Commission.

Justice Goldstone said the suspects had received training from the SA Defence Force in the Caprivi Strip, Namibia, in 1986. This training had been the focus of a previous Goldstone inquiry, he added.

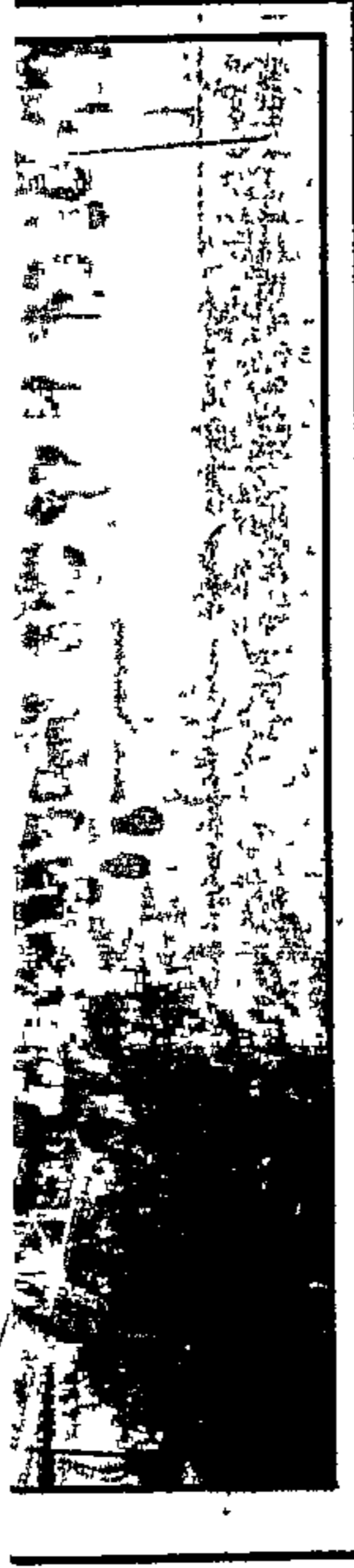
The report said hit squads had been responsible for a huge toll of murdered leaders and supporters of the IFP, ANC and SAP among others.

The then ANC Natal Midlands deputy chairman, Mr Reggie Hadebe (35), was shot dead when a car carrying ANC officials from a peace meeting in Ikopo was ambushed in October last year.

"Both leaders (Hadebe and Nqwanya) were clearly killed by hit squads and we know for a fact that the names of other leaders like S'bu Ndebele, Bheki Cele and Jeff Radebe are top on the list of these hit squads," said Scott.

Reacting to the Goldstone Commission findings yesterday, KZP Commissioner Lieutenant-General Roy Doring said: "I wholeheartedly agree with the commission that, to make public further details at this stage would be calculated to prejudice the investigation." He did not believe it was in the public interest to release any information yet.

● See Page 2.



Shock findings on hit squads

Star 9/12/93

BY HELEN GRANGE and CHRIS WHITFIELD

The Goldstone Commission's disclosure yesterday that it had "credible evidence" of a KwaZulu Police (KZP) hit squad being responsible for the murder of nine people has vindicated the assertion that hit squads exist, the ANC said yesterday.

The organisation said the report had given credence to its assertion on the existence of the hit squads and blamed President de Klerk for the SADF's training of hit squad members.

Three arrests had been made and more were expected, Mr Justice Richard Goldstone said in a report of his commission released yesterday.

ANC leaders were among those allegedly murdered by the hit squad during 1992 and 1993.

The facts had "come to light" after KZP commissioner Lieutenant-General Roy Dur-

ing had requested the South African Police to investigate allegations of murder, attempted murder, armed robbery and theft of vehicles.

During yesterday confirmed his investigation of the probe, but said he was distressed at Judge Goldstone's decision to make the information public, adding it could "prejudice the investigation and possible prosecution of those involved".

He said it was "regrettable in the extreme" that the allegations had been disclosed "at a time when I and the majority of my members are making earnest endeavours to establish sound community relations".

During said one of the men being held had already been arrested for armed robbery and another had been recently dismissed after a board of inquiry found he was unfit to remain a member of the KZP.

Allegations of their involvement in hit squad activity had emerged only in the subse-

To Page 3

Shock findings on KwaZulu hit squads

Star 9/12/93

From Page 1

quent SAP-assisted investigation, Durug said.

Mr Justice Goldstone said in the report, "The fact that hit squads are operating in South Africa cannot seriously be doubted."

The commission had constantly refused to make findings without adequate evidence.

However, during the past few days credible evidence has come to the knowledge of the commission of a hit squad.

All three persons (now arrested) were until recently members of the KZP.

The ANC said: "These revelations make it even more urgent that the Transitional Executive Council should take immediate control of the KwaZulu Police and the finances of the KwaZulu bantustan."

"It is incumbent upon Chief Minister Gatscha (Mangosuthu) Buthelezi

the Chief Minister of KwaZulu and Minister of KwaZulu Police — to explain to the world what he knows about the activities of the hit squads within his police force.

"We need to know who is issuing orders and who the ANC members are who have been assassinated."

The Democratic Party's Natal provincial chairman Kobus Jordaan said the disclosures made it imperative for the KwaZulu government and the IFP to take part in the TEC

Evidence

"These findings convince the DP that elements within the KZP are being used as a political instrument by their present political taskmaster," he said.

In his report, the judge stressed that the fact that evidence had been found implicating the

KZP "in no way exonerates any other party who might also have been responsible through their members' or supporters for public violence and intimidation."

The SAP investigation found that the men held "had received training from the SA Defence Force in the Caprivi in 1986" — the subject of a previous inquiry by the commission.

The judge said the evidence pointed to a hit squad consisting of five KZP policemen.

In September, The Star revealed that a KwaZulu policeman who received SADF training in the Caprivi had appeared under a false name in court on two charges of murder.

Alfred Masarigo was acquitted in the Natal Supreme Court although the judge had found there were strong suspicions against him.

It is not known whether he has been held in the clampdown

ISU pullout will fuel violence — Goldstone

Star 9112193
BY CHRIS WHITFIELD
and HELEN GRANGE

The withdrawal of the police's Internal Stability Unity (ISU) from the violence-torn East Rand townships — as demanded by the ANC — would lead to greater violence, says the Goldstone Commission.

In a report issued yesterday and directed specifically at the Transitional Executive Council, Mr Justice Richard Goldstone said. "The commission is alarmed at the demands for the ISU to be withdrawn from these townships."

Reacting to the finding last night, the ANC bluntly repeated its call for the withdrawal of the ISU from the area.

The report found that the residents of these townships "are consistently at risk of death and injury and the withdrawal of adequate protection will make them even more vulnerable to the mercy of roving groups of people".

Mr Justice Goldstone pointed to groups who had "set themselves up as informal, undisciplined and unaccountable vigilante 'law enforcers', whether calling themselves self-defence units or by any

other name"

He added: "Whatever the shortcomings or unacceptable conduct of members of the ISU might be, their withdrawal is likely to lead to greater and not lesser violence."

The ANC said Mr Justice Goldstone's acknowledgement that he could not comment on the justification or non-justification of accusations levelled against the ISU made his assertion "unacceptable"

The Law and Order Ministry said the report "highlights the irresponsible nature of ANC demands for the withdrawal of this unit from unrest-torn areas" (252) (25)

National Party spokesman Marthinus van Schalkwyk said the ANC, in calling for the ISU's removal, was aiming to establish a position "where there is no opposition or control over intimidation"

ISU chief Major-General Adriaan de la Rosa yesterday agreed with the commission that, in all probability, there would be an increase in violence in certain townships if the ISU were withdrawn. He appealed to the public to help the ISU "in its efforts to bring about peace and stability".

Unit must stay in townships — judge

LLOYD COUTTS

WHATEVER the shortcomings or unacceptable conduct of members of the SAP's internal stability unit, its withdrawal from East Rand townships would probably lead to greater violence, the Goldstone commission said yesterday.

In an interim report on prevention of public violence and intimidation, Judge Richard Goldstone said the commission was alarmed by demands for the unit's withdrawal from the townships.

"The residents of those townships are consistently at risk of death and injury and the withdrawal of adequate protection will make them more vulnerable to the mercy of roving groups of people who have set themselves up as informal, undisciplined and unaccountable vigilante 'law enforcers', whether calling themselves self-defence units or any other name."

Not only had violence increased dramatically, but vital amenities such as water reticulation, electricity and railway tracks had been sabotaged.

Attacks on police had become so widespread that uniformed policing was not possible. Since August 1 there had been more than 150 attacks on police patrols. Five policemen had been killed and 11 seriously injured.

"Even if some or all of the criticisms (of the unit) are fully justified, there is no peacekeeping force in SA other than the SAP, and it appears to be highly unlikely that there will be another in the future."

"It is therefore essential that the SAP be given the support of all South Africans and that efficient and adequate steps be taken to ensure that it operates fairly and efficiently, and transparently so, in the inter-

To Page 2

Unit

ests of all citizens," Goldstone said.

The SAP, with the Transitional Executive Council and the Independent Electoral Commission, needed to consider urgently measures to ensure increased confidence in policing.

The ANC said Goldstone's insistence on the unit's continued deployment was unacceptable in the light of his admission that he was unable to comment on justification of criticisms of the unit.

"Through its actions the unit has come into direct conflict with many communities, reinforcing the perception that it is a paramilitary force deployed against them, not a police force there to protect them."

From Page 1

Sapa reports that Law and Order spokesman Craig Kotze said the finding highlighted the irresponsible nature of the demand. "Such demands can now, more than ever, be dismissed as political posturing aimed at smearing the SAP, obscuring the political rivalry and intolerance between the ANC and the Inkatha Freedom Party and diverting attention from the role of ANC supporters in the violence."

Goldstone's views were welcomed by the NP, which said the ANC's campaign to remove the unit was intended to create a situation in which there would be no resistance to, or control over, intimidation.

Comment: Page 6

By KADER ASMAL

SINCE 1948 when the General Assembly of the United Nations adopted the Universal Declaration of Human Rights — with South Africa abstaining — December 10 has been celebrated as International Human Rights Day throughout the world

This year marks two official anniversaries in which South Africans have been involved. As we mark the adoption at Kempton Park of our future bill of rights, we should recall a real tradition based on the invocation of human rights as part of resistance of tyranny

Since 1955, the Freedom Charter has provided a set of founding principles on which a democratic South Africa had to be built. It became a beacon for further struggles. But the set of inclusive demands reflected in the Freedom Charter flow from a continuous and hard-fought tradition which produced the Charter. This has provided a democratic vision

The ANC was the first liberation movement in the world to adopt a comprehensive bill of rights, at its national congress on December 16, 1943. But as this anniversary is observed, we must recall that our rights-based tradition goes even further back, to the days when formal and legally entrenched racism was slowly making its way into the statute book

Opposition

It was when the first Hertzog government was in power, 70 years ago on May 24, 1923, that the annual conference of the ANC adopted what was described as the "following declaration, statement or bill of rights" at a time when the concept of a bill of rights had hardly entered the minds of most people, except in France and the United States

In five clauses, the bill of rights laid claim to the national rights to live, to ownership of land, to liberty and

ANC's pioneer charter of human rights

equality for Africans "as well as their coloured brethren" and equal participation in the "management and direction of the affairs of this land"

Although the 1923 document asked for a qualified franchise through support of Rhodes' equal rights for "all civilised men south of the Zambezi", and was written in "respectful" language, it was for the time and place a revolutionary document, surpassing by far, in its approach and content, any other set of claims by oppressed and excluded people

It was invoked in the great opposition to Hertzog's Land Bill of 1936, which determined the physical, legal and demographic nature of land rights for the next half a century

Just as important in its effects was the demand for equal treatment for the "coloured brethren", the assertion of non-racialism in our ranks, which again was unique in the annals of resistance movements against tyranny.

Exceptional

Pride of place after the Freedom Charter must go to the African Claims document adopted by the ANC, 50 years ago, on December 16 at Bloemfontein. Nearly three decades before the liberals in South Africa grappled with the nature of a democratic South Africa — and they supported a qualified franchise for Africans even then — the African Claims document demanded self-determination for the en-

tire people of South Africa. Integral to this document was the first fully-fledged, systematic and comprehensive bill of rights, which was ahead of its time in many and exceptional ways

The two documents were prepared by a broadly-based committee of 28 people whose names read like a roll-call of heroes of our struggle: Calata, Kotane, Mahabane, Moroka, Mtimkulu, Ka Seme and Xuma, the President General of the ANC

It was chaired by the redoubtable Professor Z K Matthews and happily, three of the signatories — Govan Mbeki, C Mbata and E T Mofutsanyane — are still with us

This committee, composed exclusively of Africans from South Africa, so that, as Dr Xuma put it, "they can declare without assistance or influence from others, their hopes and desires", was truly internationalist in tone and content

It was drawn up so that the ANC could respond to the Roosevelt-Churchill Atlantic Declaration of 1941, produced in the early days to rally democratic forces world-wide in the greatest anti-fascist crusade of our time

Segregation

The African Claims document applied the eight points of the Atlantic Declaration to Africa and the colonial system, rejecting colonialism in its entirety (a year before the famous Manchester conference against colo-

rial rule), supported economic, political and cultural self-determination, asserted freedom for the British High Commission territories around South Africa and rejected the acquisition of territory by force

The bill of rights, adopted before the Universal Declaration of Human Rights by the UN in 1948, was precocious in its treatment of rights. It was anti-sexist — a vote for all adults — rejected the perverted values of segregation and asserted the need for non-racialism and, for the first time in the ANC, demanded a non-racial suffrage without any qualification

Decency

Rights played an important part. More remarkable — something that Kempton Park never really grasped — was the assertion of economic, social and cultural rights as *human* rights, especially with the emphasis on equal pay for equal work, the rejection of a special type of education for Africans (anticipating Verwoerd by 10 years), a demand for a national health service and the assertion of rights which we consider today to be "inalienable" in the claim to full citizenship

Dr Xuma, in introducing the Bill of Rights at Bloemfontein, said that the adoption of the documents was only the "beginning of a long struggle entailing great sacrifices of time, means and life itself" before it would be achieved. How right he was

The Programme of Action, of the Youth League of 1949 (in which Mandela and Tambo played leading roles) adopted the bill of rights of 1943 as the basic demands of the Youth League. We are today on the verge of achieving what may have appeared to be fanciful and far-fetched. But the 1943 document inspired us in exile, when we drafted the Constitutional Guidelines in 1988 and the first bill of rights produced in 1990 after our return

This is our patrimony. We are the upholders of the core values of what the 1943 Bill of Rights described as the establishment of a "new order" for South Africa, of freedom, democracy and human decency

□ Kader Asmal is a member of the National Executive Committee of the ANC and Professor of Human Rights Law at UWC

'Amnesty info must be open'

VREDENBURG — It was appalling that the National Party did not want the crimes of those receiving amnesty, for the perpetrators of "politically-motivated" crimes, to be made known, Democratic Party leader Dr Zach de Beer said yesterday.

"What is the National Party hiding? What has it been up to between 1990 and 1993 that the public should not know and who in the party is in need of amnesty?"

The ANC was also in favour of further amnesty which, given the ANC's record of human rights, did not come as a surprise, he said. — Sapa (252) CT 10/2/93

The fourth, and final, draft of the first comprehensive Bill of Rights for South Africa was approved by the negotiators at Kempton Park on November 18. It will probably be retained without amendment and come into effect after April 27 next year. To mark Human Rights Day, December 10, SOUTH publishes extracts from the draft Bill.

Your rights

252

without amendment and come into effect after April 27 next year. To mark Human Rights Day, December 10, SOUTH publishes extracts from the draft Bill.

ture of any kind, whether physical, mental or emotional, nor shall any person be subject to cruel, inhuman or degrading treatment or punishment.

SERVITUDE AND FORCED LABOUR

No person shall be subject to servitude or forced labour.

PRIVACY

Every person shall have the right to his or her personal privacy which shall include the rights not to be subject to searches of his or her person, home or property, the seizure of private possessions or the violation of private communications.

RELIGION, BELIEF AND OPINION

1 Every person shall have the right to freedom of conscience, religion, thought, belief and opinion, which shall include academic freedom in institutions of higher learning.

2 Without derogating from the generality of subsection (1), religious observances may be conducted at state-aided institutions under rules established by an appropriate authority for

or cause:
(c) to freely make political choices
2 Every citizen shall have the right to vote, to do so in secret and to stand for election and public office

DETAINED, ARRESTED AND ACCUSED PERSONS

1. Every person who is detained, including every sentenced prisoner, shall have the right
(a) to be informed promptly in a language which he or she understands of the reason for his or her detention;

(b) to be detained under conditions consonant with human dignity, which shall include at least the provision of adequate nutrition, reading material and medical treatment at state expense,
(c) to consult with a legal practitioner of his or her choice, to be informed of this right promptly and, where substantial injustice would otherwise result, to be provided with the services of a legal practitioner by the state,

(d) to be given the opportunity to communicate with, and to be visited by, his or her spouse or partner, next-of-kin, religious counsellor and a medical practitioner of his or her choice, and

employers shall have the right to form and join employers' organisations
3 Workers and employers shall have the right to organise and bargain collectively
4 Workers shall have the right to strike for the purpose of collective bargaining
5 Employers' recourse to the lock-out for the purpose of collective bargaining shall not be impaired subject to Section 34 (1).

PROPERTY RIGHTS

1 Every person shall have the right to acquire and hold rights in property and, to the extent that the nature of the rights permits, to dispose of such rights.
2 No deprivation of any rights in property shall be permitted otherwise than in accordance with a law

ENVIRONMENT

Every person shall have the right to an environment which is not detrimental to his or her health or well-being

CHILDREN

1 Every child shall have the right (a) to a name and nationality as from

EQUALITY

1 Every person shall have the right to equality before the law and to equal protection of the law
2 No person shall be unfairly discriminated against, directly or indirectly, and without derogating from the generality of this provision, on one or more of the following grounds in particular: race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language

3 a) This section shall not preclude measures designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination

equal enjoyment of all rights and freedoms.

b) Every person or community dispossessed of rights in land before the commencement of this Constitution under any law which would have been inconsistent with the provisions of subsection (2) shall be entitled to claim restitution of such rights

LIFE

Every person shall have the right to life

HUMAN DIGNITY

Every person shall have the right to respect for and protection of his or her dignity

FREEDOM OF ASSOCIATION

Every person shall have the right to freedom of association

FREEDOM OF MOVEMENT

Every person shall have the right to freedom of movement anywhere in South Africa

FREEDOM AND SECURITY OF THE PERSON

- 1 Every person shall have the right to freedom and security of the person which shall include the right not to be detained without trial
- 2 No person shall be subject to tor-

... vances are conducted on an equitable basis and attendance at them is free and voluntary

FREEDOM OF EXPRESSION

- 1 Every person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media, and the freedom of artistic creativity and scientific research
- 2 All media financed by or under the state shall be regulated in a manner which ensures impartiality and the expression of a diversity of opinion

ASSEMBLY, DEMONSTRATION AND PETITION

Every person shall have the right to assemble and demonstrate with others peacefully and unarmed, and to present petitions

CITIZEN'S RIGHTS

Every citizen shall have the right to enter, remain in and leave South Africa, and no citizen shall be deprived of his or her citizenship

POLITICAL RIGHTS

- 1 Every citizen shall have the right
 - (a) to form, to participate in the activities of and to recruit members for a political party
 - (b) to campaign for a political party

or her detention in person before a court of law and to be released if such detention is unlawful

2 Every person arrested for the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right

(a) in a language which he or she understands, to be informed promptly that he or she has the right to remain silent and to be warned of the consequences of making any statement,

(b) as soon as it is reasonably possible, but not later than 48 hours after the arrest or the first court day thereafter, to be brought before an ordinary court of law and to be charged or to be informed of the reason or his or her further detention, failing which he or she shall be entitled to be released,

(c) not to be compelled to make a confession or admission which could be used in evidence against him or her, and

(d) to be released from detention with or without bail, unless the interests of justice require otherwise

3 Every accused person shall have the right to a fair trial

LABOUR RELATIONS

- 1 Every person shall have the right to fair labour practices
- 2 Workers shall have the right to form and join trade unions and

(b) to parental care,
(c) to security, basic nutrition and basic health and social services;

(d) not to be subject to neglect or abuse;

(e) not to be subject to exploitative labour practices nor to be required or permitted to perform work which is hazardous or harmful to his or her education, health or well-being,

2 Every child who is in detention shall, in addition to the rights which he or she has in terms of section 25, have the right to be detained under conditions and to be treated in a manner that takes account of his or her age

LANGUAGE AND CULTURE

Every person shall have the right to use the language and to participate in the cultural life of his or her choice

EDUCATION

Every person shall have the right.

(a) to basic education and to equal access to educational institutions,

(c) to establish, where practicable, educational institutions based on a common culture, language or religion, provided that there shall be no discrimination on the ground of race or colour

RESIDENCE

Every person shall have the right to freely to choose his or her place of residence anywhere in South Africa



Star 10/12/93
**Report aimed at
'discrediting IFP'**

Ulundi — The timing of the Goldstone Commission of Inquiry report into alleged KwaZulu Police hit squads was an attempt to discredit the Inkatha Freedom Party for not taking part in the Transitional Executive Council, IFP president Mangosuthu Buthelezi said in a statement yesterday. (18) (252)

Buthelezi questioned why the KwaZulu Police were singled out by name when the report did not mention the "atrocities perpetrated by Umkonto we Sizwe and the ANC-dominated self-defence units in the townships". —

Sapa. 10/12/93

Affirmative action for legal posts

~~11/12/93~~ 152 11/12/93
Weekend Argus Reporter

AFFIRMATIVE action is essential if the Justice Department is to be "more representative" of South Africa's population, says Deputy Justice Minister Sheila Camerer

Speaking in Port Elizabeth, Mrs Camerer said all posts in the public service would have to be filled on a representative basis in the future.

"Affirmative action implies positive action. It is a positive thing to employ a more representative group of men and women from our full community, to confirm our goal in the department of equal treatment and equal opportunity."

Mrs Camerer said the department was considering recruiting people from non-governmental organisations with experience in public administration, and training court interpreters with the potential to become judicial officers

Justice under fire

Accusation that the legal system is a 'white man's preserve'

JOE LOUW

Weekend Argus Reporter

TWO of the founding members of the newly formed Legal Forum — the Black Lawyers' Association (BLA) and the National Association of Democratic Lawyers (Nadel) — have fired off an angry protest to Justice Minister Kobie Coetzee urging him to stop all unilateral restructuring of the Justice Department.

The protests follow the announcements earlier this week of permanent appointments of five judges to the Supreme and Appeal Courts.

Moganku Gumbi, national director of the BLA said in a letter "We are particularly concerned about the appointment

After the appointment of five acting judges to permanent posts, a legal forum has urged the Justice Department to stop restructuring before next year's election.

of acting judges to permanent posts as judges which we see as pre-empting any moves by a future government to rectify the imbalances that already exist in the legal profession

"In view of the advanced stage of deliberations relating to appointments to the Bench, we urge you not to proceed with any appointments until you have met with a delegation of the BLA and Nadel"

She dismissed as "utter nonsense" the Justice Minister's reply in a letter to the BLA that "the administration of justice cannot be brought to a standstill due to a lack of sufficient judges"

The minister also stated that he considers it his constitution-

al responsibility to maintain a proper justice administration

Mrs Gumbi added "The bottom line is that we interpret these moves by the minister as loading the Bench with appointees whom we will have to live with permanently"

Chairman of the general council of the Bar Mr W H Trengrove said the council also felt that no permanent appointments should unilaterally be made by the government

"This is part of the general concern, not only in the legal sphere, that government should not at this stage make appointment of permanent nature especially of judges But let me also say that the recent appointments to the Appellate Di-

vision were outstanding appointments and I believe there was in fact consultation," said Mr Trengrove

Nadel president Pius Langa is "vehemently opposed" to any restructuring "With the exception of a very few black faces," he said, "the legal profession in our country is still a white man's preserve — even after the coming elections, with the present interim arrangements in the judiciary, there will be very little visible change The present incumbents have been reassured that they are not going to lose their jobs"

Mr Langa said the present "glaring imbalances" in the judiciary and other institutions will not be tolerated

"We have an unnatural situation where, in a country where the demographics show a majority of blacks and with only about one sixth of the total population white — in a legal

profession of 12 000 members barely 1 000 are black, all the judges of the Supreme Court except one are all white"

Asked what the Justice Department is doing about affirmative action and equal employment opportunities in the department, a spokesman said the administration of justice, in line with internationally accepted principles, "should be exercised independently and solely on merit"

"In line with this principle," he said, "principle appointments in the Justice Department are done only with regard to merit and efficiency principles, with the result that subjectivity and discrimination are actively combated"

In 1992 his department had awarded 163 bursaries to persons of "other communities" to study in the legal field

AKG 11/12/93
(252)

Choose words carefully, magistrates are warned

RAYMOND HARTLE
Weekend Argus Reporter

252

ARC 11/12/93

MAGISTRATES have been warned by the Department of Justice about making insensitive comments which can be construed as racist or sexist.

The warning has been issued in the light of the furore which erupted recently around the comments by Port Elizabeth magistrate Peter Campbell in a sexual harassment case.

Mr Campbell's "locker room" comments during the sentencing of police groper Anton Weitz, to the effect that three policewomen who objected to Weitz's advances had "over-reacted", led to a public roasting from women's rights organisations.

"What did Weitz actually do?" asked Mr Campbell, before cautioning and discharging the warrant officer from Humewood police station for touching a colleague's leg and kissing another's neck.

The magistrate said he believed the policewomen had

over-reacted, but said that men must learn to keep their hands to themselves.

Weitz was fined R1 000 (or one month) for touching a third policewoman's breast and fondling a teenage girl.

A Justice Department investigation into Mr Campbell's comments is still under way.

But Deputy Justice Minister Sheila Camerer said that court personnel should work towards achieving greater "gender sensitivity". Mrs Camerer, who said she was confident that justice was done in the Weitz case, said it was essential that magistrates take account of public perceptions.

"It is up to each of us to see to it that we choose our words and actions carefully so as not to further wrong perceptions.

"Gender sensitivity has nothing to do with feminism but is in line with the principles of equality and the right to be treated with respect and dignity. The same applies to race sensitivity."

Marches to be regulated

C.P. (1992)

12/12/93

MARCHES and gatherings are to be regulated in terms of a draft Bill emanating from a Goldstone Commission inquiry, and consultation between the Department of Justice, security forces and political parties.

The Regulation of Gatherings Bill is deemed an essential instrument in maintaining order and peace during the run-up to the election, according to an explanatory memorandum accompanying the Bill.

Tabled on Saturday after more than a year of incubation, the Bill was the culmination of an inquiry by a panel of South African and international experts into limiting possible disruption and violence associated with marches and gatherings.

The ANC and Inkatha were among the political parties consulted before the panel produced its July 1992 report on regulating gatherings.

"At the inquiry, broad agreement was reached on the right to peaceful public expression and assembly and the rights to State protection in the en-

joyment of these rights," the memorandum said.

It said this agreement was fundamental to the procedures to regulate the exercise of these rights (252).

Penalties include fines of up to R20 000, and imprisonment not exceeding one year. Organisers of gatherings have a civil liability where property is damaged, or people are injured or die.

Measures in the Bill include

- Appointing a convenor of a gathering who must notify a responsible officer, appointed by a local authority, that a gathering is to take place,

- Negotiations may be instituted with interested parties, including the police, to ensure that gatherings proceed peacefully, and that both participants and non-participants are protected,

- If negotiations break down, a responsible officer may lay down certain conditions or, in specified circumstances, prohibit the gathering, and

- Such decisions can be reviewed by a magistrate or be referred for appeal to the Supreme Court against any judgment by a magistrate.

Demonstrations in close proximity to parliament, the Union Buildings and law courts are to be prohibited in terms of the new Bill — Sapa

'Proposals 'received positive attention'

Slow acceptance of judge's advice

Star 14/12/93

■ BY HELEN GRANGE

Of a total of 149 recommendations made by the Goldstone Commission of Inquiry into Public Violence and Intimidation since its inception in October 1991, only 21 have been implemented and fully completed.

This is according to a report of the follow-up of the commission's recommendations conducted by Mark Shaw and Sello Monyatsi of the Institute for the Study of Public Violence, issued yesterday.

Some 27 recommendations have been ignored, while progress has been achieved in 42 cases. Six recommendations are under discussion and the status of 24 is difficult to determine.

Analysing these results, researchers found that those recommendations which had been completed were "fairly specific or technical in

ONLY 21 suggestions made by the commission probing violence have been implemented (252)

nature, with clear parameters", while the most important and far-reaching ones tended to be those with which some progress was being made.

"Since most of these recommendations are complex and require the agreement of many parties (often resulting in protracted negotiations), the allocation of finances and the internal efficiency of organisations and State departments, progress has often been slow," the report states.

In most cases where recommendations had been ignored, the reason was bureaucratic ineffi-

ciency or the fact that parties had not been reminded or were unaware of the contents of the recommendation.

The report concludes that the commission has had a substantial influence on the debate around the causes of violence, and its recommendations, on balance, received positive attention.

A number of important recommendations still remained to be implemented.

Inquiries following which recommendations have as yet received little attention include: the inquiry into the illegal importation of arms and ammunition; the investigation on what needs to be done to improve the taxi industry, especially in the western Cape; the inquiry into the right-wing invasion of the World Trade Centre; and the inquiry into violence in Tokoza on the East Rand.

NEWS Allegations of fraud against council officials

Commission calls for charges against mayor

SOWETAN 15/12/93

By McKeed Kotlolo

THE Krugel Commission of Inquiry investigating allegations of maladministration in the Mamelodi Council will recommend that fraud charges be investigated against the mayor, former management committee chairman and a businessman.

The decision follows evidence yesterday by Mr George "Baas Musa" Ntsele, an officer of the Engen Petrol Company and a council clerk.

The commission's chairman, Mr Willem Krugel, announced that the commission would refer the matter to the Attorney-General for "possible

charges of fraud" against the mayor, Mr Simon Mokone, former management committee chairman Mr James Maluleka and Mr Andrew Tladi. (252)

Ntsele, of Mamelodi East, said Mokone and Maluleka approached and introduced him to Tladi in 1989.

They offered him R40 000 to sell his business rights to Tladi. He turned down the offer and finally agreed to R100 000.

He said the money was payable on the day of the signing of the transfer agreement on July 19 1989.

Present at the signing were Mokone, Maluleka, councillor Mr Peter Bambo, the council's legal adviser Mr Cecil Phatudi and other councillors.

He was told that he would receive his

money once the council had approved the transaction.

The transfer of the rights was completed and the garage erected.

Ntsele said he had "not received a farthing" from that transaction.

Ntsele, who described himself as an "illiterate", told the commission that on July 20 1989 he was made to sign a letter stating that he was handing over his rights to Tladi.

But Tladi later told "me he did not owe me any money and referred me to Mokone and Maluleka".

But the two told him not to worry because Tladi would pay.

The commission has adjourned until January 17 1994.

'NP had no right to pass rape law'

LIBBY PEACOCK

Weekend Argus Reporter

(252) ARG 18/12/93

THE ANC is still smarting over the National Party stealing some of their thunder by passing a sensitive new family law, the Prevention of Family Violence Act.

The Act, passed two weeks ago, enables a married woman to lay a charge of rape against her husband, while victims of family violence can now settle their disputes outside court.

ANC Women's League regional chairwoman Nomatyala Hangana said "It was opportunistic of the NP to pass the Bill. There are so many women's organisations which they didn't consult."

"It was an election ploy. The NP has no history of women's rights. They are pretending to care."

Although Ms Hangana conceded that the new law was protecting women — especially wives — she said the ANC was complaining about "how" the law was passed.

"They had no right to do so at this time in history. The NP laughed when our secretary-general proposed that negotiators have a woman added to each party's delegation. Their hearts are not in it."

And the future of women's rights in South Africa?

"We still have a long battle ahead. Mainly because of the apartheid system, women don't trust one another yet."

"It is our chance as a women's organisation to bring women together and address issues of race, class and gender. Women's rights should not be seen in a vacuum," said Ms Hangana.

Bid to aid unrest kids

By CARMEL RICKARD

THE Goldstone commission is to appoint an expert panel to deal with the many tens of thousands of children affected by public violence.

The commission has established an inquiry into the effect of the violence on under-16s. A number of organisations made representations to the commission and a working committee has been elected.

In a statement by the commission the chairman of the working committee.

Mr J Rees, said a strategy had to be formulated to ensure the future development of the tens of thousands of under-16s whose lives were affected by the violence. (252)

Mr Rees's committee has suggested that an expert be found to collate all the relevant information, and that a panel of experts be set up.

The Canadian embassy has donated funding for these projects and the commission is seeking suitable people through countryside advertisements.

Feminists' issues came out of closet

Sowetan 20/12/93

252

■ CUSTOMARY LAW Kept out of Bill

of Rights as body politics takes over:

By Sizakele Kooma

THE YEAR 1993 will go down as the year women scored marked victories from the political front to the grass-roots level

First came the installation of women at the World Trade Centre. The move, seen as a face-saving tactic by sceptics, was initially beset by controversy.

Their contributions led to the establishment of a special subcouncil to deal with gender issues during the transitional period.

The women at the World Trade Centre also fought successfully for the exclusion of Customary Law from the Bill of Rights.

A recent victory was the passing of two bills that will hopefully see a decrease in the rate of domestic violence.

Domestic workers also finally got their calls heeded with their incorporation and farm workers in the Labour Relations Act.

A dramatic move by the women this year was talk about the formation of a women's party. The party's platform would be anti-sexism — it includes body politics, reproductive rights, rape and violence against women — gender issues and environmentalism.

Personal achievements came with the selection of the first ever black Miss South Africa, Ms Jacqui Mofokeng, who subsequently came second in the Miss World competition.

Another major appointment was that of Dr Ivy Matsepe-Casaburri as chairman of the SABC board. Six other women, Ms Brigalia Bam, Ms Anna Boshoff, Dr Gertina Cilliers, Professor Fatima Meer, Mrs Sheila Sisulu and Dr Ruth Tomaselli, are also on the board.

To the resounding applause of her grass-roots followers, Mrs Winnie Mandela was elected president of the ANC Women's League and now holds one of the most powerful positions in ANC.

And then, of course, we got Mrs Felicia Mabuza-Suttle, talkshow host of the popular *Top Level*. She has now been appointed

to an executive position by South African Airways.

On the economic front the Women's Development Business got a R2,55 million loan from the Development Bank of Southern Africa and the Independent Development Trust. The money will be used to nurture emerging women entrepreneurs by providing loans.

The achievements were marred by certain disappointments.

Among their losses women count Chris Ham, the ANC MK commander whom colleagues branded a feminist. Ham was a member of the SACP gender committee and was also known to have shared chores with his wife and children at home.

More women continued to die from Aids. One million women will be lost to Aids by year-end, according to the World Health Organisation. The WHO estimates the rate of infection at two women every minute. It also forecasts the number infected to be 13 million women by year 2000. The number of infected teenage girls is also fast growing.

On another level the shocking news of abuse prompted serious action by the Women's National Coalition. Information that every 83 seconds a woman is being raped in South Africa and also that one out of two female persons will be raped in their lifetime and that one out of four will be battered, led to women taking to the streets this year. The beginning of the year saw a botched attempt by the government to scrap five Bills on sex discrimination.

The ANC Women's League also launched a book, *The Status of Women in South Africa*, which charted a clear picture of South African gender inequality.

Men, the book revealed, outnumber women in tertiary institutions. But more girls than boys pass matric. Over 80 percent of management positions are occupied by men and 70 percent of professional positions, whereas 86 percent women are fit only for domestic work.

For every rand earned by a man, a woman doing the same job gets 60 cents.

Detention without trial clause set to go

Star 21/12/93

■ BY CHRIS WHITFIELD
POLITICAL CORRESPONDENT

Cape Town — The notorious section 29 of the Internal Security Act — providing for detention without trial — is to be scrapped in terms of legislation tabled in Parliament yesterday

The Abolition of Restrictions on Free Political Activity Bill also envisages giving powers to the president — to the extent recommended by the Transitional Executive Council — to repeal discriminatory legislation in the self-governing territories

The Bill arises from agreements struck in multiparty talks and is

designed to break down legislative barriers to free political activity. It is expected to be passed by Parliament tomorrow

However, the perception that there will be no detention without trial in the new South Africa is incorrect. A clause in the constitution's Bill of Rights makes provision for limited detention of this kind (252)

Other legislation that is to be repealed entirely includes the Disclosure on Foreign Funding Act — applicable to political parties — the Prohibition of Foreign Financing of Political Parties Act, the Black Administration Act and the Affected Organisations Act

Bill does ⁽²⁵²⁾
away with
sacred cows

Political Staff

FILMS, publications and shows that ridicule or bring into contempt any section of SA society will soon be legal, according to a bill tabled in Parliament yesterday

The Abolition of Restrictions on Free Political Activity Bill amends or repeals several acts, including the Publications Act, Internal Security Act, and the Aliens Control Act in order to "remove from the statute books certain provisions which are capable of being used to impede free political activity"

The tabling of the bill follows recommendations from a negotiating council task group and includes the repeal of the Prohibition of Foreign Financing of Political Parties Act and the Disclosure of Foreign Funding Act

Rise in complaints to ombudsman

CHARLOTTE MATHEWS

THE harder line taken by insurance companies on disability claims helped to produce a sharp increase in the number of complaints handled by the life assurance ombudsman in the year to December 1992, according to the ombudsman's eighth annual report, released yesterday. **BIDA**

In the 12-month period ombudsman Judge Gerhardus Kotze handled 718 complaints from the public, a 62% rise on the previous year. The 632 cases finalised included 109 disability claims.

Kotze said it was no secret that the disability market was an area of concern to the life industry. **2112193 (58)**

"For many companies this class of business seems to continue to produce adverse results. It may be that one consequence of this state of affairs is a tightening of claims control and procedures." **(252)**

He criticised the vague and ambiguous marketing literature of some companies who launched health plans, and urged the industry to adopt a standard procedure on paying interest on late satisfaction of

claims.

Kotze said misunderstandings about health plans resulted in an increasing number of complaints about health care products being directed to the ombudsman. A number of clients with health plans had been under the impression that they had taken out conventional medical aid cover.

On the payment of interest, Kotze recommended that life companies paid interest whenever there was a delay in settling claims.

He said he had received complaints arising from the fact that a policy was not fully understood.

Several complaints were received from investors in Masterbond and Supreme Bond which would not normally be handled by the life assurance ombudsman since they did not relate to life assurance policies. However, in some cases the representatives who had sold the investments had used the letterheads of life assurers

Homeland's casinos face investigation

ADRIAN HADLAND

CAPE TOWN — The KwaNdebele cabinet had granted "temporary approval" to three casinos, even though casinos were illegal under KwaNdebele and SA law, the Parsons commission disclosed in its sixth and final report yesterday. **BIDOM**

It recommended that the Transvaal attorney-general investigate the establishment of these casinos. **22/12/93**

The commission also found that mismanagement and financial malpractice were rife in the homeland, and identified financial disarray, a lack of controls and irregularities in the KwaNdebele National Development Corporation and the KwaNdebele Utility Company.

Regional and Land Affairs Minister Andre Fourie said drastic measures had been instituted already as government was "just as fed up with this as the general public". The measures included the passage of legislation allowing the SA President to take over the necessary executive powers, authorities and functions of self-governing territories if they were deemed likely to collapse. **(252) (454)**

Government could also prevent actions by the territories that would result in unreasonable financial obligations or burdens, while legislation had been passed "which makes provision for the manner in which the autonomy of self-governing territories could be done away with".

Fourie said corruption and maladministration were unacceptable and government would not hesitate to act strongly to protect the interests of the SA taxpayer.

The series of Parsons reports dealt with

To Page 2

Casinos

BIDOM

22/12/93

From Page 1

corruption and malpractices dating back to the '80s. In the latest report, the commission found no stock control or creditor payment system existed in the KwaNdebele National Development Corporation and the KwaNdebele Utility Company. **(454) (252)**

There was poor decision-making by management, no control over assets and property registration irregularities.

In 1988 the KwaNdebele Utility Company suffered a loss of R651 000. Audits showed that no irregularity could be proved, but there was evidence of poor decision-making by the former management. Between 1987 and 1988 virtually no basic control measures or asset control existed in the companies. In one case, an amount of almost R50 000 was not recovered from a contractor.

There is plenty of room at the inn, say hoteliers

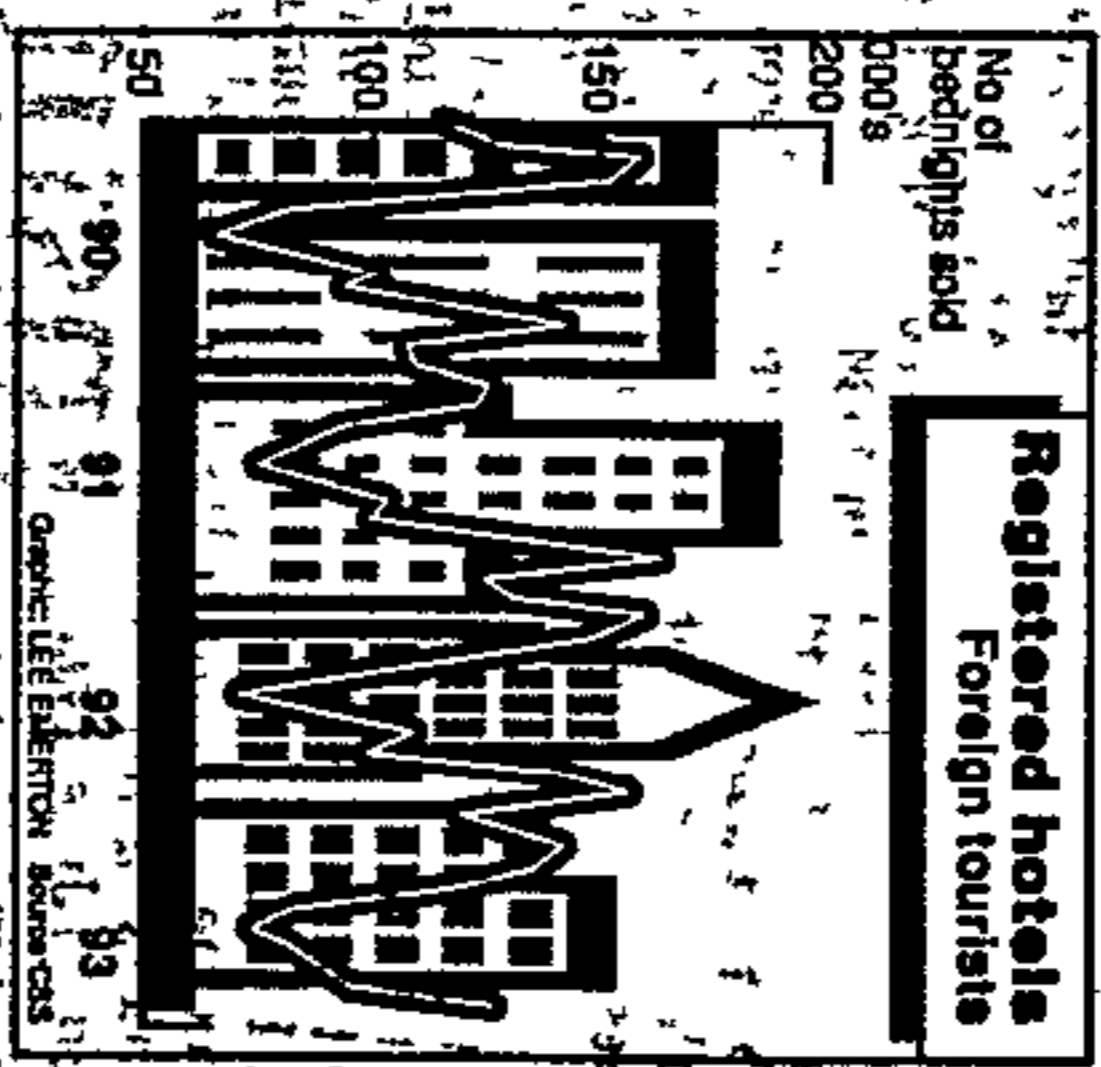
BEATRIX PAYNE and MARCIA KLEIN

THEY are no good surprises in the hoteliers' Christmas stocking this year, as festive season bookings are only marginally above last year's levels.

Industry sources said occupancies had been fairly good, and forward bookings over the next few weeks were quite promising. Although the Christmas season was traditionally buoyant, they were expecting no significant improvement on last year's sluggish turnout. Hotels were busy, but not full, they said.

A continuing trend was that people were going on holiday for shorter periods and to destinations closer to home. Many were also "buying down", opting for limited service hotels or self catering accommodation rather than the four and five star hotels. This was attributed to the recession and to the increase in available rooms in this market.

Satour's quarterly review showed that hotel occupancy for graded SA hotels was just 45.9% in the first six months. Most major hotel groups said occupancies over Christmas were significantly higher, but this would not be enough to lift full year occupancy. No increase in the number of bookings



Major hoteliers said there had been a respectable level of bookings for foreign tourists.

Portfolio of Country Places director Liz Westby-Nunn said although hotels would be full over the Christmas and New Year holiday period, booking pressure had declined since the same time last year.

She said there had been an increase in bookings of self-catering accommodation as a result of the recession. The Western Cape had fared relatively well from international tourism, although hotels were finding it difficult to forecast bookings as many foreigners made accommodation arrangements at the last minute.

Sun International MD Peter Venison said although occupancy rates had trailed through the year, bookings for the holiday period were at the same level as last year.

Venison said there had been no upswing in the number of bookings by foreign tourists. He added that tourism would not increase until foreign tourists were happy that SA was peaceful and secure.

Satour senior tourism development officer Heidi Keyser said the western Cape had been the most popular area with foreign tourists, while SA holiday-makers tended to prefer Natal and the eastern Cape.

City Lodge operations director Clifford Ross said that the highest occupancies were in Cape Town, while Port Elizabeth and Durban were picking up.

He said people had become more price conscious, looking carefully for the best value for their rand.

Protea Hotels Transvaal regional director William Ford said that lead-in time for bookings was shorter, as families waited to see what disposable income they would have towards the end of the year.

He said Cape Town and the Garden Route were popular, but there were still "many rooms available".

Dire shortage of posts for SA law graduates

GERALD REILLY

PRETORIA — Nearly half of the 3 000 law graduates from SA universities this year would be unable to find articulated posts in law firms, Legal Aid Board deputy director Tony Hutchinson said this week.

And the gap between the number of graduates and available posts was expected to widen "indefinitely". Last year 2 134 graduated and 1 390 found posts with law firms. B124 22/12/83

Hutchinson said to find channels other than articles through which candidate attorneys could qualify for admission to the profession, the board planned to establish 24 community service law clinics over the next 12 to 18 months.

The clinics would provide desperately needed affordable and accessible legal services for South Africans deprived of legal access because of poverty and the high costs involved. At the same time, Hutchinson said, they would provide the two-year practical experience needed by applicant attorneys to fully qualify for admission.

The first five — at Unisa, the universities of the Witwatersrand and Potchefstroom, RAU and in Natal — would open at the beginning of the year. It was estimated that the five clinics would handle up to 5 000 cases a year at an average cost of R178.

Hutchinson stressed that changes for entry into the profession through community service and other opportunities developed by the Association of Law Societies should not be seen as cosmetic. There was no danger of a lowering of standards.

Other plans were on the drawing board to meet the urgent need for affordable services in a population with a growing awareness of the law and the protection and redress it could provide.

Hutchinson said recent statistics underscored the need for greater accessibility. In 1981, 52 694 000 magistrate's court cases related to serious offences went unrepresented.

Parsons Commission releases damning report

Illegal casinos set up in KwaNdebele

Star 22/12/93

Cape Town — The KwaNdebele Cabinet allowed three casinos to be set up in its territory even though they were illegal under KwaNdebele and South African law, the Parsons Commission has found.

In its sixth and final report released yesterday, the commission said the Cabinet had granted "temporary approval" for the casinos until such time as "the law is in place".

This issue should be referred to the Attorney-General of the Transvaal for further action, the commission said.

KwaNdebele National Development Corporation

GOVERNMENT just as fed up with corruption as general public, says Minister

(KNDC) chief executive officer C P du Toit said in evidence to the commission that a KNDC director, J Morgan — "who apparently has close ties with members of the royal family/Cabinet ministers" — was granted licences in 1991 to operate food distribution and entertainment businesses in three KNDC buildings

Du Toit said he subsequently discovered that Morgan was running ca-

sinos there.

Du Toit then applied specifically for a gambling licence which received the "temporary" approval of the Cabinet last year. (252)

The territory's Minister of Law and Order, M S Mahlangu, explained to the commission:

"To me it did not look legal. Because it was a Cabinet decision and I had to sign what Cabinet has resolved I had the authority given by the Cabinet authorising me to say this is good."

The report said the KwaNdebele Utility Company (KUC) lost R651 131 in 1988.

The commission said

the KwaNdebele government should consider whether it should be KNDC and KUC policy not to make loans to members of the Cabinet or members of their own boards of directors

In a press release accompanying the report, Minister of Regional Affairs André Fourie said the Government was just as fed up with corruption and maladministration as was the general public.

It had already taken drastic measures, including legislation enabling the President to take over the functions of a self-governing territory, to prevent a repetition. — Sapa.

Bekkersdal boycott called to force security forces out

BEKKERSDAL residents yesterday launched a consumer boycott in protest against the presence of the SAP's internal stability unit and SA Defence Force troops in the West Rand township.

Before calling for the boycott of businesses in neighbouring Westonaria, residents marched through the township streets to the police station to demand the immediate withdrawal of the unit and confinement of the SADF to barracks.

Sapa reports that West Rand police liaison officer Maj Henriette Bester, who was in the township, said the march had proceeded peacefully and no incidents were reported. *BIDAY 23/12/93*

In a written reply to the protesters, the SAP said the unit would not be withdrawn from Bekkersdal as it was "the duty of police to protect the lives and properties of all residents". It was common knowledge that recent attacks in Bekkersdal had stemmed from political intolerance.

Bester said the protesters had demanded an answer to their memorandum by 3pm but by 3.30pm no one had arrived to receive the reply. *(252)*

Five people have been killed since the outbreak of violence in Bekkersdal on Sunday. Two were allegedly killed by members of the unit and the others were understood to be victims of a clash between

JOHANNES NGCOBO

members of the ANC and Inkatha.

During the march, ANC and Azapo members armed with assegais, pangas and traditional weapons sang songs calling for the blood of unit members.

A number of people not taking part in the protest action were forced to walk 8km to work in Westonaria because no taxis were operating.

Bekkersdal ANC branch secretary Thomas Letlhake said miners in the area had vowed to withdraw their buying power from white businesses until the unit and the SADF were withdrawn.

He said mine workers and other members of the community had volunteered to enforce the boycott by positioning themselves in strategic places in the town.

The Inkatha Freedom Party has distanced itself from the boycott. Inkatha Youth Brigade's Soweto branch said the withdrawal of the unit would lead to an escalation of violence.

Three deaths were reported on the East Rand yesterday. Police said the bodies of two men who had been shot were found in Tsakane, and a man was hacked to death in Thokoza.

Meanwhile, Natalspruit Hospital appealed to East Rand communities to recognise its impartiality.

Cape hospitals 'lack controls'

CAPE TOWN — The lack of control over stock at Cape provincial hospitals had led to the destruction of medicines worth millions of rand, ombudsman Judge P J van der Walt has been told. *BIDAY 23/12/93*

In a report released yesterday, the ombudsman said he had received a complaint from a person employed by the Cape Provincial Administration who was involved in buying medicines. *(252)*

"The complaint concerns the lack of control at hospitals over the quantities of medicine ordered and the repeat of those orders while there is already a surplus of the medicine in stock.

"This causes the destruction of large quantities of medicine of which the shelf life has elapsed... It is alleged that the state loses 'millions of rands' in this manner," Van der Walt said.

He said it was clear from his inquiries

that the National Health Department was aware of the problem and that it was caused mainly by the divided control over health services.

He recommended that the co-ordinated system for control of medical supplies used by the Transvaal Provincial Administration be extended to all health services.

The ombudsman also said no historically important documents should be destroyed unless their destruction was first cleared with the Director of Archives.

This finding followed an investigation into a complaint by former President P W Botha that a senior intelligence official had destroyed a secretly made tape recording of a meeting between ANC leader Nelson Mandela and Botha.

Van der Walt also recommended each state department should create a post of complaints officer to whom the public could bring any complaint. — Sapa.

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Goldstone rejects international force

By **ENCA JANKOWITZ** 27/12/93

THE Goldstone commission has said it rejects the use of an international peacekeeping force for the April election, favouring locally trained and selected personnel.

Among its 51 recommendations aimed at curbing violence and intimidation during the election, it said these forces should be supplemented by external personnel to provide technical assistance, monitors and experts to help train the police and marshals.

Local marshals drawn from communities should help a specially formed peacekeeping service on polling day, the commission said.

This service "should be created under civilian control with a command structure drawn from senior and mid-level SAP officers and others, and staff drawn from current SAP, internal stability unit and other police personnel and, at a later stage, personnel recruited from party-affiliated forces".

The service would form a committee to coordinate peacekeeping functions especially as far as campaign marches, rallies and demonstrations were concerned.

It also recommended that the creation of a voter education programme be given the highest priority by the Independent Electoral Commission (IEC). (252)

It said voter education should concentrate on reassuring delegates of ballot secrecy, urging them to accept the election result, discouraging violence and encouraging participation in the political process.

Non-governmental organisations should also be urged to expand their voter education programmes. Other recommendations covered the role of the IEC and the police, and establishing a peacekeeping service.

The commission also recommended that the IEC employ the services of independent, non-partisan organisations to conduct parallel vote counts.

"The IEC should develop a range of sanctions to be imposed for violations of the election to comply with the law and regulations."

Christmas truce over squatters

By **ENCA JANKOWITZ** 27/12/93

A TENSE standoff between squatters and landowners in the Noolgedacht area at Muldersdrif, north of Johannesburg, has been temporarily defused by the Transvaal Provincial Administration (TPA) agreeing to relocate shack dwellers.

The Christmas Eve peace move came after squatters set up a permanent "community watch" to counter landowner threats to move them from the land on which they were illegally living.

Tensions were fuelled by rumours that landowners would ask the AWP to help throw the squatters out.

The TPA, landowners and squatter representatives of the Crocodile Valley Rural and Civic Association (Clivarco) discussed possible relocation sites at a Friday meeting, facilitated by the area's peace secretariat.

In a weekend statement, the TPA said alternative accommodation would be offered in consultation with the squatter families. A "heavy-handed, unilateral eviction" was unlikely to solve the problem, it said.

Clivarco chairman Greg Pickett said the squatters were prepared to

move to other land within a 5km radius. Most squatters were employed in the area and their families and friends lived close by, he said.

Suitable sites are to be discussed again on January 4.

The landowner umbrella organisation (NRA) has said it believes the squatters could be moved to nearby low-cost housing areas, such as Swanleville. But Clivarco says most potential sites had been blocked by nearby residents' associations voicing similar objections.

The owner of the occupied land, Pienaar Fourie, said yesterday the TPA had told him the squatters would be moved after January 1.

Pickett said the squatters were not likely to be evicted between Christmas and New Year.

Earlier, NRA spokesman Bruce Finemore said landowners objected to the area being used as an informal squatter settlement as it had led to an

increase in crime and had devalued their properties.

"We don't believe squatting is a long-term solution. There is a lot of anger on the part of landowners and if anything happens about moving these people, it must not come as a surprise."

Finemore said squatters were being used as pawns to test whether landowners would accept other informal settlements.

He could not confirm rumours concerning the AWP: "All I know is that if the squatters were removed, there would be a lot of people to help remove them."

Pickett said landowners did not realise this conflict could spread outside the region if they were to call in the AWP to help move the squatters.

In about four months, the settlement has grown to close on 100 shacks. Most of the squatters were evicted from local farms and others had been victims of displacement.

An agreement had been reached at Friday's meeting that no further building materials would be taken into the settlement, Pickett said.

INGRID SALGADO

INTERNATIONAL clothing manufacturer Benetton was bracing itself for controversy in SA when it launched its latest advertising campaign featuring the AIDS epidemic, a company spokesman said at the weekend.

The advertisement, one of which features photographs of a person's arm, backside and abdomen branded with the words "HIV positive", have already attracted lawsuits from two overseas AIDS organisations.

"I am sure we will have a reaction from SA AIDS organisations when

INGRID SALGADO

the campaign kicks off," the spokesman said.

A strong public reaction was also expected when the adverts were aired in April.

In a statement last week, Benetton blamed moral outrage on adults whose mindset was "so inflexible" they could not reconcile Benetton's shock advertising tactics with the products being sold.

The company said "it preferred spending money on AIDS and children's organisations than on unces-

Benetton braced for storm over ads

Benetton SA had already worked with the local branch of the Red Cross in helping to donate clothes to underprivileged children. During this project, an advert showing company boss Luciano Benetton posing naked was used to raise extra funds.

The company preferred unusual advertising because "with other adverts you just have to change the label at the bottom of the page and you probably would not be able to tell the difference."

Eskom

Byday 27/12/93



Business as usual at illegal casinos

BIDAY 28/12/93

JOHN DLUDLU

THREE KwaNdebele casinos found to be operating illegally in the homeland continued operating last week despite renewed threats of a legal crackdown.

The Parsons commission of inquiry into the homeland reported last week that the Admiral casinos — in Siyabuswa, Kwaggafontein and Ekangala — were operating illegally under both SA and KwaNdebele law.

The commission recommended that further investigation into the casinos be conducted by the Transvaal attorney-general's office.

The final report of the commission quoted KwaNdebele National Development Corporation CE CP du Toit as saying that another corporation director, Joe Morgan, who is also a director of Admiral, was granted licences in 1991 to operate food distribution and entertainment businesses in three corporation buildings.

Du Toit subsequently discovered Morgan was running casinos, which were reported to the police.

He said he did not know if the police had taken action.

KwaNdebele's cabinet last year temporarily approved a gambling licence until such time "as the law is in place".

However, last week it was business as usual at the casinos, which closed only on Saturday and Sunday.

Morgan could not be reached for comment yesterday and attempts to contact the Siyabuswa casino were unsuccessful. (252)

Parliament last week passed the General Law Sixth Amendment Bill, effectively closing the legal loophole which had led to the resurfacing of casinos countrywide following a government clampdown earlier in the year.

Meanwhile, the six-month pay dispute between Admiral casinos staff and management looks set to take an ugly turn if it is not resolved by next week.

Striking workers have threatened to consider other ways to voice their "anger" if next week's last-ditch attempts to resolve the dispute fails.

The KwaNdebele government has arranged a meeting between the workers and the casino management in Kwamhlanga on Monday.

If no resolution is reached, it is understood that strikers will ask the office of the ANC's secretary-general to intervene.

"If all this fails, we'll have no option but to use other means to voice our anger at management reluctance to resolve the issue," a spokesman for the striking workers said.

Although management had agreed to discuss the strike with workers, other people had been employed in their place.

"We understand that these people are not locals, contrary to management's professed policy of appointing locals," the spokesman said.

The strike started early this year when workers asked for increases, which management promised to consider after probation and as soon as income had picked up, but never did.

A source said workers had taken voluntary salary cuts to avoid retrenchment when management complained of falling income.

"This occurred in spite of the opening of two casinos in Ekangala and Nelspruit."

Workers then downed tools, and were subsequently locked out while the two casinos closed down.

According to the source, management was reluctant to resolve the issue and had refused to meet the staff.

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Goniwe's brainchild comes of age at last

Own Correspondent

PORT ELIZABETH — After 12 years and much hardship, Cradock has finally got its Skills and Training Development Centre thanks to Masizame (Let Us Try) and assassinated former UDF leader Matthew Goniwe.

Masizame spokesman Wilson Soci said the idea had originated in 1981 among a group of Cradock people working in Cape Town. They had initially worked on a "burial society" and an old-age home but in 1988 had settled on building a creche. BIDAY

The creche was Goniwe's brainchild. Seven teachers were sent for training at the Early Learning and Training Resources Unit in Cape Town. 28/12/93

During 1988 Masizame trained 18 electricians by raising funds for them to study at Peninsula Technikon, with some of them going on to work for Mossgas. Soci said the electricians had contracted to use their skills as required in the community and most had helped build the community's library in 1991.

Masizame employed two trained consultants who ran skills workshops in fields such as bricklaying, sowing, welding, knitting, weaving and pottery, he said.

The community centre was also running voter education workshops and would be running winter schools.

Soci said talks had recently been held with the Cape Provincial Administration and the Regional Services Council regarding the possibility of building a clinic which would provide a 24-hour service to the Cradock community.

He said the project was surviving on funds received from Swedish and Nowergian church organisations but these were quickly drying up.

Soci said he hoped Cradock's community centre would show other communities that "blacks can rise above their marginalised position and do things on their own".

The centre would also highlight the importance of skills empowerment, which was "crucial for the development of the new SA and will help bring the economy back to our townships", he said.

SALDRU LIBRARY

PUBLIC SECTOR GOVT. - Justice'

1994

JANUARY - JULY

Detention clause still being used

By BARRY STREEK
Political Staff

252

CT 5/1/94
THE police are using a controversial legal provision for detention without trial for interrogation purposes, to hold two PAC officials and five right-wingers, even though Parliament scrapped the provision last month.

The measure, Clause 29 of the Internal Security Act, is, however, technically still valid.

Its scrapping in terms of the Abolition of Restrictions on Free Political Activity Bill, one of the last measures approved by Parliament shortly before Christmas, will come into effect on a date to be fixed by the State President "in consultation with the TEC" by proclamation in the Government Gazette.

This has not been done yet, and therefore the police can, in terms of the technicalities of the law, still use Clause 29.

● How to fight terrorism — Page 4

Section 29 still used

by police

Political Staff

THE police would be "silly" not to use the detention without trial provisions of the Internal Security Act, even though Parliament had voted to abolish them, Ministry of Law and Order spokesman Captain Craig Kotze said yesterday.

While the instrument is available, the police will avail themselves of it, he said.

The police are holding two PAC officials in the Western Cape and five right-wingers in the PWV areas in terms of the controversial section 29 of the Internal Security Act.

Despite Parliament's decision to scrap the clause last month in the Abolition of Restrictions of Free Political Activity Bill, section 29 of the act is still technically law.

Violence prompts crisis talks

THE Goldstone commission is to investigate Sunday's attack on an ANC peace tour in Katlehong, in which a photographer was killed and two other journalists injured, and President F W de Klerk and ANC leader Nelson Mandela are to hold crisis talks on the East Rand violence.

The SAP's internal stability unit and SADF troops yesterday raided the Mazibuko hostel, from where the shots were allegedly fired. They confiscated 31 petrol bombs, an R5 rifle, a homemade gun, a police uniform and ammunition.

Police said three people had been arrested in connection with the attack on the entourage of SACP leader Joe Slovo and ANC secretary-general Cyril Ramaphosa.

Judge Richard Goldstone announced a preliminary inquiry would be held in Sandton on Friday. He said the Transitional Executive Council's management commit-

BIDOM 11/1/94

WILSON ZWANE

tee had been informed of the inquiry and its terms of reference. (252)

It would seek to establish what led to the initial shooting and subsequent shooting, who was responsible and steps which could have been taken to avert the incident.

It would also examine the SAP's role in relation to the incident, the presence of illegal weapons in the Mazibuko hostel and the surrounding community, immediate and long-term steps to avert repetition of the incident and immediate steps to restore peace to Katlehong and other East Rand areas.

"The commission would like to emphasise the need for finding urgent and lasting solutions to this problem. The safety of all residents, politicians, journalists and elec-

□ To Page 2

Violence

BIDOM 11/1/94

□ From Page 1

tion monitors requires to be guaranteed in the interests of a free and fair election," Goldstone said. (252)

The investigation was welcomed by De Klerk, the ANC, SAP, Inkatha Freedom Party and the Independent Electoral Commission.

STEPHANE BOTHMA reports that De Klerk and Mandela will discuss the East Rand violence in Pretoria today.

After meeting Irish Foreign Minister Dick Spring at the Union Buildings, De Klerk said any leader of any organisation should be free to visit any area of the country without being shot at.

Although his meeting with Mandela had been scheduled before the East Rand attack, Mandela had since indicated that he would make some proposals regarding the violence. The two leaders had a duty to continue trying to find ways of preventing further violence, De Klerk said.

Mandela said he had made a specific proposal to stem the East Rand violence and warned that if De Klerk did not act on it, SA would face a crisis. It was understood to include cordoning off hostels and deploying security teams around them.

Law and Order spokesman Capt Craig Kotze dismissed ANC criticism that police did not protect people in Katlehong as hypocritical and inconsistent.

"First they claim the internal stability unit is responsible for the violence, then they blame it for not protecting them when they did not alert police or invite the SAP on their tour."

ANC spokesman Ronnie Mamoepa said.

"Government is responsible for protecting people by enforcing law and order"

Sapa reports that the Inkatha Freedom Party said the ANC had acted in an irresponsible manner in a "war zone" Transvaal spokesman Gertrude Mzizi said Inkatha was investigating Sunday's incident. Hostel residents were "adamant that the first shots were fired at them from ANC-occupied houses alongside the hostel"

Transvaal deputy chairman Humphrey Ndlovu claimed renegade self-defence units were responsible for the incident.

The Wits/Vaal peace secretariat said the ANC had informed it of the tour late Mamoepa said the ANC had abided by the peace agreement that the secretariat be informed of political meetings in volatile areas.

Meanwhile the SA National Civic Organisation said it would push for the establishment of joint command structures to supervise township law-enforcement agencies.

Southern Transvaal general secretary Dan Mofokeng said the structures should consist of SAP, SADF, Umkhonto we Sizwe and other liberation armies, as well as homeland forces.

□ Our Maritzburg correspondent reports that photographer Abdul Shariff, 31, was buried yesterday. Among the mourners were ANC Midlands chairman Harry Gwala and national executive committee member Carl Niehaus. Gwala condemned Shariff's killers, saying he had undertaken a noble job and placed his life on the line.

● Comment: Page 4

Electoral court men approved

Own Correspondent

JOHANNESBURG. — The TEC has approved appointments to the special electoral court, and to the independent media commission.

The court will hear appeals from political parties, groups or individuals concerning TEC decisions.

Mr Justice I Mahomed of the Transvaal and advocate Mr Jan Heunis of the Cape Bar were appointed by the TEC while Judges J.W. Smalberger, J.M. Didcott and P.J. van der Walt were Judge President appointees to the court.

The Independent Media Commission will be chaired by Judge J. Tregrove and comprises N. Manana, Magua, Raymond Louw, Willem de Klerk, Jenny Malan, Zubeida Jaffer and Libby Lloyd.

An interim party liaison committee was also established yesterday.

Goldstone recommends drastic arms seizures

Star 22/1/94

DRASTIC, military-style steps should be taken to seize all illegal weapons from people in certain areas of South Africa, the Goldstone Commission has recommended.

The recommendation forms part of its report on the January 9 shooting in Katlehong in which photographer Abdul Shariff was killed.

"Similarly, adequate steps will have to be considered for ensuring that any such sanitised areas remain weapon-free," Mr Justice Richard Goldstone said.

He said that if the presence of illegal arms and ammunition in some areas of South Africa could not be dealt with speedily and successfully, the prospect of a relatively free and fair election in such areas would be remote. One such area was the strife-torn East Rand townships.

"At this time in our history, the murder or injury of political leaders could well plunge this country into a situa-

MANDY JEAN WOODS

tion of irreversible violence. The efforts of tens of thousands of local and foreign people, who are or will be involved in the election, would become irrelevant," he said.

The huge quantities of automatic weapons and other firearms in some parts of the country has been a cause for concern to the police, the Government and many political parties, he noted.

Methods

"The commission has held an inquiry into these matters and some of its recommendations have been implemented. However, conventional methods of dealing with this problem have proved to be inadequate in a number of areas."

In the Katlehong incident, ANC secretary-general Cyril Ramaphosa and SACP leader Joe Slovo — accompanied by about 100 people — were fired on by residents of

the Mazibuko Hostel when the group was about 350 m from the building.

"Within seconds, the bodyguards of Ramaphosa and Slovo had their handguns out. Within minutes, members of the local self-defence unit (SDU) produced AK-47 rifles and began firing in the direction of the hostel. Two of these men can be seen shooting with their AK-47s in a completely undisciplined manner. There can be no doubt the initial shots were fired from the hostel."

Goldstone said the SAP was at fault for not monitoring the visit of its own accord, despite not having been asked to do so, and the ANC was at fault for not notifying the police about the tour despite the right of all South Africans to move freely at any public place in the country.

The commission's investigation into SDUs was continuing and a report would be made as soon as possible.

'Make war on violence'

CIPRESS 23/1/94

THE Goldstone Commission on Friday condemned actions by both Mazibuko Hostel residents and East Rand self-defence unit members, and questioned the police's role in the January 9 Katlehong firefight in which press photographer Abdul Sharif was killed.

The Commission said "drastic military action" should be considered to combat the violence in South Africa.

In its report on the shooting during a tour of Katlehong led by ANC secretary-general Cyril Ramaphosa and SACP chairman Joe Slovo, the Commission said it could not ascertain whether Sharif and the two other injured journalists were

shot by hostel residents or by SDU members.

It noted police evidence that SDU members had been "issued with AK-47s and told to fire at the hostel" on the morning of the battle (252).

But there could be no doubt that the shots which started the firefight had come from the hostel. This was "unequivocally condemned".

The Commission also condemned the actions of at least two SDU members who "began firing in a completely undisciplined manner".

Noting the ANC's self-confessed "error" in having failed to notify the police about the Katlehong tour, it said "Not only did the ANC have a re-

sponsibility to itself to safeguard Messrs Ramaphosa and Slovo, it owed that duty to all of the people of this country." The aftermath of the assassination of the late Mr Chris Hanu should be a constant reminder.

It said the ANC had a duty to safeguard people who joined the entourage - among them media representatives who had actually been alerted by the ANC about the visit.

"Questions arise as to the failure by the SAP to have taken any appropriate action in relation to the initial shooting," the Commission said.

Police Commissioner General Johan van der Merwe yesterday appealed to political organisations to liaise with police when special security measures are needed.

Sapa

Political comment and newsbills by K Sibya, headlines and sub-editing by B Keswa, both of 2 Herb Street, New Doornfontein, Johannesburg

ANC will

beef up

SI Times
23/11/94
security

By SHARON CHETTY

THE ANC will provide more protection for its members and journalists during future tours of trouble spots (252)

The organisation gave this assurance yesterday in response to a Goldstone commission report criticising it for the way it handled a visit to Katlehong two weeks ago during which three people, including photographer Abdul Shariff, were killed. Two journalists were also injured

The IFP yesterday described the report as a damning indictment of the ANC. The report, it said, vindicated its view that ANC leaders had "acted in a reckless and irresponsible manner"

The preliminary inquiry into the incident found that the ANC, by its own admission, failed to notify the police or the Wits-Vaal Peace Committee of the visit

It called on the ANC and all other political parties to "exercise careful judgment" when exposing their leaders and members to danger

The SAP also came in for criticism. The report recommended that the SAP investigate why it had not taken note of the publicised event and had not taken steps to be present.

Goldstone gets more muscle to tackle election intimidation

By CARMEL RICKARD

SCORES more "untouchables" are to join the ranks of the Goldstone commission police investigators to follow up complaints of election-related violence and intimidation.

The Independent Electoral Commission, which is responsible for ensuring that the elections are free, fair and as peaceful as possible, has asked the Goldstone commission to enlarge its investigation unit to take on election-related complaints.

Sixty additional South African police will be seconded to the special units in addition to the existing 13 police officers whose work has won them the title of the "untouchables" after the American crime busting agencies of the 20s and 30s. Twelve more international police experts will also be added, bringing the total of foreign members of the unit to 17.

A joint control room will be established at the Goldstone commission offices in Sandton, and senior members of the Goldstone commission, in liaison with the IEC, will monitor complaints to decide which matters the commission should handle.

Commission chairman Judge Richard Goldstone said the additional staff would allow a special investigation unit to be set up in each of the nine geographical regions around the country — at the moment there are only five. Each unit will include international police experts and independent attorneys. A special mobile 10th unit will be equipped for quick response in any part of the country, or to help any of the other nine units. (252)

He added that, as with the first 13 "untouchables", the names of the 60 police chosen to join the commission would be published before the appointments were confirmed to allow the public to raise objections.

Explaining the IEC decision to ask the Goldstone commission for help, Judge Johan Kriegler said: "We would rather use the tried and tested units of the Goldstone commission, which have credibility with the communities and the police."

He said the IEC would also monitor security force actions if they were relevant to the elections. "We will monitor the whole process. If security force intervention is inimical to free and fair elections, we will have to deal with it."

Judge Kriegler said there would clearly be grey areas and it might be difficult to decide when a crime was election-related and when it fell within the domain of the Goldstone commission. The new structures would enable this confusion to be resolved immediately a complaint was received, he said.

He said the IEC also hoped to use its monitoring structure to anticipate when an incident was likely to flare up, when retaliation was likely in response to an earlier event, and when mediation or other forms of conflict resolution could be employed to prevent further violence.

Goldstone increases units to probe poll violence

The Goldstone Commission is to double the number of its investigation units to 10 so it can probe election-related complaints of violence and intimidation

Star 24/1/94
The commission said the Independent Electoral Commission had requested the extra units and asked for its existing five investigation units to be enlarged.

There would be one unit in each of the electoral regions. The tenth unit would be equipped for quick response in any part of the country — Sapa.

(252)

Commission asked to double in size

THE Independent Electoral Commission has asked the Goldstone commission to more than double its size to help investigate election-related complaints of violence and intimidation. *B. Day*

Its five investigation units will be enlarged and five more established. There will be one unit in each electoral region. The 10th unit, equipped for quick response, will help out other units. Each unit will include at least one foreign member and one independent attorney. Sixty SAP members and 12 foreign police experts will be seconded to the commission. *24/1/94*

ADELE BAILEY

The SAP and the ANC welcomed at the weekend the Goldstone commission's report on the January 9 Katielhong shooting in which freelance photographer Abdul Shariff was killed.

The commission condemned Mazibuko hostel residents' and ANC members' actions and questioned the role of the police. "Drastic military action" should be considered to combat SA violence, which had proved unstoppable. The ANC had a responsibility to safeguard people who joined the entourage. *(252)*

Blanket hospital bonus could cost TPA R40m

ADELE BAILEY

THE Transvaal Provincial Administration (TPA) faces a R40m payout if it is decided that all health institution workers in the Transvaal should get a R500 bonus.

This possibility arose after an agreement between the TPA and health worker representatives at Baragwanath Hospital, which sought to diffuse the crisis at a special meeting of the Public Services Bargaining Council on Saturday.

The TPA said it would suspend action to recover the R500 awards paid so far and would pay those Baragwanath workers who had not received the bonus.

The final decision on whether the bonus would be retained or returned, and who would be included in the payment, would be made by an independent third party to be agreed upon.

TPA director-general Len Dekker said the extension of the goodwill payment to all employees at Baragwanath "was not because I think they really deserve it, but just to diffuse the situation".

The bottom line was that this award was for, among other things, excellence and virtue. It was not an across-the-board bonus, Dekker said. He had tried to explain this to the workers.

Dekker said that he hoped the final decision would not cost too much as the staff

estimated R40m needed was "not attainable" in the light of vast budgetary overspending. Payment of the bonus to all 60 000 staff members would result in a cut-back in the hospitals' running expenses to the extent that they would have to close down certain wards.

This would be to the detriment of patients and at the expense of the community", a statement said earlier.

Other grievances of health workers and management at Baragwanath Hospital would be addressed by a forum consisting of TPA and health workers' representatives, which would be set up urgently.

In the agreement, the parties committed themselves to ensuring health workers in other institutions did not engage in illegal industrial action concerning the payments and to allowing the dispute procedure to follow its course.

The parties decided on a programme of visits to 10 health institutions over the next week for this purpose.

Baragwanath spokesman Adri Potgieter reported yesterday that everything was back to normal at the hospital with all nurses back on duty.

Comment: Page 9

Commission asked to double in size

ADELE BAILEY

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Donors' conference planned

LINDA ENSOR

LONDON — The Commonwealth and the UN planned to sponsor an international donors' conference in June or July to mobilise financial support in the form of both loans and grants for SA's reconstruction programme, UN Special Committee Against Apartheid chairman Ibrahim Gambari said at the weekend.

He also said the UN would soon initiate a process of detailed planning of socioeconomic assistance programmes for SA, particularly in the areas of human resource develop-

ment and development in SA and the new government. Gambari was addressing a conference on sustainable growth and development in SA organised by the UN and the London School of Economics' Centre for the Study of the SA Economy and International Finance.

He said the purpose of the planned international donors' conference would be "to stimulate interest among donor countries and in SA, particularly those of the disadvantaged sectors of the society. Preparations will be made in consultation with the Transitional Executive Council and, following the April elections, with the new government."

Gambari noted, however, that while the international community might stand ready to assist the new SA, redressing its significant socioeconomic imbalances would depend on a growing economy.

Regarding the elections, he said the upsurge in poli-



Detention law is abolished

252 ~~229~~

ET26/1/94

By BARRY STREEK
Political Staff

THE law abolishing South Africa's controversial provision for detention-without-trial for interrogation has been signed by President F W de Klerk and will be gazetted on Friday, Mr De Klerk's office said yesterday.

However, the detention provision will be technically in force until a date for the implementation of the new law is agreed by Mr De Klerk and the Transitional Executive Council.

The Abolition of Restrictions on Free Political Activity Bill, which was passed by Parliament shortly before Christmas, will abolish section 29 of the Internal Security Act.

Despite Parliament's decision, the police have continued using

But police still using section 29

section 29 for the detention of suspects for interrogation purposes, including members of the PAC for the Heidelberg Tavern killings and a number of right-wingers who were detained in connection with various incidents of sabotage in the Transvaal.

The police have said they would be "silly" not to use the provision while it was still law, but they were strongly criticised by the Black Sash for not adapting to the new provisions which

granted detainees a right of access to their families, lawyers and doctors.

A spokesman for the State President, Mr Richard Carter, said yesterday Mr De Klerk had signed the law on January 14 and it would be published in the Government Gazette on Friday, January 28, but he was not sure when it would come into effect.

The new law also abolishes other controversial political legislation including the Prohibition of Foreign Financing of Political Parties Act, the Affected Organisations Act, the Parliamentary Internal Security Commission Act, the Disclosure of Foreign Funding Act and six clauses of the Internal Security Act.

Although detention-without-trial for interrogation will go, provisions for "preventive detention" will remain on the statute book.

ARGUS UNBUNDLES THE SOWETAN

The Argus Group completed its unbundling of the *Sowetan* newspaper this week by yielding control to black business interests led by Dr Ntatho Motlana. In return, it got a 30% stake in his group's company, which owns 20% of Mobile Telephone Networks, one of the two cellular-telephone network operators.

It's a deal that has, apparently, run into some opposition within the ANC from people who felt it was wrong for black business to get into bed with the much-maligned "Anglo press monopoly."

While conceding that there has been some concern within the ANC, however, Motlana says. "We were quite firm that we needed the Argus as a partner for its distribution, management and printing skills. But we are happy that blacks will have the majority share."

The structure of the deal is that Prosper Africa Group, whose directors are Motlana, educationist Franklin Sonn and businessmen Sam Motsuenyane, Paul Gama and Enos Mabuza, will have 70% of a new company, New Africa Communications. Argus will hold the other 30%. A national geographic spread will be sought in the appointment of two other directors.

New Africa Communications will in turn hold 75,1% of New Africa Publishers, the sole owner and publisher of the *Sowetan*. Argus will also hold 19,9% directly in New Africa Publishers and *Sowetan* staff will hold the other 5%. New Africa Communications also holds 20% of Mobile Telephone Networks, the share that in previous announcements has been attributed to Naftel.

The deal is essentially a swap, though there will be a small cash settlement. "We are now addressing how that will be financed," says Argus MD Doug Band. The net result for Argus is that its at-

Fm 28/1/94
tributable interest in New Africa Publishers will be slightly less than 43%. However, it also has a five-year services and support contract.

In effect, Band says, Argus is paying a premium for its participation in the cellular business, "but we believe this is well justified by the anticipated returns." Argus already has a cellular interest through its 23% stake in M-Net, which in turn owns 25% of Mobile Telephone Networks. (232) (199)

Band says the deal values the *Sowetan* at R62m. He's not prepared to disclose current profits, though he says they are down on the all-time record of last year. However, at the time of the unbundling announced in December 1992 he said profits were expected to be R10,5m-R12m for that year. They were only R6,4m in 1991.

The previous unbundling deal was for Argus to reduce its stake in the *Sowetan* to 50% and to give 45% to a trust representing the community and 5% to staff. That plan has now been abandoned.

"Prosper Africa has a commitment to spreading equity to the man-in-the-street,

Motlana ... leading an independent communications group



rather than allowing control to rest in the hands of a trust," Motlana says. "This will ensure that the newspaper remains commercially driven."

Since its circulation overtook that of *The Star*, making it SA's biggest daily newspaper, the *Sowetan's* advertising revenues have also increased dramatically. Two years ago its annual revenue, according to Adindex, was around R20m, or 17% of *The Star's*. The latest figures, for the 12 months to November, give it R34,6m, equal to 29% of *The Star's* R120m.

Motlana, who is now chairman of New Africa Publishers, says the deal is the first step towards building an independent black-led communications group. "We are in discussion with other groups. We are looking for magazines and we are talking to somebody about acquiring an FM radio station."

One plan being contemplated for the *Sowetan* is a Natal expansion, leading ultimately to it becoming a national daily.

He insists that the *Sowetan's* editorial independence will remain unaffected and will be entrenched by a commitment of support to the paper's editorial charter by all parties to the transaction. New Africa Publishers' board appointments will include a majority of Prosper Africa nominees, together with Argus appointees, a staff representative, editor Aggrey Klaaste and general manager Rory Wilson.

Adds Band: "This is not a sale to a political party. The board members are known as supporters of the ANC, but there are other diverse groups that will play a role. The transaction will empower black business and place control of the *Sowetan* in black community hands. The new partnership is a major plus for Argus."

Goldstone commission reports come under fire

CAPE TOWN — The Goldstone commission is "somewhat overstretched", and some of its reports are not as thoroughly researched as the UN Observer Mission would like, according to mission head Angela King.

"We also feel that sometimes the reports take too long to complete, because perhaps there is not enough personnel," she said in an interview in the latest edition of the SA Communications Service's Policy Review RSA.

"By the time the results are out, the people involved are either frustrated or no longer interested, or it has become irrelevant."

She also noted, however, that the commission had done "some good work".

King said the national peace accord had to be strengthened and should become embedded in the culture of the country.

South Africans "should look at it as an institution which they may need even after the election".

The accord was generally perceived to be toothless, but this could be rectified by strengthening its powers.

She said that in the more than 200 local peace committees, there were only four woman chairmen, and of the 11 police-reporting officers, only one was a woman.

She would like to see more women in party structures and other national structures in general, so that the position of women reached equity.

King said that given the volatile nature of the situation in SA and the poor socioeconomic conditions, it was unlikely that violence would not increase in the run-up to the election.

"However, I do not see the violence stopping the elections. Hopefully it will be containable and not escalate all the time, but I do think all South Africans, all the political parties, churches, business and social groups, would have to get together and commit themselves to political tolerance." — Sapa.

McBride 'no' to death for Hani's killers

Political Staff

CONVICTED Magoo's Bar car bomber Robert McBride last night rejected the imposition of the death sentence on the killers of former secretary-general of the South African Communist Party, Mr Chris Han

(252) 4/2/94
"I don't want the death sentence imposed on them (Mr Janusz Walus and Mr Clive Derby-Lewis who are currently on death row for Mr Hani's murder)," he said on the Future Imperfect television programme

Both Mr McBride and the ANC's legal spokesman, Mr Mathew Phosa, said the ANC was opposed to the death penalty but stressed that convicted people should serve appropriate sentences

Shock decision on detention law

By BARRY STREEK
Political Staff

IN a shock decision, the multi-party Transitional Executive Council has postponed the scrapping of the controversial detention-without-trial internal clause and five other equally contentious political laws.

The TEC move to delay scrapping section 29 of the Internal Security Act comes despite urgent calls for its im-

mediate repeal by the Black Sash and other civil liberties bodies. "We are profoundly shaken by the TEC's decision," Black Sash's Mrs. Mary Burton said last night on behalf of its Legislation Watch group. "We view this decision as an outright breach of faith."

The TEC decision to delay the implementation of a crucial schedule of the Abolition of Restrictions on Free Political Activity Act, which would have ended section 29 and the other political measures, was taken at its meeting on January 25.

It is reliably understood that the decision not to bring section 7 of the act into operation was made after the police argued detention-without-trial was still necessary and because some member-parties felt the security provisions might be needed to deal with the right-wing during the transitional process.

The police said recently it would be "silly" not to continue using the detention measure, despite Parliament's decision to abolish it, as it was still law.

The effect of the TEC decision is that section 29 and the following measures will remain the law until the TEC agrees on a date with President F. W. de Klerk to bring section 7 into operation. Five other clauses of the Internal Security Act; The Affected Organisations Act; The Parliamentary Internal Security Commission Act of 1976; The Prohibition of Foreign Financing of Political Parties Act of 1968 and the Disclosure of Foreign Funding Act of 1989, and section 29 of the Black Administration Act.

FRANCIS "FET" FETTER, a member of the TEC, said that the decision was a "breach of faith" and that the TEC was "not being honest" in postponing the repeal of section 29. He said that the TEC was "not being honest" in postponing the repeal of section 29.

enough consideration had been given

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Section 29 decision

Chris Louw

(252) ~~357~~
WM4-10/3/94

DETENTION without trial may finally be outlawed if the Transitional Executive Council decides to scrap Section 29 of the Internal Security Act at its next meeting on Tuesday.

TEC joint executive secretary Mac Maharaj, a senior member of the ANC, said this week the TEC was awaiting a report from its Law and Order subcouncil suggesting a date for the repeal of the clause. The TEC would consider the report next Tuesday and, if immediate repeal was ordered, could have it scrapped by President FW de Klerk before the end of next week.

Detention without trial has recently been used against white right-wingers — with the tacit consent of senior ANC members.

Minister of Law and Order Hernus Kriel's assertions this week that Section 29 was necessary to "achieve democracy" because of threats from right and left-wing extremists met with a barrage of criticism from human rights activists. The Human Rights Commission said it recalled the worst days of apartheid, while a Lawyers for Human Rights spokesman said retention of the clause was "bizarre".

The negotiating council decided last year at Kempton Park that Section 29 should be scrapped as soon as legislation concerning the repeal of limitations on free political activity came into effect. Legislation allowing for this was passed by parliament in December last year but has not yet come into effect.

TEC accused of a breach of faith

By ANTHONY JOHNSON
and BARRY STREEK

THE TEC was widely condemned yesterday for not scrapping detention without trial — and could be made to rectify this as early as next week

The multiparty body's shock decision has raised fears that the new-look executive might try to use old security legislation in dealing with dissident groups during and after the election

Lawyers for Human Rights (LHR) and the Black Sash have accused the TEC of bad faith and of flouting the Bill of Rights

The Democratic Party's representative on the TEC, Mr Colin Eglin, said his party would insist at the TEC's meet-

Fears new executive will detain dissidents

ing on Tuesday that the detention clause be abolished.

The Black Sash said it appeared that the arguments of the SAP "and possibly other groupings" had prevailed over the "lofty principles" contained in the Constitution

Although Parliament has approved the scrapping of the detention clause, Section 29, the police have continued using the measure

The LHR's national director, Mr Brian Curran, said yesterday that the TEC's failure at its meeting last week to implement agreements negotiated by the multiparty negotiating fo-

rum was a breach of faith and an abdication of responsibility

The public was entitled to know why agreements reached were being broken

The Black Sash's Mrs Mary Burton said on behalf of the Organisation's Legislation Watch group that the TEC's failure to abolish Section 29 and other repressive security legislation clauses was a direct breach of faith

Other civil liberties bodies such as the Human Rights Commission, Nicro and the Trauma Centre for Victims of Violence have also called on the TEC to

scrap Section 29 as a matter of urgency

Mr Eglin said yesterday the TEC's legal advisers had indicated there was an overlap between the laws to be abolished in terms of the Abolition Act and the Regulation of Gatherings Act

However, he added, even if there was overlapping, this was no reason to retain Section 29 of the Internal Security Act a day longer than Tuesday

Last week, the TEC passed Resolution 18, in which it advised President F W de Klerk to implement the Abolition of Restrictions of Free Political Activity Act, except clause 7, on January 28, 1994

Mr Eglin said that after the TEC had been advised about the overlapping it had been referred to the Law and Order Sub-Council to resolve

CF5/2/94

252

TEC under fire over Section 29

TIM COHEN *Biday*

A GROUNDSWELL of opposition is developing against the TEC's decision to retain the notorious Section 29 of the Internal Security Act until after the election, with advocates, the DP and the PAC objecting yesterday. *8/2/94*

The General Council of the Bar, which represents advocates, expressed dismay at the decision. Council chairman Wim Trengove said detention without trial was unacceptable in a free society.

"Any decision to retain detention without trial would also fly in the face of the principles enshrined in the new constitution."

The section would allow the detention of anyone planning to violently promote any constitutional, political, industrial, social or economic aim for up to 10 days. Police could seek a Supreme Court order to hold detainees for a further 10 days. *(252)*

The TEC resolved that the Abolition of Restrictions of Free Political Activity Act, intended to scrap all repressive laws, should be implemented — except for the provisions of Section 29. But no final decision had been taken and the matter was referred to the TEC law and order subcouncil.

DP TEC representative Colin Eglin said he had asked the TEC secretariat to request the sub-council to report its decision today, giving notice that he intended to oppose the resolution.

The PAC said it strongly condemned the TEC's plan to reverse an earlier decision to repeal Section 29. It said the TEC had now decided to openly join the "oppressive institutions of the racist regime".

The decision was reversed so that the section could be used against African people "when they rise against the fraudulent ANC-NP deal", said the PAC.

The Black Sash has already objected to the TEC resolution.

● Comment: Page 12

KwaZulu police chief faces TEC 'grilling'

ADRIAN HADLAND

PRETORIA — The appearance of KwaZulu police commissioner Lt-Gen Roy During before the TEC today would mark a symbolic and legal victory for the TEC in its quest to wield authority over the homeland, a TEC source said yesterday. *Biday*

After two months of ignored requests, During will appear before the TEC to give evidence on the possible existence of hit squads in the KwaZulu police force. *8/2/94*

A TEC media liaison officer said During would be "grilled" rather than humiliated.

During agreed to appear before the TEC after an out-of-court settlement between the TEC and KwaZulu on Friday.

Sapa reports that During's lawyer Patrick Falconer said During would appear before the TEC in his private capacity and not as KwaZulu police commissioner. In this way KwaZulu would not appear to be recognising the TEC, he claimed.

The encouragement of free political activity in Bophuthatswana is also on today's TEC agenda.

Other matters on the agenda include the budget, the reportedly shambolic state of the national peacekeeping force, and an update on the East Rand peace and reconstruction plan.

TEC delegates are also expected to voice their disapproval of Home Af-

fairs Minister Dame Schutte's decision to grant temporary broadcasting licences to 15 radio stations.

TEC DP representative Colin Eglin has warned earlier that he would call on the TEC to scrap Section 29 of the Internal Security Act.

Amendments to the Internal Security Act, as well as several other Acts, are being considered by the TEC law and order subcouncil in relation to the Abolition of Restriction on Free Political Activities Act.

Our Political Staff reports that a Ciskei government spokesman said yesterday that Ciskei had applied for TEC membership for the second time.

A TEC source said its application would be considered by the TEC today. The application had been rejected last week as Ciskei had not carried out the conditions for TEC membership.

These were that the "Kempton Park" Bills should be passed in homeland territories. They include the Electoral Act, the Independent Media Commission Act, Independent Electoral Commission Act and Independent Broadcasting Authority Act.

These had been passed by the Ciskei council of state last week and the path was finally open to joining the TEC, the source said.

DP demands Kotze's dismissal

LLOYD COUTTS

THE DP has called for the dismissal of Law and Order Ministry spokesman Craig Kotze after what it called his "savage and unwarranted" attack on ANC president Nelson Mandela during a radio interview yesterday.

Kotze was interviewed on the ministry's response to a threat by Mandela that force could be used to counter right-wing attacks on the ANC.

DP federal council chairman Ken Andrew said it was inappropriate for a public servant to involve himself in political controversy. *Biday*

"What makes this worse, however,

is that by using inflammatory language, Kotze is endangering the lives of policemen by setting them up as enemies of the ANC," he said.

Andrew said the DP would instruct its representative on the TEC's sub-council on law and order, Peter Gastrow, to raise the issue as a matter of urgency. *(3077)*

Kotze described the accusation that he was endangering the lives of policemen as laughable. *8/2/94*

Star 8/2/94
**PAC, DP slam
detention law**

The Democratic Party and the Pan Africanist Congress have joined the outcry over the Transitional Executive Council's decision not to immediately repeal the notorious section 29 of the Criminal Procedure Act, which provides for detention without trial. (29) (252)

The Democratic Party's Cohn Eglin said he would propose at today's TEC meeting that section 7 of the Abolition of Restriction on Free Political Activities Act be brought into effect immediately.

This would have the effect of scrapping section 29. — Political Correspondent

Call to end Section 29

By BARRY STREEK
Political Staff

THE detention-without-trial clause of the Internal Security Act may be repealed by the Transitional Executive Council (TEC) at its meeting in Pretoria today

The Democratic Party representative on the TEC, Mr Colin Eglin, who wants the clause abolished, has given notice that he intends raising the matter today

Yesterday the General Council of the Bar and the PAC strongly criticised the TEC for not implementing

Clause 7 of the Abolition of Restrictions on Free Political Activity Act

Clause 7 provides for the abolition of Section 29 and other clauses of the Internal Security Act, as well as five other politically-inspired laws

The General Council of the Bar expressed dismay at the TEC decision to retain detention without trial

The council's chairman, Mr Wim Trengrove, said in a statement "Detention without trial is wholly unacceptable in a free society

"Any decision to retain detention without trial would

also fly in the face of the principles enshrined in the new constitution"

Mr Trengrove called on the TEC to reaffirm its commitment to the abolition of detention without trial and the repeal of Section 29

The PAC strongly condemned the TEC for reversing the decision to repeal Section 29

"The only reasonable conclusion is that, not only is the TEC a toothless bulldog but it has now also decided to openly join the numerous oppressive institutions of the racist regime," it said

252

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CT8/2/94

Parties back off from retention of detention without trial provision

POLITICAL parties including the ANC lived for cover yesterday as the row grew over their decision in the TEC to retain detention without trial.

All TEC parties, except the NP, denied upporting the retention of Section 29 of the Internal Security Act until after the April election.

The controversy follows a unanimous TEC resolution two weeks ago, calling for the promulgation of legislation abolishing restrictions on free political activity.

Resolution 18 called on the President to promulgate the Abolition of Restrictions

on Free Political Activity Act, except Section 7. This section applies to Section 29 of the Internal Security Act and was reportedly retained on the advice of senior policemen because of right-wing threats.

The connection between Section 7 and Section 29 was publicised by the Black Sash last week, sparking objections from organisations including the General Council of the Bar, the PAC, the Inkatha Freedom Party and the DP.

ADRIAN HADLAND reports that TEC members said yesterday technical reasons had prevented the inclusion of Section 7 in

their resolution, and the matter had been urgently referred to the law and order sub-council, which was expected to report back next week.

The subcouncil's chairman, Peter Gastrow, said the subcouncil had never been asked to consider the matter, and had never received police advice on it.

TEC co-chairman Zam Titus said the section had been withheld for further consideration as parts of it could have compromised the legal basis of the East Rand

TIM COHEN

peace plan

Last night the TEC was told that no decision had been taken on Section 29.

Some ANC members, many of whom were detained in terms of Section 29, said they intended raising the matter at today's ANC working committee meeting.

ANC spokesman Carl Niehaus said anyone who had been on the receiving end of Section 29, would have serious concerns about its retention in a democratic SA.

The Human Rights Commission, usually supportive of the ANC, said the decision to retain Section 29 "smacks of old-style re-

pression under the apartheid government". "Over the past 30 years, at least 78 000 people were detained without trial. Not only does this decision contradict the Bill of Rights incorporated in the new constitution, it also raises questions about the TEC's acceptance and commitment to these principles."

It urged the TEC to reconsider its decision and scrap Section 29.

NP law and order spokesman Hennie Smut said his party was in favour of eventually abolishing Section 29, hopefully when

Section 29

B/Say

912194

From Page 1

To Page 2

the new constitution was introduced

"Taking into account the present abnormal circumstances with both the far left and far right threatening violence, it is still needed, but it must be applied with great circumspection," he said.

Meanwhile Reuter reports from Durban

that Inkatha Freedom Party spokesman Ed Tillet called for the immediate scrapping of detention without trial. He said the TEC's decision amounted to poor political judgment. "The decision makes a mockery of the lengthy campaign fought by the ANC and its allies to have the controversial legislation removed from the statute books."

Detention law under spotlight

Own Correspondent

JOHANNESBURG. — Political parties, including the ANC and the DP took cover yesterday while the controversy over the retention of section 29 of the Internal Security Act deepened.

All except the NP denied, having supported the legislation, which allows for detention without trial.

The controversy follows the unanimous passing of a resolution by the TEC which called for the promulgation of legislation abolishing restrictions on free political activity.

Resolution 18 called on the president to enact the Abolition of Restrictions on Free Political Activity Act, "except section 7 thereof" which applies to section 29 of the Internal Security Act. It was reportedly retained on the advice of senior policemen because of threats from the right-wing.

The connection between section 7 of the abolition act and section 29 was initially missed, but publicised last week by the Black Sash, which sparked objections from a host of other organisations including the Bar

General Council, the PAC, the Inkatha Freedom Party and the DP.

Yesterday TEC members claimed they did not ask for section 7 to be included in the lifting of restrictions for technical reasons, and said the matter had been referred to the law and order sub-council.

Yesterday, TEC co-chairman Mr Zam Titus said section 7 had been withheld for further consideration by the TEC as parts of the section could have compromised the legal basis of the East Rand peace plan.

Certain statutory powers, needed to set up peace structures in the region, were contained in section 7.

The question of section 29 had been referred to the TEC's sub-council on law and order for "urgent attention".

The sub-council is due to report back on the matter next week.

However, despite claims the TEC asked the sub-council to discuss the matter, chairman Mr Peter Gastrow denied they had ever been requested to consider the matter.

● Rightists face detention law — Page 2

252

CT 9/2/94

328

TEC rebuked for retaining Star 9/2/97 section 29

■ POLITICAL STAFF

The Human Rights Commission (HRC) has joined a growing number of organisations criticising the TEC for not scrapping detention without trial.

In a statement yesterday, the HRC said the retention of section 29 of the Internal Security Act — which makes provision for detention without trial — despite a multiparty agreement to scrap it in terms of last year's Abolition of Restrictions of Free Political Activity Act, 'smacked of apartheid-style repression.'

The HRC said at least 78 000 people had been detained without trial in South Africa.

Yesterday, TEC sources said the body intended to scrap section 29, but had been forced to postpone action. (252)

The sources said section 29 would be scrapped once the TEC law and order subcouncil had decided how to handle other issues that had arisen around the Abolition of Restrictions of Free Political Activity Act.

On January 25 the TEC advised the State President to pass the Act, excluding schedule seven, which contains the repeal of section 29 as well as certain sections of the Publications Act, the Prohibition of Foreign Funding Act, the Affected Organisations Act and the Disclosure of Foreign Funding Act. (252)

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TEC won't keep Section 29

(252) (252)

WM11-17/2/94

Chris Louw

DETENTION without trial will not be allowed in South Africa, despite the fact that the infamous Section 29 of the Internal Security Act is still on the statute books.

At Tuesday's meeting of the Transitional Executive Council in Pretoria, two senior TEC members were at pains to explain that Section 29 was only retained because other parts of the Act had to be rushed through to allow for immediate action in the violence-torn East Rand townships.

The denials followed a public outcry after newspaper reports that the TEC has decided not to scrap the provisions for detention without trial.

TEC co-chairman Zam Titus insisted that no decision had been taken by the TEC not to abolish Section 29.

Joint executive secretary Mac Maharaj explained that a misunderstanding arose "because of the East Rand question".

Maharaj said he had requested the TEC to implement parts of the Free

Activities Act in order to allow the task group to act in the East Rand townships.

Those parts of the Act not directly relevant to the East Rand plans were not rushed through, because they still had to be discussed by the TEC's law and order sub-council.

The issue was further complicated because certain clauses in the Free Political Activities Act passed by the multiparty process was transferred by the government to the Goldstone Gatherings Bill, which was never seen by the negotiators.

"Because of these complications we came to an understanding that both (Bills) would be passed (by parliament) but that we would only activate the Goldstone Bill when it has been properly examined and brought before the TEC. We could not authorise the passage of an Act which the multiparty negotiators had not seen. In the case of the East Rand we requested powers which would enable the TEC to advise the president to amend certain existing legislation including the Public Safety Act."



The day Natal judges threatened to resign over police torture of political detainees

By CARMEL RICKARD *S. Times*
SO strongly did Natal's judges feel about consistent allegations of police torturing detainees during the mid-80s that they threatened to resign en masse unless something was done to halt abuses. 12/2/94

Their unprecedented move has been kept confidential for almost 10 years, but it came to light recently at a memorial service for Natal's former Judge President, Mr Justice Milne, in Durban. A speaker at the service,

former president of the Association of Law Societies and a close friend of the judge, Mr Graham Cox, disclosed that Judge Milne and his fellow judges had given the government an ultimatum if the condition of detainees was not improved, they would resign.

The Sunday Times has now established that Judge Milne — a member of the Appellate Division at the time of his death — wrote a lengthy letter to then Minister of Law and Order Louis le Grange and Minister of Justice Kobie Coetsee in 1985. As Judge President of Natal, Judge Milne told the ministers the Natal judges wholly disapproved of indefinite detention in solitary confinement and believed it led to abuse of power.

Speaking on behalf of the other Natal judges, he said the power of the executive to prevent detainees' access to the law was a gross intrusion of the court's power, and the abuse of detainees had reached such proportions that the judges were no longer prepared to stand by without acting.

In the letter, Judge Milne said that, if the allegations of systematic police torture were true, no civilised country could tolerate it — and the judges were not prepared to do so.

If, however, the allegations were false, the best remedy to quash the claims was for the issue to be heard at once in open court.

He said immediate safeguards were needed to protect detainees as the government's promises of humane treatment, made in 1982, were clearly no longer effective since that directive, four people had died in detention and allegations of systematic torture continued. (252)

The judges said that, unless some effective way was found to prevent torture of detainees held under emergency and other security laws, they would be forced to consider whether, in conscience, they should continue as members of the judiciary.

It is not known how the ministers responded to Judge Milne's letter but, at the time, other legal sources were pressurising the government over the same issue in separate moves. Some lawyers said they believed the cumulative pressure might have helped improve the situation somewhat. (253)

Senior members of the legal profession said the judicial démarche was unprecedented in this country's history. The only possible comparison was the 1951 decision of the Johannesburg Bar not to appear in a court presided over by Judge Lucas Steyn (later Chief Justice). The Bar believed his appointment to the Transvaal bench was highly unsuitable because he had been employed by the government as its chief state legal adviser.

Hated security law still retains echoes of the past

SI Times

1312194

By CARMEL RICKARD

SINCE detention without trial laws were first introduced, they have often been condemned in the strongest language — “a torturer’s charter” is just one of the more pithy examples.

Starting with 90-day and 180-day detention in the 60s, to the Terrorism Act of 1967 and to the Internal Security Act of 1982, government apologists quoted state security to justify their ferocious legislation.

Most feared was Section 29 of the Internal Security Act, which allowed, in effect, indefinite detention in solitary confinement during which a detainee could see no one except interrogators and warders.

Relatives, friends, even the family doctor were denied access to detainees. Detainees could not even see their lawyers. If they were assaulted in detention — and few were released without tales of unlawful interrogation methods or worse — it was extremely difficult to obtain any legal protection

Former detainees say the worst part was not knowing how long the detention would last. Under Section 29, they could be held until the commissioner of police was satisfied they had answered all questions satisfactorily, or “no useful purpose” would be served by continuing to hold them

Detainees’ mental health suffered as much as their physical well-being and many were had to be given psychiatric treatment because of severe depression

During the 30 years it was a key element in state strategy, an estimated 78,000 people were held for varying periods and

73 died while in detention.

Among its critics were the various branches of the legal profession. Even some judges spoke out — an irony, given that a former Chief Justice helped formulate the security legislation.

Against this background it seemed obvious that Section 29 would be among the first laws to go. Instead it is still on the statute books, although substantially amended.

The law now allows a detainee to be held for 10 days. After that, the detention period may be renewed for further periods of 10 days, but only on the orders of a judge to whom the police must apply giving reasons why they want to hold the detainee for longer. (252)

The detainee must be notified that the police are applying to prolong the detention, and the detainee or his legal representative must be given an opportunity to oppose the application. The final decision to extend the detention beyond 10 days lies with the judge.

The new-look Section 29 replicates important parts of the old law.

For example, if the police commissioner believes it might hamper investigations, the family does not have to be informed that a person has been detained, and the detainee may be refused any visitors, apart from a magistrate and a district surgeon.

Although a lawyer can help prepare representations to end the detention, there is no automatic right to legal visits and a family doctor may not have access should the police commissioner believe such a visit could hamper investigations.

Parties attack Section 29

THE ANC, the Democratic Party, the Inkatha Freedom Party and the Conservative Party yesterday all called on the Transitional Executive Council to scrap the controversial Section 29 of the Internal Security Act immediately. (252)

The ANC's Mr Valli Moosa, the DP's Mr Colin Eglin and the IFP's Dr Ben Ngubane told International Press Institute congress delegates that detention without trial should be abolished immediately. CT16/2/94

Mr Moosa said the ANC did not support detention without trial, and Mr Eglin said Section 29 was a relic of the "bad old South Africa"

Goldstone commission asked to probe shooting

Biday 18/2/94
JOHANNES NGCOBO

EASTERN Transvaal police commissioner Chris Serfontein has asked the Goldstone commission to probe the shooting of ANC and PAC supporters by police in Standerton on Wednesday.

Sixty-eight people were injured in Sakhile township when the internal stability unit opened fire on marchers going to the Standerton Town Council to deliver a memorandum protesting against the declaration of the town as part of a volkstaat.

SAP eastern Transvaal spokesman W/O Izak Van Zyl confirmed that the request had been made to the commission yesterday. He said Brig Daniel Siebrit would head a team of senior police officers investigating the incident.

Van Zyl said the march was illegal in terms of restrictions proclaimed on Tuesday night by the Standerton chief magistrate.

He said a group of about 200 Afrikaner Weerstandsbeweging (AWB) members had gathered in the town on Wednesday, threatening to open fire on the ANC and PAC supporters if they came into town.

A police major was hit by a stone when demonstrators attempted to force their way through a police line to deliver a memorandum to the town council (252).

ANC eastern Transvaal secretary-general Jerry Masilela called yesterday for the immediate withdrawal of the unit from the township and the immediate suspension of the unit commander who issued the order to open fire on unarmed marchers.

The ANC also threatened a consumer boycott of all white-owned shops in the eastern Transvaal.

Masilela warned that the ANC

would call an indefinite consumer boycott of all white-owned shops in the eastern Transvaal if its demands were not met.

Law and Order Minister Hernus Kriel said yesterday the standoff between the ANC and the AWB in Standerton should serve as a "wake-up call" to SA that levels of political intolerance and intimidation had reached dangerous levels, Sapa reports from Pretoria.

He said the intolerance of the ANC and the AWB had sparked the incident. It had also illustrated the complexity of the task of the police, whose function was made more difficult by the "destructive intolerance" of the ANC and the AWB.

Kriel said the Independent Electoral Commission should give serious attention to the question of marches during the election period.

Report by J Ngcobo, TML, 11 Diagonal St, Jhb

Numsa to lodge complaint against Scaw Metals to TEC

Biday 18/2/94
JACQUIE GOLDING

NUMSA said yesterday it would refer the "gross incompetence" of Scaw Metals management to the TEC.

Numsa's decision to take this step stems from the breakdown in negotiations on security between the union and management nearly two weeks ago.

The negotiations followed the killing of 12 people at a company hostel in a shooting incident last year.

"Scaw management cheapens the lives of black workers by not attending to the security problem at the company hostel."

"It was seven months before we got a response from management and the meeting which followed was ended because of management's arrogance and their blatant refusal to listen to our proposals," said a Numsa official.

Responding to the allegations, Scaw Metals parent Anglo American urged the union to recommence discussions with Scaw management as soon as possible.

It said Scaw Metals had "devoted an enormous amount of time and additional money" to security.

Scaw said it acknowledged the important role the union could play in resolving security problems, but said it was necessary that it take part in an "atmosphere of mutual respect".

It attributed the breakdown in talks to the "unwarranted, inappropriate and unacceptable behaviour on the part of the union".

Numsa reiterated its demand for the replacement of Scaw Metals MD Tony Harris.

The union accused Harris of high-handedness in his insistence that an ethnic committee be established to oversee the hostel.

In a letter to Scaw's holding company, Anglo American, Numsa outlined another attack on September 28 which left "many Numsa members injured".

Numsa threatened to embark on "various forms of protests" — to be decided by Scaw Metals workers — as soon as the union had received a mandate from the workers.

'Link up' education

KATHRYN STRACHAN

A NEW initiative to link top SA educational institutions to deprived communities was launched yesterday when British ambassador Sir Anthony Reeve opened three new classrooms at Penryn College outside Nelspruit.

Penryn College is an innovative venture between St Stithians College in Johannesburg and the low-veld community.

St Stithians provides educational expertise, while the community ensures pupil, teacher and local business support.

Penryn College also serves more than just its own pupils, acting as a centre of educational excellence and providing outreach programmes to the local community.

Most of Penryn College fundraising will be undertaken by Education Africa, a non-profit organisation.

TEC dithers on scrapping Section 29

Stephen Laufer

TEN new detention orders under Section 29 of the Internal Security Act were issued this week — bringing to 28 the number of people currently being held without trial

The new detention orders were signed despite claims by the Transitional Executive Council that the demise of the controversial clause was imminent

Speaking off the record, one TEC member said he believed the government was keen to keep the provision alive at least until the election

It was up to the ANC, said the source, to tip the balance by coming out unequivocally for the immediate abolition of Section 29 as agreed by the multiparty negotiating forum at the World Trade Centre

ANC constitutional expert Kader Asmal said continued use of Section 29 was not consistent with claims that its scrapping was imminent. The TEC could act immediately by calling on police and the courts to stop using

it, he said

Some TEC members are understood to favour the retention of the provision because it enables police to hold white rightwingers suspected of terrorism. The SAP is believed to have lobbied for retention of Section 29

An SAP legal expert said the police were aware of the negative perceptions surrounding Section 29, but it was felt that scrapping it "could have a negative effect on the investigation of terrorist crimes

"Terrorists work in cells," said the SAP expert. "It is seldom the case that a detainee talks immediately, it often takes days. If Section 29 is repealed, consideration must be given to alternatives"

Of the 28 currently in detention, four are members of the Azanian National Liberation Army, five are Azanian People's Liberation Army cadres, and nine are white rightwingers, a spokesman for the Human Rights Commission said. Ten detainees' political affiliations were unknown

ANC negotiator Mac Maharaj, co-

Wm 18-24/2/94
executive secretary of the TEC, denied there was any pressure to retain the infamous provision. "Sure there is a minority which wants to retain Section 29," he said. "But we are bound by the decision of the multiparty negotiating forum" to get rid of it

But another TEC source pointed out that the resolution called for Section 29 to be abolished on "a date to be determined". "That could be immediately, or it could be after April 27," he said

Maharaj said the delay was "purely technical". It is connected to the Goldstone Bill which has been sent to the TEC's law and order subcouncil as a matter of urgency. It could come before the full council next week, or at latest a week later

Sceptics believe delegating discussion of the issue to the subcouncil could be a ploy to keep Section 29 in force for as long as possible — while appearing to work for its abolition. In practice, the TEC could decide to scrap the clause at its Tuesday meeting

Rules would still keep many off Bench

More black access to Supreme Court?

Star 18/2/94

■ JOHN SODERLUND

The Milne Commission of Inquiry into the Granting of Certain Powers to Legal Practitioners has proposed amendments which promote more representation in, but effectively restrict appointment to, the Supreme Court of black attorneys.

The commission has recommended that attorneys be allowed to practise in the Supreme Court, termed "audience rights", because this would give black attorneys the experience to eventually be appointed as judges

But it has also insisted that only senior counsel be admitted to the Bench.

The commission, whose findings were released yesterday, was appointed in June last year to investigate how more wide-

**INQUIRY
recommendations
would still
stop many blacks from
becoming judges**

ranging powers could be extended to attorneys.

The Association of Law Societies has broadly welcomed the proposals, but has also criticised some of its recommendations.

Uppermost is the association's concern that the findings will not facilitate the appointment of more black judges to the Bench.

ALS official representative at the commission's hearings, Peter Leon, points out that the report suggests that attorneys who are not qualified as senior counsel should not be eligible for ap-

pointment to the Supreme Court Bench.

Senior counsel are required to have LLB degrees, but Leon says most young black lawyers increasingly have BProc degrees. This hampers their ability to work as advocates and effectively prevents them from being appointed as judges

Leon points out that the Constitutional Court established in terms of last year's constitution is the most important judicial authority in South Africa — above that of the Supreme Court

In terms of section 99 of the Interim Constitution, an attorney may be appointed as a judge of the Constitutional Court while the proposals of the Milne Inquiry suggest that such an attorney would not be eligible for appointment to the Supreme Court Bench.

(250)

Star 18/2/94

Inquiry into Standerton

(2.52)

Eastern Transvaal SAP commissioner Major-General Chris Serfontein has asked the Goldstone Commission to investigate the shooting in Standerton on Wednesday in which at least 68 people were injured.

Chaos erupted when the ISU fired into a crowd of about 5 000 ANC marchers protesting against the suggestion that the town belong to a volkstaat.

At about midday, the police opened fire on the marchers, because, they say, they had been pelted with stones. Police promised all ANC claims would be investigated by the commission. — Crime Reporter.

Section 29: Sash appeals to ANC

By BARRY STREEK
Political Staff

THE Black Sash appealed yesterday to the ANC's representative on the Transitional Executive Council, Mr Cyril Ramaphosa, to support the move next week to scrap detention without trial

The TEC is to consider a report from its sub-council on law and order on Tuesday about the possible abolition of section 29 of the Internal Security Act, and the ANC could have a decisive influence on the decision

The Black Sash said in a letter to Mr Ramaphosa, signed by Mrs Mary Burton, that it had opposed detention without trial for many years

Since December last year it had been expecting the repeal of section 29 through the promulgation of the Abolition of Restrictions on Free Political Activity Act, which was passed by Parliament in its final days

"We were greatly dismayed to discover when this act was finally promulgated, schedule 7, which includes section 29, was not included for implementation at this time," Mrs Burton said

"We ask you to lend your support to the removal of this provision from our statute books. It is an ugly relic of past practice, and should have no part in the future society we hope to build"

Number of black silks doubles

By CARMEL RICKARD

THE appointment of six new senior counsel to the Durban bar has significantly changed the country's legal statistics.

The number of black silks has doubled, while there is now one woman senior counsel in practice at the bar.

The six, who were officially notified this week, include Mr Pius Langa and Mr Marumo Moerane

This brings to four the practising black silks countrywide. The others are Mr Lewis Skweyiya and Mr Dikgang Mosenke. Mr Thole Madala, a fifth silk, was appointed a judge in Transkei in January.

Mr Langa, who is president of the National Association of Democratic Lawyers, began his career as a factory worker before joining the Department of Justice as a messenger/interpreter and studying part-time for his law degree.

Mr Moerane obtained a BSc and a BComm before switching to law.

Both have appeared in a number of high-profile political trials.

The appointment of Mr Nir-mal Singh as a silk brings the number of Indian senior counsel to four, including Mr Ismail Mahomed, an acting member of the Appellate Division.

Advocate Vivienne Niles-Duner's appointment makes her not only the first woman at the Natal bar to be appointed as senior counsel, but also the only woman SC practising at the bar in SA.

One woman serves on the Appellate Division and one is serving as a Supreme Court judge in the Cape.

Milne's last battle to legitimise SA's courts

THE Milne commission report on whether attorneys should be allowed to appear in the Supreme Court has been welcomed by the official bodies representing both attorneys and advocates.

The report, released for comment this week, backs the most far-reaching changes to the legal profession in decades

But it concludes that no changes should be made without first consulting a widely representative legal forum about whether the whole legal system should be restructured.

Following on from this precondition, the report — compiled by the commission chairman, the late Mr Justice John Milne — suggests attorneys should be given audience rights under strict conditions

Judge Milne reviewed the arguments in favour of extending audience rights and found none persuasive enough to warrant changing the status quo

The only argument he accepted was that changes should be made as part of an effort to restore the "lost legitimacy" of the legal system

In his report, the judge says apartheid effectively excluded black people from any meaningful role in the country's legal structures.

"It is now necessary to

redress the balance and ensure that lawyers from the formerly disadvantaged communities be drawn in to play a significant part."

The present bar is too small and too restricted in race and gender to serve the public need, says the report, and for this reason it supports granting audience rights to "attorney-advocates" who qualify under new guidelines

The judge's report recommends that only attorneys with an LLB or a BProc and five years' experience should be eligible to become attorney-advocates

It also recommends the establishment of a new Advocates Board to set and administer a compulsory national bar exam which all prospective advocates and attorney-advocates will have to pass

Attorney-advocates would have to abide by the same ethical code as members of the bar, and would have to be prepared to take on pro deo work, as advocates must do

The report also recommends that judges should continue to be drawn from the ranks of senior counsel for as long as the bar can provide sufficient candidates

The implication is that senior attorney-advocates would have to specialise as advocates and take silk to be considered for the judiciary

The National Association of Democratic Lawyers did not give evidence to the commission because its brief was too narrow and it was appointed without consultation.

But Mr Pius Langa, SC, Nadel's president, welcomed the judge's recommendations as a valuable contribution to the debate on restructuring the legal system

The General Council of the Bar also welcomed the report and the safeguards it recommends to ensure that the standards of advocacy in the Supreme Court do not fall

The Natal Bar urged interested parties to meet urgently in a national legal forum to decide how to implement the proposals

The Association of Law Societies, which represents attorneys, said the main recommendation was a "breakthrough" establishing the principle that attorneys should be allowed audience rights

One of the report's recommendations which could immediately affect many people unable to afford legal representation is the judge's suggestion that attorneys employed at Legal Resources Centres, the Centre for Applied Legal Studies and university law clinics be granted attorney-advocate status even if his other recommendations are not accepted

Mr Geoff Budlender, national director of the LRC, said this recommendation would allow these attorneys to appear for poor clients without needing to brief expensive outside advocates

Don't let section 29 slip into the new SA

WM 25/2-3/94
(252)

No government should be given draconian powers — even when fear stalks the land. The TEC should condemn section 29, argues Kader Asmal

IN 1976 the British ambassador to Ireland was assassinated by the IRA in a dramatic coup d'etat explosion outside Dublin. The Coalition Government of the day immediately introduced legislation for internment without trial for up to seven days. There was an immense public furore and some of us, concerned at the implications for public life, led a campaign against the measure. Although the Irish parliament caved in to the ministerial diktat, the supreme court, in upholding the legislation as it had to under the constitution, introduced so many conditions — right of access to lawyers, to family, to a doctor and to a minister of religion — that the detention provision has never been invoked.

The lesson of this experience is illuminating for us in South Africa. It has indelibly imprinted itself on me, together with the understanding of the mayhem during our permanent emergency. We have had 12-day, 90-day, 180-day and subsequently indefinite detention without trial as a normal state of affairs for over 30 years. The Public Safety Act, with its draconian judge proof assumptions, was an additional armoury in the hands of a repressive regime. When the Internal Security Act was amended after February 2 1990, the government insisted on the retention of detention without trial, now for 10 days but conferring authority on a judge to extend the period.

However, the climate of public opinion has changed sharply. The ANC in its Bill of Rights of November 1990, expressly and unusually prohibited such detention as a violation of fundamental rights, other parties implicitly rejected such a concession to alleged public needs. During the Codesa debates, every party, with the exception of the government and the National Party, opposed detention without trial. But there was no "sufficient consensus". With the collapse of Codesa, we had to wait until the multi-party talks at Kempton Park which convened last year when an historic advance towards the recognition of the evils of detention took place.

Once again, the government was the odd man out. Although the government's Charter of Fundamental Rights of February 1993 described

violation of personal freedom as "one of the most serious infringements of a person's fundamental rights", the document permitted detention without trial for up to 10 days, with a further extension under judicial supervision. There was no concession to the liberal non-sense of access to family etc.

Yet the government was overruled at Kempton Park. The technical committee dealing with discriminatory and repressive legislation advised against the retention of section 29 of the Internal Security Act. This time, there was "sufficient consensus" at the Negotiations Council for its repeal. The recent contretemps at the Transitional Executive Council must therefore be seen in our own context and in the light of international experience.

Human rights watch

From this week, the Weekly Monitor will have a regular feature to highlight detention without trial and other human rights abuses. See the bottom of this page for the first Human Rights Parameter.

to detention without trial arises out of a universal experience of torture, ill-treatment, degrading punishment and humiliation associated with this arrangement. Yet, the objections are more basic.

Detention without trial violates the presumption of innocence because part of the reason for such deprivation of liberty is to "make people talk". Our courts have not been particularly zealous in excluding such "evidence". Even with the most stringent safeguards against ill-treatment, the deprivation of liberty, the alien conditions under which people are held and the overwhelming ethos of state power, induce persons to make the most extraordinary confessions or admissions inculcating totally innocent persons.

In Ireland, ordinary policemen privately but strenuously opposed such powers as a licence to obtain confessions. They ought to know.

Most important of all, detention without trial leads to an incompetent police force.

There is no pressure to fine-tune professional and forensic skills con-

cerning the gathering, sifting and collating of evidence. Pick up the usual suspects is the lazy but disastrous approach, as we have learnt recently from some of the Pan Africanist

Congress and Azapo arrests. Laws concerning incitement to violence and conspiracy are not used against those who threaten public order. Finally, detention without trial has been used for partisan political reasons against enemies of the party, rather than alleged culprits against the state.

Politicians have an infinite and credulous capacity to believe what "security crats" tell them. We should not provide them with a statutory opportunity.

There is no reason why the TEC should not "advise" De Klerk to repeal section 29 and consign this horrendous power to the dustbin of history.

On the contrary, alleged technical reasons have ensured an avoidance of any discussion at the TEC about the use of similar powers in the "independent" homelands. All such laws ought to be repealed as a signal about our future.

We cannot concede to administrative convenience or political expediency on the issue of the freedom of the individual. Neither should it be left to the judiciary. If there is a genuine emergency, as determined by the Interim Constitution, then in common with other democratic countries, we can invoke the provisions of the constitution against a threat to the foundations of the incipient democratic order. But, in the meantime, even when fear stalks the land, it is vital that the core values of civilised jurisprudence are not violated by conceding to any government such draconian powers, outside a real emergency.

In the South African context, we should remember Milan Kundera's injunction that the demand for human rights is the struggle of memory against forgetting. Too many horrifying things have happened in the privacy of John Vorster and Caledon squares for us to allow the use of impermissible state powers even against the Afrikaner Weerstandsbeweging and other recalcitrants. We must ensure, like Kundera, that memory is victorious.

Kader Asmal is professor of human rights law at the University of the Western Cape and a member of the National Executive Council of the ANC.

AWB demand for indemnity

VENTERSDORP —
AWB leader Mr Eugene
Terre Blanche has de-
manded that political in-
demnity be extended to
right-wingers convicted
up until January 1994.

The demand follows
the granting of indemni-
ty to 14 Apla command-
ers, who accompanied
Apla commander Mr Sa-
belo Phama's body, last
weekend (252).

Mr Terre Blanche said
in a statement yesterday
that indemnity must be
applied equally — Sapa

Detention law may be axed

252 By BARRY STREEK
Political Staff



THE controversial detention-without-trial clause of the Internal Security Act could finally be scrapped tomorrow when the Transitional Executive Council meets in the city.

28/2/94

The TEC has been strongly criticised by political and civil groupings from right to left after it failed to implement clause 7 of

the Abolition of Political Restrictions Act, which contained a schedule of laws including section 29 of the Internal Security Act

Parliament and the Multi-Party Negotiating Council had agreed the law should be scrapped

One of the ANC'S chief negotiators, Mr Mohammed Valli Moosa, and one of its constitutional experts, Professor Kader Asmal, have publicly supported these

criticisms

Professor Asmal wrote in the Weekly Mail last week "There is no reason why the TEC should not 'advise' President De Klerk to consign this horrendous power to the dustbin of history"

He also called for repeal of similar powers in the homelands

At present, 42 people, mostly right-wingers but also some PAC members, are being held under section 29

ANC 'wants to scrap detention'

Political Staff

252

THE ANC is to support the immediate scrapping of detention without trial when the Transitional Executive Council meets in Cape Town today.

The ANC's secretary-general, Mr Cyril Ramaphosa, said last night that the ANC had always been opposed to section 29 of the Internal Security Act.

The Minister of Law and Order, Mr Hennis Kriel, claimed yesterday that "other parties" in the TEC were in favour of keeping section 29 as a way of dealing with threats of violence from the right-wing and far left.

He refused to say whether the ANC was among them.

The TEC decided in January not to implement clause 7 of the Abolition of Political Restrictions Act, which provides for the scrapping of section 29 of the security laws and other laws.

Mr Ramaphosa's statement leaves the National Party as the only supporter of detention without trial.

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CT 13/94

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Detention without trial necessary — Kriel

CAPE TOWN — The retention of the Internal Security Act's Section 29 provisions for detention without trial was necessary in the interests of democracy, but a round-up of anti-election dissidents would serve no purpose, Law and Order Minister Hennis Kriel said yesterday.

"Government will use its full power during the pre-election phase to combat all forms of violence," he told an NP news conference on SA's security situation.

The SAP's track record on right-wing violence could be attributed largely to the existence of Section 29.

BIDay 11/3/94
JIM COHEN

"It is amazing how talkative people can get after a few days with no one to talk to." Considering the right-wing threats, and those from the left wing, it was necessary to maintain Section 29 in the interests of democracy, Kriel said.

He said other TEC parties also supported the retention of Section 29. (252)

Political intolerance and violence from the ANC, the Inkatha Freedom Party and the far right threatened to create a blood-stained election. The ANC had to be singled

out as the main threat to the democratic process, although Inkatha and the far right seemed to be vying for this position.

Major threats to democracy had emerged during the run-up to the elections with the ANC, Inkatha and the far right playing prominent roles.

These threats included:

Political intolerance. The ANC paid lip service to political tolerance but really wanted total power and would not tolerate opposition.

Uncontrolled supporters. Both the ANC

To Page 2

Kriel BIDay 11/3/94

From Page 1

and Inkatha apparently allowed their supporters to kill, destroy and intimidate opponents without taking credible steps to control them. (252)

No-go areas. The ANC and Inkatha had created no-go areas for their political opponents, especially on the East Rand;

Illegal weapons. The power struggle unleashed by the ANC had created an increased demand for AK-47 rifles. The ANC had resisted all attempts to place their arms under impartial control, while Inkatha and the far right were also arming their supporters on a large scale;

War talk. Inflammatory statements by

right-wing leaders such as the CP's Ferdi Hartzenberg and the AWB's Eugene Terre-Blanche, as well as ANC president Nelson Mandela, and

The demonisation of the SAP. The ANC had created a climate of hate and suspicion against the SAP which had contributed to the murder of hundreds of policemen.

The question therefore arose, if these organisations used violence to win the elections, how would they act after gaining victory against political opponents and when in control of the state's security organisations?

Report by T Cohen, TML, Press Gallery Parliament

Section 29 debate today

CAPE TOWN — The future of the controversial Section 29 of the Internal Security Act, which provides for detention without trial for a period of up to 10 days, could be decided today

MPs will hold a special snap debate in Parliament this morning on detention without trial, following the failure of the TEC over several weeks to remove the provision from the statute books

The scrapping of Section 29 was approved last year by the multiparty negotiating council and a joint session of Parliament. The TEC's foot-dragging has been criticised in recent weeks by the Black Sash, the Human Rights Commission, Lawyers for Human Rights, Nicro, the Institute of Race Relations, the DP, the Inkatha Freedom Party, the PAC, CP and the Labour Party.

TEC law and order subcouncil chairman Peter Gastrow confirmed yesterday that Section 29 was the first item on its agenda for its meeting this morning in Cape Town. "We will formulate our recommendation to the TEC," he said.

The TEC is scheduled to discuss the

matter when it meets next Tuesday

The subcouncil is expected to recommend the scrapping of Section 29 after ANC secretary-general Cyril Ramaphosa said the ANC had always opposed the section, and continued to do so, despite representations to keep it in force.

The DP representative at yesterday's TEC meeting, Ken Andrew, urged the TEC parties to "stop filibustering".

It is understood four options are being considered: scrapping Section 29; its retention, its amendment to bring it into line with the constitution, its repeal and replacement

Only since Ramaphosa's intervention on Monday has it become clear the ANC will support scrapping of Section 29.

The NP and the government are now the only groups supporting the retention of Section 29

Earlier yesterday the CP tabled a Bill in Parliament calling for the immediate scrapping of Section 29.

Report by P Cull, EP Newspapers, Press Gallery, Parliament, and B Streak TML Press Gallery Parliament

Political Staff

Only NP supports keeping Section 29

BIDAY 3/3/94
TIM COHEN

CAPE TOWN — Only the NP expressed support for the retention of Section 29 of the Internal Security Act, which provides for detention without trial, during a special debate in Parliament yesterday.

The debate did not require a vote and will not result in any legislative action.

The debate was initiated by Inkatha MP Hennie Bekker.

CP MP Jurg Prinsloo said CP supporters were being arrested "in the middle of the night under circumstances that are upsetting to their families." Reversing the CP's past support for the legislation, he said the legislation was being used specifically to detain conservatives.

ANC-aligned MP Dave Dalling called for the "immediate repeal" of the legislation, but spent his speech explaining how the legislation was not comparable to the more draconian brand of detention without trial applied in the '80s. (252)

The principle of habeas corpus was recognised in the legislation, and access to doctors and lawyers was permitted.

He also lashed out at the CP's stance, describing the party's opposition as "cynical and hypocritical", saying it could hardly be called a stand on principle.

DP MP Colin Eglin said the DP supported the immediate repeal of the legislation, pointing out that Parliament had already decided it should be scrapped.

The legislation was due to be scrapped, but the promulgation of the legislation which would implement its termination had been delayed following discussions in the TEC.

The retention of the legislation was illusory because it was of marginal benefit to the police, he said.

To Page 2

Section 29 From Page 1

The new constitution would not authorise the retention of Section 29, he said. Current legislation should be based on the best parts of the new constitution, not the worst parts of the old constitution. (252)

Law and Order Minister Hennis Kriel reiterated his support for retaining the legislation until the election, saying it was neces-

sary because of the deteriorating security situation. "We must not let our ideals run away with us."

He cited Judge Curlewis's judgment in CP MP Clive Derby-Lewis's trial. Curlewis said Section 29 was the only effective mechanism the police had for dealing with subversion.

Report by T. Cohen. TML, Press Gallery, Parliament, Cape Town.

Biehl trial: State asks for disclosure

Supreme Court Reporter

THE State has made an application in the Army Biehl murder trial that the statement of one of the accused, Vusumuzi Ntamo, be disclosed so they can test his credibility.

The statements of Mr Ntamo and his co-accused, Mongezi Mougana and Mzikhona Nofemela, which they made to police, have not been disclosed as they dispute that they made them freely and voluntarily.

They allege they were assaulted and forced to make the statements.

The court is hearing evidence on whether the statements are admissible.

State advocate Nolile Niehaus said yesterday the statement of Mr Ntamo should be disclosed to show that it contained information which could never have come from the police.

Mr Ntamo contended that he was told by two policemen what to say in his statement. He added he had made up a certain part of the statement.

Asked by the State why he only now told the court he had made up a portion of the statement, he replied, "There are many things I have said here in court."

The State did not press the judge for a ruling on whether the statement should be disclosed and the court left the issue.

In earlier evidence Mr Ntamo said he was arrested at his house by a policeman who threatened to shoot him.

He said he was put into a minibus where the policeman told him, "You better not deny anything because I am also from the township."

Asked why he told the court he was frightened by this statement, he replied "It makes me afraid."

The trial continues on Monday.

Judge-President Mr Justice Friedman is on the Bench. Mr Niehaus and Leon Norder appear for the State. Justice Poswa and Nona Goso appear for the defence.

Amnesty expected — assassins may go free

DAVID BREIER

Weekend Argus Political Staff

SUSPICIONS are growing that the government and the African National Congress have cut a deal to grant a new amnesty for politically motivated crimes — which could include Pan Africanist supporters responsible for recent outrages in Cape Town.

This week parliamentarians voiced suspicions that politically inspired killers could qualify, including the St James Church and Heidelberg Tavern attackers and the murderers of Army Biehl.

Former Air Force chief Lieutenant-General Bob Rogers, Democratic Party MP for Walmer, told Weekend Argus that the prospect of such an amnesty might be interpreted as a "licence to kill."

This was after Minister of Justice Kobie Coetsee fuelled the suspicions when he mentioned in parliament the likelihood of a general amnesty. He did not exclude the possibility that the Heidelberg Tavern attackers could qualify.

The interim constitution under which next month's elections are to be fought makes provision for an amnesty for offences "associated with political objectives and committed in the course of the conflicts of the past."

The constitution gives the newly elected parliament enormous scope — it will be left free to decide on the mechanisms, criteria and procedures, including tribunals "if any" for amnesty.

The constitution also provides for the new parliament to adopt a law determining a firm cut-off date for such offences.

Such a date must be after the existing cut-off of October 8 1990 under which previous indemnities were granted. The constitution

■ The new government of National Unity is expected to declare a general amnesty — and there is growing suspicion that perpetrators of recent outrages may get off scot-free

states the cut-off shall be before December 6 last year, which was the date the negotiating council reached the agreement.

Since Army Biehl was murdered on August 25 last year and the St James Church attack was on July 25 last year, the attackers in both cases could qualify.

Chris Hani's murderers, Clive Derby-Lewis and Janusz Walus, could also qualify as the Hani murder was on April 10 last year — but the ANC has vowed that they would not be given amnesty.

The Heidelberg Tavern attack on December 30 last year falls outside the possible December 6 cut-off date. But constitutional experts point out that with a two-

thirds majority, the new National Assembly could change anything in the constitution — including extending the cut-off date past December 6.

Mr Coetsee stressed the need to accommodate the PAC in the amnesty — the PAC this year suspended its armed struggle and is taking part in the election.

Mr Coetsee gave an indication of things to come in answer to a question by General Rogers, who asked whether those responsible for the Heidelberg Tavern murders would be let off.

"The minister does not indemnify them. It will be a tribunal of judges before which this case will serve as others have done in the

past," Mr Coetsee said.

He said the number of cases turned down by the present tribunal (the National Council on Indemnity under Mr Justice M T Steyn) was "quite impressive."

"I say it will not be to the account of this government to condone any of these atrocities where civilians were the targets," Mr Coetsee said. But he left open the possibilities under the next government.

General Rogers said it was clear from Mr Coetsee's reply that amnesty was possible for atrocities such as the Heidelberg Tavern attack.

"I am all for getting together and letting bygones be bygones. But this is not to say people can now and in the future perpetrate acts and expect to get off. In fact, this is what has been happening. Our fear is that this may be interpreted as a licence to kill," he said.

General Rogers said that criminals might interpret the possibility of an amnesty as enabling them to kill people whose political views they disagreed with.

Lester Fuchs (DP Hillbrow) told Weekend Argus "The Nats fall over themselves to accommodate their allies in the ANC. We believe that if people want indemnity, they should apply for it and tell what their crime is. Each matter must be considered on merit. We are against granting blanket amnesties."

"Unlike the Nats, we believe murderers and criminals should be in jail, not on the streets or in parliament."

The ANC plans to set up a Truth Commission after the elections to bring crimes committed in the apartheid era into the open. But it undertakes that this will not develop into a Nuremberg Trial.

(News by D Breier 122 St George's Mall Cape Town)

252 ARG 5/3/94

Section 29 under fire

Sowetan 8/3/94

Political Staff

THE Freedom of Expression Institute yesterday called on the Transitional Executive Council to scrap Section 29 of the Internal Security Act.

The section was retained by the TEC to facilitate the task of the police in clamping down on rightwing terrorism. (252) (a)

"This iniquitous piece of legislation should be thrown to the dustbins of apartheid history as soon as possible."

"We find Law and Order Minister Hernus Kriel's assertion that Section 29 is necessary to achieve democracy frightening as it shows a total misunderstanding of what democracy is about."

HEBBILOAS 940200171

The end looms for two despised laws

TIM COHEN

B1 Day

THE writing is on the wall for two of SA's most despised laws — Section 29 of the Internal Security Act and Section 205 of the Criminal Procedure Act. 813194

The Transitional Executive Council's law and order subcouncil yesterday recommended that Section 29 be repealed immediately. It said 75% of the subcouncil's members favoured abolishing Section 29 immediately, while the minority favoured retaining it after an SAP report had recommended that it should not be scrapped until after the election.

The subcouncil said adequate legal provisions existed to meet any possible security threat and its retention would hamper sound police/community relations. 252

The subcouncil also recommended the repeal of corresponding legislation in self-governing territories and TBVC states.

Meanwhile, the Justice Department announced yesterday that the General Law Sixth Amendment Act had come into effect, including changes to Section 205 of the Criminal Procedure Act. 252

Section 205 allows a magistrate to question any person about an alleged crime, with penalties if the person refuses to provide the information. It became controversial following its use against journalists.

The Act has been amended so that anyone refusing to furnish information can be imprisoned only if, in the absence of an acceptable excuse, the information is necessary for the administration of justice and the maintenance of law and order.

Report by T. Cohen, TML, 11 Diagonal St, Jhb

Sect 29 of 9/3/94 (25) to be ~~25~~ scrapped

PRETORIA — The Transitional Executive Council yesterday decided to scrap detention without trial.

The TEC resolved to ask the State President to introduce section 7 of the Abolition of Restrictions on Free Political Activities Act. The section contains a provision to abolish section 29 of the Internal Security Act which provides for detention without trial.

The resolution was passed with reservations from government delegate Mr Roelf Meyer and Transkei delegate Mr Zam Titus.

The TEC resolved that its sub-council on law and order review all existing legislation to see whether it catered adequately for the security situation.

● Ms Martha Bridgeman, of the Black Sash legislation watch group, last night applauded the TEC's decision.

"With this move SA takes another step towards respect for human rights," she said. — Sapa, Staff Reporter

Detention without trial to disappear from statute book

ARL 9/3/94

(252) ~~252~~

□ Security Act change on TEC sub-council recommendation

ESTHER WAUGH
Political Staff

JOHANNESBURG — The Transitional Executive Council has agreed on the repeal of the controversial section 29 of the Internal Security Act allowing for detention without trial

At its weekly meeting last night the body agreed to the implementation of section 7 of the Abolition of Restriction on Free Political Activities Act,

which includes the repeal of sections of the Internal Security Act, sections of the Publications Act, the Prohibition on Foreign Funding Act and the Affected Organisations Act

The decision followed a recommendation from the TEC sub-council on law and order

The Abolition on Restriction on Free Political Activities Act was passed by parliament in December, and implemented, except for section 7, ear-

er this year

The TEC noted the sub-council's view that adequate provisions existed in law to meet the exigencies of the security situation

The TEC instructed the sub-council to review all existing legislation with regard to its adequacy to meet exigencies of the security situation

The body's two joint executive secretaries — Mac Ma-

haraj and Fanie van der Merwe — have been requested to monitor the security situation, in particular any threats such as acts of terrorism, and violence to the process of transition

They are to make recommendations in consultation with the sub-council on matters relating to the combating of such threats

(News by E Waugh 47 Sauer Street, Johannesburg)



NOW LISTEN HERE! Shaneil, a rap artist from Prophets of the City, holds an ID card and tells schoolchildren about the voter registration process during a concert at a school in Soweto this week

Only the NP has submitted lists

JOHANNESBURG — Only the National Party has handed in candidate lists to confirm its registration for the election, Independent Electoral Commission official Norman du Plessis said today

The parties had until 4 30pm today to endorse their registrations by submitting candidate lists

The Transitional Executive Council undertook at its meeting yesterday to explore an extension of the lists deadline with the IEC. However, an amendment to the Electoral Act empowers President De Klerk to change deadlines, even retrospectively

But practical difficulties prevent the IEC accepting late registrations. IEC chairman Mr Justice Johann Kriegler said he had already inspected a draft of the ballot paper and deletions were still possible. However, additions could not be made — Sapa

(News by P Bulger 141 Commissioner Street Johannesburg)

Subcouncil foils TEC on section 29

Wm/11-17/3/94

Chris Louw (252) (327)

A DEFT political manoeuvre led to the Transitional Executive Council agreeing this week to the repeal of section 29 of the Internal Security Act, which allows for detention without trial.

The TEC's hand was forced by a shrewd move on the part of its subcouncil on law and order, security and stability (LOSS), which saw those in favour of keeping the controversial clause on the statute books outwitted. Peter Gastrow, chairman of the subcouncil, took the unusual step of pre-empting any TEC decision on the issue by making public the fact that the subcouncil had recommended the clause be scrapped.

It is understood that Gastrow deliberately released his subcouncil's recommendations to compromise the TEC, which has stalled on the issue.

Senior TEC members, including co-chairman and Transkei delegate Zam Titus, tried up to the last minute to stall a decision on section 29.

Titus on Monday tried to neutralise Gastrow's move by releasing a press statement on behalf of the TEC, claiming the TEC would only take a decision on section 29 after receiving a report from the subcouncil dealing with the security situation in the country and legislation to deal with it. At Tuesday's TEC meeting Titus argued that the subcouncil had failed to comply with what it had been instructed to do.

Government negotiator Roelf Meyer also expressed reservations about the repeal of section 29.

The TEC nevertheless resolved to ask the state president to introduce section 7 of the Abolition of Restrictions on Free Political Activities Act, which provides for the abolition of section 29. The TEC's joint executive secretaries were mandated to monitor the security situation and to make recommendations on combating the threats of terrorism.

Section 29 was a licence for torture, says ANC's Yengeni

FOR three days detainee Tony Yengeni was kicked and punched in the face until his eyes were swollen, his lips were cut and his face looked as if he had "collided with a truck"

His body was also full of bruises from being "kicked around like a football" as he was handcuffed and bound to a chair.

Mr Yengeni's 20-odd interrogators also repeatedly suffocated him with a wet bag, removing it when he was about to collapse

Mr Yengeni, a former regional commander of Umkhonto weSizwe, was detained in Rondebosch in September 1987

He was taken to the Culemborg police cells, where he said he was tortured and not given any food or water.

His interrogators wanted to know about weapons they said he had stashed away, as well as the whereabouts of ANC terrorists

Mr Yengeni's experience — "you would not have recognised me after the torture" — is one of many of victims of detention without trial

After the torture, Mr Yengeni said he was placed in solitary confinement

To keep going, he played with ants in his cell, redirecting their

ARG 12/3/94 (252) ~~254~~
■ Section 29 of the Internal Security Act, one of the most hated laws of the apartheid era, was finally scrapped this week. One of the supporters of this move was Tony Yengeni, former regional commander of the ANC's military wing, Umkhonto weSizwe, who was detained under the Act for six months. Weekend Argus Reporter **VUYO BAVUMA** spoke to him about his experiences.

paths with crumbs of bread. He also sang revolutionary songs until he became tired

Mr Yengeni, who had undergone military training in the Soviet Union and Angola, was detained in connection with terrorism charges on September 16, 1987

In a subsequent trial that lasted more than a year, Mr Yengeni and another 13 accused were indeterminately.

Interviewed by this week at the ANC election office in Community House, where he is a co-ordinator of the election campaign in the townships, Mr Yengeni said he was pleased the Transitional Executive Council had scrapped the legislation

Last year parliament resolved to repeal the Act, but this was delayed by the TEC, prompting criticism by several organisations, including the Black Sash, Lawyers

for Human Rights and the Institute of Race Relations

This week Mr Yengeni said he could not understand why there had been any delay in scrapping the legislation from the statute books

To him, Section 29 was merely a "licence for the security policemen to commit crimes and get away with them"

"For example, there was no reason for the policemen to torture me after they had captured me"

"That inhumane Section 29 has no place in the new South Africa. It generally embodies the evilness and dirtiness of apartheid and is merely an excuse for the police to abuse the law"

Mr Yengeni said he could only welcome the scrapping of this piece of legislation — a step which showed that South Africa was changing for the better

Training call by

court officials

By JESSICA
BEZUIDENHOUT

COURT interpreters have called on the Department of Justice to allow their union, the SA Court Interpretation Officers and Allied Workers Union, to be involved in training (3/3/94)

Training of the interpreters has until now been handled exclusively by the Department of Justice

A nationwide campaign by the union was launched last week to address the shortcomings of a new training programme introduced last month, union spokesman Mr Dumile Siko said (252)

He said the union's problem with the training was that it did not provide "enough room" for officers to further their qualifications and language skills

Training

"This limits officials' chances of being promoted," he said

There were more than 900 court interpreters in SA, with fewer than 50 holding senior positions, Mr Siko said.

The basic training programme for court interpreters includes academic, functional and administrative training

A spokesman for the Department of Justice, Mr Pieter Du-Rand, said the Department was aware of the union's problems, but no official proposals had been put to them

He said the recently announced training programme was introduced in consultation with court interpreters

Detention law still in place

THE controversial detention-without-trial clause of the Internal Security Act is still law.

But its formal abolition could be published in tomorrow's Government Gazette.

A spokeswoman from the State President's Office, Ms Janetta Badenhorst, said yesterday the draft proclamation providing for the adoption of section 7 of the Abolition of Political Restrictions Act — which will abolish section 29 — was still awaited from the Department of Justice.

CT 17/3/94

(252) 707

CRIMINAL PROCEDURE

Speeding up justice

Five years ago, Justice Minister Kobie Coetsee asked the Law Commission to investigate the possibility of simplifying criminal procedure. After calling for comment from a variety of legal sources and organisations, the commission has produced a proposed bill for further comment. Staff Reporter ROGER FRIEDMAN looks at some of the commission's recommendations.

SOME far-reaching changes to the Criminal Procedure Act have been recommended to the Law Commission, including that any confession made to a policeman should be regarded inadmissible as evidence in court.

The Law Commission has also suggested provision be made for plea bargaining, and changes to allow the giving of evidence using closed-circuit television or other electronic media.

Other recommendations include regulations to "further regulate the postponement of proceedings, to further provide for proof of undisputed facts and to grant a court the power to act against abuse of procedure".

INADMISSIBILITY OF CONFESSIONS

Confessions made to police officers have been the cause of many a lengthy delay in court proceedings, leading as they often do to trials-within-trials with the onus resting entirely on the State to prove they were made voluntarily.

In a 1990 Supreme Court trial the presiding judge found if police officers would refrain from taking confessions in cases in which they were personally involved "this could go some way to eliminating unfounded accusations of improper conduct and to establishing greater peace of mind and protection of suspects".

"If police officers stop this practice it could lead also to the elimination of many unnecessary trials-within-trials".

At present the trial of the men accused of murdering

American Fulbright student Amy Biehl is being held up on this issue.

In its discussion, the commission notes "there is no statutory impediment to the taking of confessions by police officers and despite the courts' criticism of the procedure such confessions cannot be excluded simply because they were made to police officers who are justices of the peace".

"There is no doubt that in practice this procedure regularly gives rise to protracted trials-within-trials to determine the admissibility of confessions".

"The commission is of the opinion that the number of confessions taken by police officers who are justices of the peace and disallowed by the courts discredits the image of the administration of justice and the police in general".

"The majority of accused in South African courts are illiterate and police officers are seen by them as persons in position of authority. It is therefore easy for police officers to influence accused to make confessions".

In the event, the commission recommends that "legislation be passed to provide that confessions taken by any police official are inadmissible".

PLEA NEGOTIATION

Known as plea bargaining in the United States and Canada, plea negotiation (as the commission calls it) certainly has its detractors who fear sinister dealings behind closed doors.

But "the commission is of the opinion that the practice of plea negotiation in South Africa could make an impor-

tant contribution to the acceleration of the process".

"Statutory measures could be used to meet legitimate objections so that the procedure could eventually be used to improve the effectiveness of the system of criminal law, while still maintaining established principles".

"Plea bargaining does in fact (already) take place in South Africa, although the extent thereof cannot be supported by statistical data. The commission's view is that the absence of statutory recognition of the procedure forces it underground".

"Judicial officials, prosecutors and legal representatives do not wish to be associated with such a system and shy away from it for the very reason that it is considered 'illegal'".

The commission recommends legislation be adopted to provide for negotiation between a prosecutor and accused (or legal representative) "with a view to reaching an agreement" that if the accused enters a plea of guilty in respect of a charge, the prosecutor commits him or herself to:

- Withdraw other charges,
- Make recommendations on sentencing or refrain from opposing defence motions on sentencing, or
- "Consent to a certain course of action or to refrain from taking a certain course of action".

EVIDENCE IN ABSENCE OF ACCUSED

The Criminal Procedure Act presently requires that criminal proceedings, in their entirety, take place in the presence of the accused.

However, the Law Commission recommends the legisla-

tion be changed to allow for an accused or a witness to give evidence by means of "closed circuit television or similar electronic media".

If in any criminal proceedings it appears to a court the use of electronic media would prevent unreasonable delay, save costs or that it would be convenient, the court may order that a witness or an accused, if he consents, may give evidence through some form of electronic media.

This action should be followed only if the court is satisfied "the accused's right to question the witness and to observe the witness's reaction will not be prejudiced".

The commission further recommends that the court only allow this sort of evidence "subject to such conditions as it may deem necessary in order to ensure a fair and just trial".

OTHER RECOMMENDATIONS

Other recommendations include:

- That a presiding regional court magistrate may request reasons for a conviction from his or her counterpart in the district magistrate's court, and if satisfied the proceedings were conducted in accordance with justice, sentence the accused,

- If an affidavit or certificate, in any case in which skill is required in anatomy or pathology, contains an opinion, "such an opinion shall be prima facie proof of that opinion" provided the expertise of the witness can be determined from the affidavit or the grounds on which the opinion is based "are explained".

252 ARG 17/3/94

Inquiry urgently sought

Star 18/3/99

The Commissioner of Police General Johan van der Merwe has asked the Goldstone Commission to hold an urgent public inquiry into accusations that senior SAP officers were involved in acts of violence and gun-running

In a statement released today, General van der Merwe said he was aware that Mr Justice Richard Goldstone was conducting an inves-

tigation into the acts of violence and gun-running (251) (252)

"Personally I have no reason whatsoever to believe that any senior member of the SAP is involved in such activities.

"Although I am aware of certain allegations being investigated by the Goldstone Commission against Lieutenant-General Basie Smit, I am convinced that any proper investigation will clear

him and that his honour and professional reputation will emerge unblemished from this episode.

"It is a matter of the greatest possible importance to both the SAP and the future of the judicial system that this matter be dealt with in such a manner that justice is seen to be done and that the basic principles of justice are strictly adhered to," Van der Merwe said.

Goldstone probe implicates top policemen in supply of weapons to Inkatha

SAP Generals Accused

Star 18/3/94

BY SHAUN JOHNSON, ESTHER WAUGH and BRONWYN LITTLETON

Top South African Police generals — including the SAP's number two man — are understood to be directly implicated by the Goldstone Commission in the supply of weapons to members of the Inkatha Freedom Party.

Intelligence sources told The Star yesterday that an imminent commission report will accuse the generals of involvement in an arms-supply network and other violence-related activities from 1980. Large amounts of money are allegedly involved.

IMMINENT report will allege "third force" in police ranks, say sources

It is understood that among the men named in the report are Deputy Police Commissioner Lieutenant-General Basie Smit, SAP intelligence chief Major-General Krappies' Engelbrecht as well as another SAP general.

The sources claim that the report on the Goldstone Commission's investigation into among other matters arms smuggling and distribution

provides unprecedented evidence of the existence of "third force" activity within elements of the police.

The Star understands the report will also make further far-reaching allegations.

Asked last night how long it would be before the report was handed to President de Klerk, Mr Justice Richard Goldstone said: "A very short period — and I mean short."

He would not comment on any other aspect of the commission's report.

In a statement on Monday, Mr Justice Goldstone responded to remarks made by Transkei military ruler Major-General Bantu Holomisa concerning

an investigation by the commission into the supply of weapons involving senior members of one of the security forces.

Mr Justice Goldstone said: "Since 13 February 1994, the commission has been conducting an investigation which relates, amongst other matters, to arms smuggling and distribution. The inquiry does involve limited elements in one of the security forces."

He added: "From its inception I have kept the State President fully informed of the commission's investigation and its progress and at my request he has given the commission the fullest support and co-op-

eration. "The president of the ANC, Mr Nelson Mandela, has also been kept fully informed by me of the nature of the investigation and of its progress."

At that stage Mr Justice Goldstone said the commission's report on the investigation would be handed to De Klerk "within the next 48 hours."

In a follow-up statement on Wednesday, he said the report would be "delayed for a further short period" as the "commission has been conducting further related inquiries."

The Star's independently gleaned information about the

report and its import comes after a week of intense speculation in political circles about imminent sensational revelations.

This week Holomisa said publicly that he had information about an investigation which pointed to a security force general and a member of the State Security Council supplying weapons to "a black political organisation in Natal."

Yesterday, addressing a meeting at the University of Natal in Durban, Holomisa went further. He claimed it had been "confirmed" that some South African generals, including the number two in one of

► To Page 3

Top SAP generals accused

From Page 1

the security forces, "had been involved in, among other things, the supply of weapons to Natal — to the IFP."

Speaking at an election meeting in Chatsworth, Natal, on Wednesday night, Mandela claimed violence was being fuelled by senior of-

ficials in State structures.

Sapa reports: "When we are in power we will weed out the criminal elements in the security forces."

"I hope that before April 27 there will be sufficient evidence to show that there is a third force," Mandela said.

Contacted in Pretoria for comment, SAP public

relations headquarters spokesman Captain Nina Barkhuizen said it would be "impossible" to get hold of the generals last night.

She said SAP Commissioner General Johan van der Merwe was likely to make a statement after the Goldstone report had been released and stud-



Deputy Police Commissioner Lieutenant-General Basie Smit.

Goldstone report expected to implicate top SAP generals

Third Force Uncovered

Star 19/3/94

THE Goldstone Commission has linked senior policemen to the supply of arms to Inkatha
SHAUN JOHNSON and ESTHER WAUGH report

252

SOUTH Africa was expected last night to be presented with the first hard evidence of a "third force" operating in the country with the release of a Goldstone Commission report.

The report, which was presented to President de Klerk yesterday, is understood to implicate top SAP generals in an arms-supply network to members of the Inkatha Freedom Party and other violence-related activities from 1990 to the present.

It is understood that the men named in the report include deputy police commissioner Lieutenant-General Basie Smut and SAP intelligence chief Major-General Krappes Engelbrecht. It is expected that they, and possibly other SAP members, could be suspended from their posts.

At the time of going to press De Klerk and Mr Justice Richard Goldstone were expected to address a joint press conference on the report at the Union Buildings.

Goldstone confirmed on Monday that the commission had since February 13 been conducting an investigation which relates, among other matters, to arms-traffic and distribution. The inquiry does involve limited elements in one of the security forces.

The Star yesterday revealed the names of the generals linked to the arms-supply network. Reacting to news reports, SAP

Commissioner General Johan van der Werwe said yesterday that he had no reason whatsoever to believe that any senior member of the SAP is involved in such illegal activities.

He said he was aware of the Goldstone investigation into allegations that senior members of the SAP are involved in acts of violence and gun-running.

Van der Werwe added: "Although I am aware of certain allegations being investigated by the Goldstone Commission against Lieutenant-General Basie Smut, I am convinced that any proper investigation will clear him and that his honour and professional reputation will emerge unblemished from this episode."

Inquiry

The commissioner said he had urgently requested the Goldstone Commission to hold a comprehensive public inquiry into the matter.

In its reaction, the ANC said: "These are very serious allegations, and the media reports seem to confirm what the African National Congress has already been stating for many years, namely that there is in organised third force within the best police ranks."

Demanding the immediate release of the full report, the ANC said: "The people of South Africa have got the right to know what the truth is."

Tack farka announced



Tension high as king urges UDI

Star 19/3/94

CHRIS WHITFIELD and VENILLA YOGANATHAN

ULUNDI — Clashes of confrontation have begun to gather over KwaZulu with King Goodwill Zwelithini suggesting yesterday that the region is on the point of a unilateral declaration of independence.

It is evident that the atmosphere in the territory is extremely tense, and addresses by leaders have taken on an increasingly bellicent tone in recent days.

Speaking here yesterday at the *imbizo* — gathering of the king's subjects — which was to have been addressed by ANC president Nelson Mandela, the Zulu king also urged Zulus to defend their freedom and sovereignty at all costs.

He added that such sovereignty would be denied by an election under the interim Constitution.

Meanwhile, the ANC announced that it would embark on rolling mass action to prove to the world that it had the majority support of Zulus in Natal, ANC spokesman Dumsane Makheve said yesterday.

Reacting to Zwelithini's proclamation, Makheve said: "We will organise events and marches that will clearly show that Zulus want to take part in the election."

"The warm everybody that our people especially Zulus, are sick and tired of people abusing their history and their title."

"If the king is used by any political party to retain an apartheid structure such as the KwaZulu bantustan, then it is a sad day for the Zulu kingdom, because it will precipitate the demise of the kingdom," he said.

Makheve also warned that if the king decided to secede KwaZulu/Natal from the rest of the country, a mass uprising against such a decree would be sparked.



He said while the ANC did not believe in ethnicity it might become important for the organisation to prove that Zulus wanted to take part in the election and were mature enough to do so.

After the rally, volleys of gunshots were heard through Ulundi as the crowd dispersed. The firing was apparently directed into the air by what an Inkatha Freedom Party official described as civilians armed with AK-47s and other arms. One youth was apparently wounded in the hand.

Mandela has cancelled his appearance at an ANC festival at the University of Zululand in Empangeni today following assassination threats.

IFP Empangeni leader Muzi Blessed Gwala, speaking at the *imbizo* had called on the crowd to attend the festival. The king — whom KwaZulu officials claimed was offended by Mandela's absence — said he hoped there was no substance in the assassination allegation. It would be rank foolishness for anyone to attempt to do such a thing. A thing like that would literally burn this country to the ground.

Travel misprint

Due to a printer's gremhln, the coupon in The Star Travel Club's Wild Holiday Competitor in the Travel section is labelled Number 1. It should be Number 2 as it is the second coupon to appear. Contestants should cut it out stick in on a postcard and it will be regarded as coupon Number 2.

Star 1913 194

◆ 'Horrible network'

Others involved in the project were Eugene de Kock, Brood van Heerden, Wilhe Nortje, Charlie Chate, Chappies Klopper, Snor Vermeulen, Lionel Snyman and Dawid Britz, all from unit C10, Vossie de Kock and Koekies Koekemoer of the East Rand Murder and Robbery Unit, Larry Hinton, Laurie Wasserman and Andy Taylor of the Durban security police, and the then KwaZulu Police Commissioner General Jac Buchner

Evidence was that Engelbrecht had at all times been involved in the projects and approved payments from the fund

THE INKATHA CONNECTION

IFP Transvaal leader Themba Khoza was recruited by Brood van Heerden and Victor Ndlovu later joined them. They distributed weapons

Khoza was caught at a roadblock with some of these arms on September 4 1990 Unit C10 paid his bail and legal fees, Khoza concocted a story about the weapons and was acquitted

The project also involved crash courses in weapons and grenade training for IFP members

Khoza was issued with a car and he and Victor Ndlovu were paid as "informers" using false names They were also supplied with firearms

Some of the arms distributed to the IFP were manufactured by Vlakplaas members at Mechem, a subsidiary of Denel

The commission further noted that an investigation into KwaZulu Police hit squads, made public last December, had been blocked by a Brigadier E du Preez "in direct contradiction" of a decision made after a meeting with President de Klerk.

The commission said there was "convincing evidence" that "elements in the KZP have been and are still involved in hit squad activities in Natal and also in the Transvaal" An officer investigating this said there was evidence "indicating the involvement of members of the SAP security police in hit squad activities"

The commission criticised the deputy-commissioner of the KZP, Major-General Mathe, whose name "over years (has) been linked with improper conduct in the course of his official duties"

THE COVER-UPS

THE commission was told that on Engel-

brecht's orders, all files and correspondence relating to Inkatha were to be destroyed

The commission also received information that Engelbrecht had instructed C10 members to dig up information to compromise Goldstone so that he could be "persuaded" to drop the inquiry (252)

Lieutenant-Colonel Botha told the commission that Engelbrecht had requested a Brigadier Schoeman to report that Engelbrecht's department was not involved in the matters under investigation

The commission also has information that Smit helped to quash an investigation of motor theft against Lieutenant Piet Botha, one of the directors of Intercol

Two police officers, Colonel Roelf Venter and Major Henning Brand, approached Major du Plessis and attempted to find out how the Goldstone Commission investigation was proceeding Venter later asked Du Plessis to keep Engelbrecht informed on who was giving information to the commission and what the National Intelligence Service was passing on

At the suggestion of the Commissioner of Police, General Johan van der Merwe, and Law and Order Minister Hernus Kriel, the allegations were put to generals Smit, Engelbrecht and Le Roux and colonels De Kock, Venter and Bellingham

Venter said Engelbrecht had put a stop to his investigation into alleged arms importation by De Kock

GUNS FOR MONEY

THERE was testimony that De Kock himself took some of the money he received in payment for the arms

De Kock was paid by the IFP for the weapons Although he left the SAP almost a year ago with a R1,2-million "golden handshake" — with the approval of the Cabinet — he continued with the project

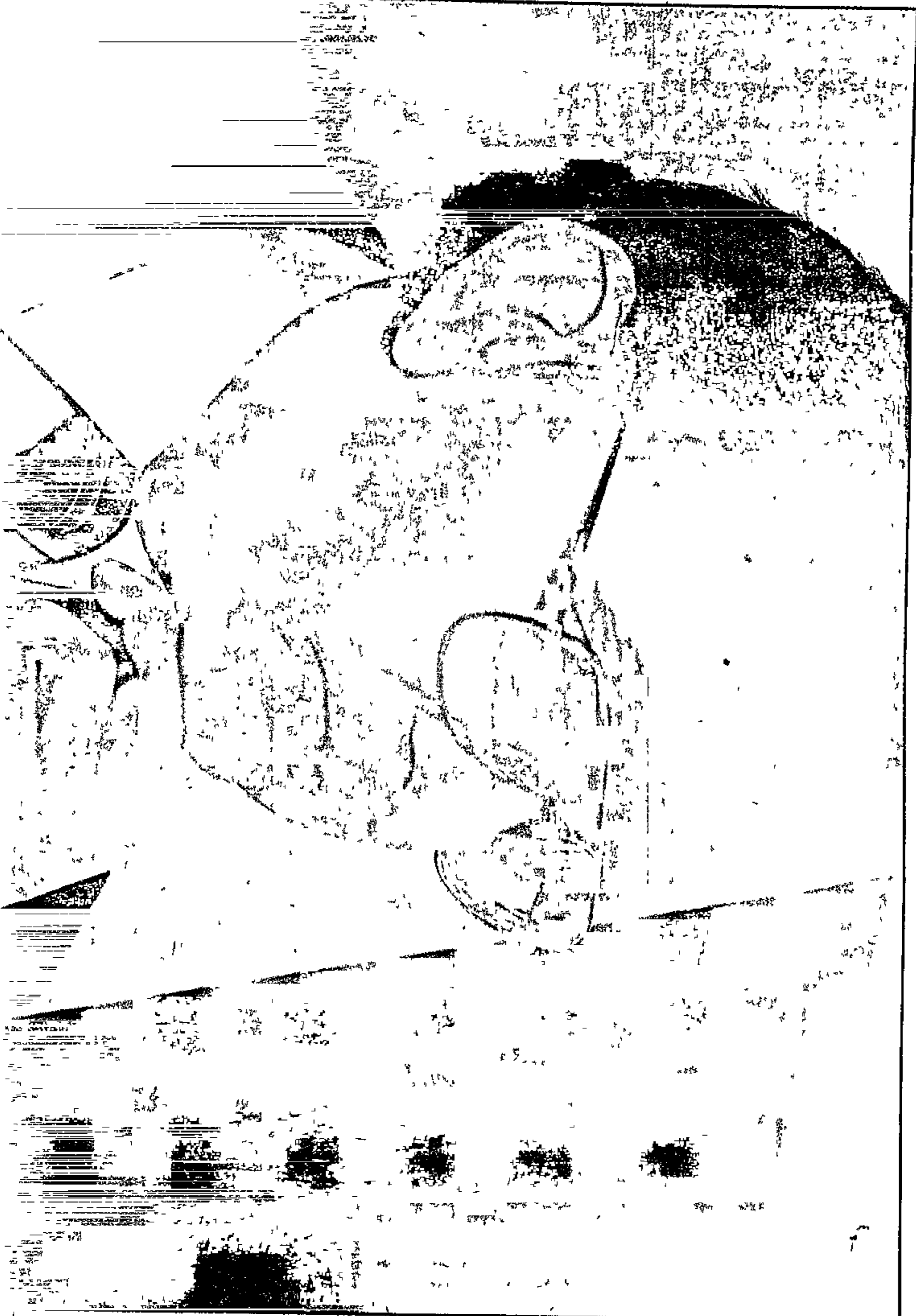
De Kock, Vermeulen, and other operatives Paul van Dyk, Jeff Bosigo, Joe Mame-sela and Lucas Kahno, left the SAP with huge payouts to keep them quiet The Askaris were paid between R200 000 and R600 000 each.

The commission was supplied with information about two front companies, Eastech and Intercol, set up by De Kock and others The sum paid to De Kock was in excess of R1 million and was approved by the Cabinet

Third Force hunter is now the hunted

SITimes 2013/94

UNDER
FIRE the
SAP's
General
Kraples
Engelbrecht



A SERIES of inconclusive inquiries into political violence overseen by Major-General Kraples Engelbrecht will come under fresh scrutiny in the next fortnight by a team of international investigators appointed by President FW de Klerk. (ZS2)

The Goldstone commission, which heard evidence that General Engelbrecht was one of three top generals implicated in "Third Force" activity, has a mass of new information to put before the investigators.

This information is expected to throw the spotlight on the remarkable record of failure by the SA Police to resolve a series of cases of serious political violence.

As head of SAP's counter-intelligence department, General Engelbrecht is in charge of all investigations dealing with violence and subversion — including train, taxi and hostel massacres.

Before that, he was involved in two major investigations into security force involvement in hit-squad activities.

The sequence begins with the allegations of convicted murderer Almond Nofomeia in 1989 that he and another police officer based at Vlakplaas, Dirk Coetzee, had murdered anti-apartheid figures General Engelbrecht was requested to assist the McNally commission of inquiry into the allegations.

Tim McNally later led evidence before the Harms commission, which found there was no proof of a state-sanctioned police hit squad at Vlakplaas.

Then General Engelbrecht was appointed by former Law and Order Minister Adriaan Vlok to assist in an investigation of the SA Defence Force after claims that the CCB, a covert military organisation, was involved in murdering political opponents of the

EDYTH BULBRING
Political Correspondent

who was a member of the Soweto and Brixton murder and robbery squads for 20 years and then the security branch for two years, has been a trusted adviser to the State Security Council, briefing Mr de Klerk on the security situation. He has also been entrusted with sensitive operational tasks.

His expertise on the state of security in the country was also relied upon by the Transitional Executive Council which he briefed three weeks ago. He has also been key to discussions with the ANC on intelligence matters and the structuring of a new police force.

The evidence before Mr Justice Goldstone is that

□ To Page 4

evidence before the Harms commission, which found there was no proof of a state-sanctioned police hit squad at Vlakplaas

Then General Engelbrecht was appointed by former Law and Order Minister Adriaan Vlok to assist in an investigation of the SA Defence Force after claims that the CCB, a covert military organisation, was involved in murdering political opponents of the government.

He paid particular attention to the assassination of Wits academic David Webster, allegedly by a CCB hit squad

At the Webster inquest, retired police general Jaap Joubert said General Engelbrecht had sent a message to detained murder suspect Ferdi Barnard that he should not speak for six or seven months about CCB activities.

A week before his evidence, the investigating officer, Warrant Officer Wessel Rousseau, had told the Rand Supreme Court General Engelbrecht had warned two other CCB operatives not to talk. They were Calla Botha and Slang van Zyl

The inquest court could not make a conclusive finding.

The Harms commission later found the CCB was not responsible for the murder of Dr Webster

General Engelbrecht is one of three generals placed on compulsory leave on Friday by Mr de Klerk for allegedly being involved in providing arms to Inkatha for hit-squad activities, illegally manufacturing weapons, issuing false documents and passports, fomenting violence and attempting cover-ups when the Goldstone commission began its work.

The evidence provided by Mr Justice Richard Goldstone on Friday, described as *prima facie* of criminal action, is only a part of the allegations of illegal activities that will be provided to a special task team of international policemen.

Evidence received by the Goldstone commission, but not yet disclosed, includes allegations of car theft and corruption in a rewards scheme for AK-47 assault rifles and other criminal acts by policemen

General Engelbrecht,

country was also relied upon by the Transitional Executive Council, which he briefed three weeks ago

He has also been key to discussions with the ANC on intelligence matters and the structuring of a new police force

The evidence before Mr Justice Goldstone is that

□ To Page 4

Hunter is now hunted

□ From Page 1

Vlakplaas Unit C1, later Unit C10, under the command of Colonel Eugene de Kock, was involved from 1989 in violence aimed at destabilising South Africa

It was involved, among other things, in planning train and hostel violence and a project which led to the manufacture of guns, with the support of Inkatha leaders, for orchestrating violence

This involved a crash-course to train IFP mem-

bers in the use of weapons and hand-grenades

The operations were allegedly under the command of General Basie Smit, now deputy commissioner of the SAP, and General Engelbrecht

During Mr Justice Goldstone's investigation, evidence was given to him by two police majors that General Engelbrecht instructed members of the C10 unit to destroy all files and evidence relating to their involvement with Inkatha

He had also instructed members of the unit to obtain any information that could be used to compromise Mr Justice Goldstone for the purpose of "persuading" him to cease the investigation

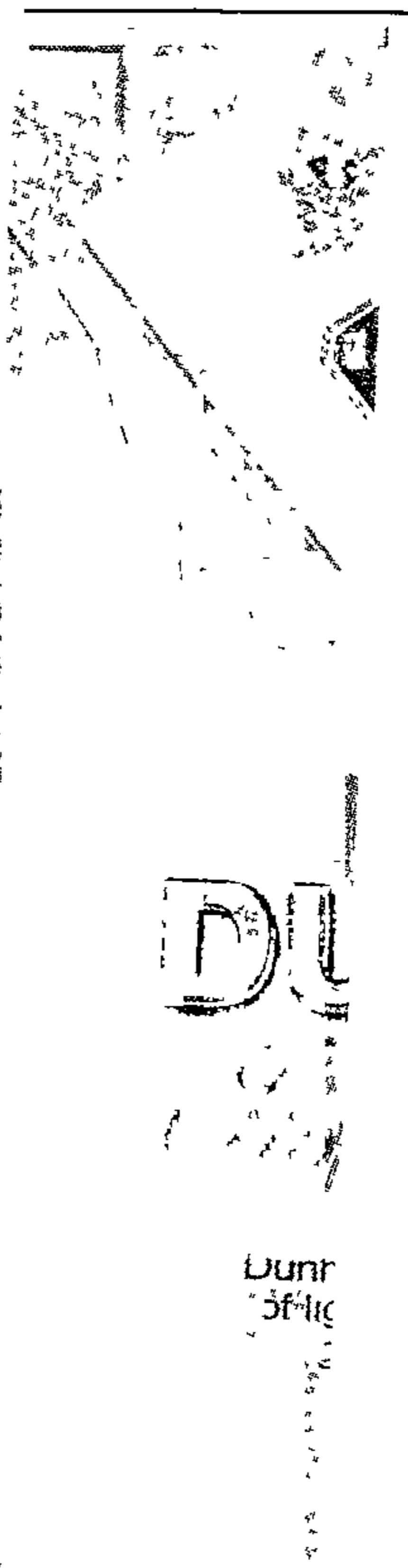
An investigation by a Colonel Roelf Venter into arms smuggling by Colonel de Kock had also been stopped by General Engelbrecht in 1993, Mr Justice Goldstone heard

One of the investigating officers, a Major du Plessis, said General Engelbrecht had told him to keep him informed on who was giving information to the Goldstone commission.

General Engelbrecht approved all payments for projects out of a secret fund

In a statement yesterday, General Engelbrecht expressed his "displeasure" that Mr de Klerk had placed him and two other officers on leave on the "strength of untested information based on perceptions, hearsay evidence, as well as disinformation"

"I have always been a champion of transparency and impartial actions in the interest of the community," he said. "I have never aligned myself with any political party and have always striven to protect everybody's lawful interest in a professional manner"



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THE 3RD FORCE

Lid lifted on IFP link to generals in conspiracy

S1 Times 20/3/94

252

By RAY HARTLEY: Political Reporter

MORE pieces of an elaborate jigsaw puzzle linking Inkatha Transvaal leader Themba Khoza and other officials to a "Third Force" within the SAP were put into place by the Goldstone Commission this weekend.

The commission and its Wallis committee outlined a startling arms-running and hit-squad training conspiracy aimed at destabilising South Africa's townships and undermining the transition to democracy.

Key to the conspiracy was the training of Inkatha members, many of whom subsequently joined the Kwazulu police, in unconventional warfare in Namibia's Caprivi Strip in 1986.

The Wallis committee report said there was disturbing evidence that the Caprivi trainees were involved in hit squads in the Kwazulu Police and recommended that those "unsuitable for police service should be weeded out".

How much information Inkatha leader Chief Mangosuthu Buthelezi had on the operations remains unclear. The Wallis committee reported that two Caprivi trainees who worked at Inkatha's Ulundi headquarters were linked to the illegal possession of an AK-47 in 1991.

But Inkatha spokesman Ed Tillet said yesterday "If these allegations are proven true, the national Inkatha leadership is certainly totally unaware of them".

One of the men, Daluxolo Luthuli, was political commissar in the Caprivi.

Mr Khoza and Inkatha official Victor Ndlovu were named as key linkmen in a second operation — a gun-running network that supplied arms from Namibia and Mozambique to Inkatha hostel-dwellers and train-killers.

The report said Mr Khoza was recruited to the secret force by ABSA head of security Dries "Brood" van Heerden and was rewarded with a car and money for his activities.

Mr Khoza distributed weapons in Natal and on one occasion — in September 1990

— was caught with some of these weapons at a roadblock, the report said.

"Unit C10 paid his bail and legal fees. His false version as to how the weapons were planted in his car was accepted by the magistrate as reasonably possibly true and he was acquitted," it said.

Weapons distributed by Mr Khoza and Mr Ndlovu included homemade guns and sophisticated conventional weapons supplied by Koevoet in Namibia and a Mozambique source.

The manufacture of homemade guns was initiated by Lieutenant-General Basie Smit and Major-General Krappies Engelbrecht, who used premises on the East Rand and in Silverton as factories.

Former Kwazulu police commissioner General Jac Buchner was involved in the gun-making project along with eight C10 members, two members of the East Rand Murder and Robbery Unit and three Durban security policemen.

When he became aware of the investigation into the conspiracy in February, General Engelbrecht ordered that all files relating to Inkatha involvement in the smuggling of weapons be destroyed. He also instructed members of C10 to destroy any documents in their possession that mentioned the involvement of Inkatha.

Weapons from Koevoet in Namibia and from Mozambique were transported to Viakplaas and later to Murrayhill, north of Pretoria. They were cleaned in acid and their serial numbers were removed before they were placed in black bags and distributed to Inkatha.

The weapons included AK-47s, mortars, RPG-7s and hand grenades. They were stored under the control of Colonel Eugene de Kock.

Former Inkatha official Bruce Anderson alleged in 1992 that AK-47s were being smuggled into South Africa via Mozambique. He named Mr Khoza as one of those involved in distributing the weapons inside the country.

Mr Anderson was deported from South Africa in 1992, while Mr Khoza vehemently denied the charges.



THEMBA KHOZA

BY JACQUELINE MYBURGH

The police generals implicated in the Goldstone report on allegations of Third Force activities have indicated that they are considering going to court to clear their names.

Criminal investigations chief Lieutenant-General Johan le Roux said yesterday that he and SAP Deputy Commissioner Lieutenant-General Basie Smit were, on behalf of all the SAP members named in the report,

seeking legal advice on their positions and that they would decide today whether to take further steps.

The men spent most of the day yesterday in a meeting with legal counsel discussing the next step.

would also be asking his legal advisers to look at all aspects of the report affecting his staff.

In a statement on Saturday, intelligence chief Major-General "Krappies" Engelbrecht expressed his "serious displeasure" with the fact that the State President had placed him and others on obligatory leave on the strength of "un-

Generals want to clear names in court

tested information based on perceptions, hearsay evidence as well as disinformation.

Le Roux declined to specify against whom legal action was being considered, but said lawyers were investigating whether anyone had the authority to place him and his colleagues on compulsory leave based on the "information and hearsay"

contained in the report.

"Basic rights have not been complied with," he said.

President de Klerk said at a press conference on Friday, during which the interim Goldstone Commission report was made public, that all SAP members implicated in the report would be placed on compulsory leave.

(252)

Le Roux said he was stunned that, after an open interview "without fear" before the Goldstone Commission, he should be named.

"Mr Justice Richard Goldstone) said two or three times that there were no allegations against me," Le Roux said. "When I walked out less than half an hour later, I was quite happy."

"They cannot come and not

► To Page 3

Star 21/13/94 Attempt to clear names

◀ From Page 1

make the allegations, then they bring out the report and take these archaic steps. It's totally unheard of," Le Roux said.

He said external and internal auditors closely monitored all police operations and it would have been impossible for any of the alleged activities to take place.

Smit could not be contacted for comment yesterday, but in interviews in the Sunday press he expressed his outrage at the State President's decision to place him and other senior policemen on obligatory leave and denied any involvement in the activities alleged in the Goldstone report.

The Generals Club of the SAP, which includes current and past police generals, noted its "displeasure and disappointment" at the suspension.

► More reports
- Page 7

(252) (253)

29 going - but 50 survives intact

THE repeal of section 29 of the Internal Security Act will not mark the end of detention without trial, reports Jo-Anne Collinge

The most infamous detention provision, section 29 of the Internal Security Act, may be headed for the scrapheap, but a detention without trial provision will still remain in permanent force throughout the country, says the Human Rights Commission (HRC)

"Amid all of the (justified) public outcry accompanying the Transitional Executive Council's dragging of feet on the section 29 issue, section 50 appears to have survived virtually intact, with no provision being made for its repeal," an HRC briefing paper notes

Section 50 of the Internal Security Act caters for preventive detention in situations of public disorder or threatened disorder. The initial period of detention may be as long as 14 days — four days longer than the initial period provided for under the amended section 29

And while section 50 is the last surviving detention clause of the Internal Security Act (the Act featured five forms of detention without trial), the Public Safety Act also allows for detention without trial — but only in times of emergency

Since August 1990 this Act has been used repeatedly to proclaim unrest areas, or "mini-emergencies"

The briefing paper notes that during 1993, the HRC not only recorded 285 detentions under unrest provisions, but it also received "numerous" reports of torture and abuse

In the East Rand unrest areas of Tokoza and Katlehong, the Peace Accord's Police Reporting Officer, Jan Munnik, discovered electric shock apparatus and other instruments of torture during a search of police armoured vehicles. The raid was prompted by complaints of detainees

The HRC says that it is "unaware of any proposed amendments to the Public Safety Act and its powers of detention without trial"

The organisation also finds cause for concern in the Interim Constitution. While the chapter on fundamental rights states that "every person shall have the right to freedom and security of the person, which shall include the right not to be detained without trial", the HRC notes that the Constitution also specifies that this right may be suspended during a state of emergency

The HRC acknowledges that any state is entitled to declare a state of emergency in order to preserve and defend its integrity against threats, whether they are internal or external in nature

"However, it rejects the notion that detention without trial can ever be justified"

Parties vie for advantage after Goldstone report

BIDAY 22/3/94

THE Goldstone commission's report on the "third force" set the cat among the pigeons yesterday with political parties seeking electoral advantage in their responses to its allegations.

The ANC and the DP called for political heads to roll, the Inkatha Freedom Party continued to proclaim its innocence and the AWB and the Transvaal Agricultural Union lodged strong protests against it.

The ANC questioned whether President FW de Klerk and Law and Order Minister Hernus Kriel could not have known of the "third force" activities of senior police officers.

The ANC vowed to remove the "rotten eggs" within the security forces, but refrained from condemning the police force as a whole, extending "a hand of friendship" to policemen who wanted to serve SA.

ANC president Nelson Mandela also called yesterday for indemnity from prosecution for SA security force members prepared to testify about hit squads, Reuter reports.

The ANC said government and the police had blamed political intolerance between the ANC and Inkatha for the violence. It was now evident

TIM COHEN and WILSON ZWANE

they were promoting the violence and "using the intolerance argument to conceal their own involvement"

The DP, which is considered likely to benefit the most from the report, called for Kriel's suspension. DP MP Tony Leon said Kriel's credibility had suffered because he had often denied that police would harbour or assist a killer force. (252)

Inkatha central committee member Sue Vos said Inkatha would not act against its Transvaal political director Themba Khoza — who the report alleged was involved in "third force" activities — because it did not have information on which to act.

Sapa reports Khoza said yesterday he would hold a news conference today to discuss the Goldstone report. "I am also inviting Goldstone commission members to the conference so they can answer questions relating to the report," he said.

Vos said Khoza denied the allegations. Inkatha objected strongly to Khoza's "trial by media" which it saw as a "public kangaroo court".

AWB leader Eugene Terre'Blanche

said Goldstone was a "boere-hater" and ANC apologist who had, without corroborating evidence, used an anonymous, paid informant to throw generals to the "communist wolves".

Sapa reports that police public relations head Maj-Gen Leon Mellet claimed De Klerk had lost a lot of white support and had responded to the report in the way he had in an attempt to gain black support.

"The way it was made public came as a shock to all of us," Mellet, who is retiring, said at his farewell function in Cape Town. "It is unsettling because it was done unfairly. I am upset about the way it was made public."

Absa Bank said it had suspended on full pay another of its employees, Victor Ndlovu, who the report alleged was implicated in illegal arms dealing. The suspensions would remain in place until an internal bank investigation had been completed.

A second Absa employee named in the report, security officer Dries van Heerden, had asked to be suspended while Van Heerden's superior, Douglas Crew, would not be suspended.

Report by W Zwane and T Cohen. TML, 11 Diagonal St, Jhb, E van Wyk and A Thomson. Sapa 141 Commissioner St, Jhb.

'Lloyd's crisis caused suicide'

LONDON — The suicide of a retired admiral was blamed at an inquest hearing yesterday on the catastrophe surrounding Lloyd's of London.

Sir Richard Fitch, 64, second in command of the Royal Navy before his retirement, gassed himself in his car in February because he was worried about the massive losses he was going to have to underwrite as a Lloyd's Name.

The inquest was told Fitch feared losing his home.

The coroner had recorded a finding of death by suicide, probably caused by financial worries.

Fitch had had to pay £300 000 to Lloyd's in a three-year period. He took his life the day after Lloyd's Names rejected a multimillion-pound settlement.

He belonged to two of the worst-hit syndicates — Gooda Walker and Cuthbert Heath.

Own Correspondent

Gooda Walker is estimated to have incurred losses amounting to at least £260m in 1989.

His wife, Lady Kathleen Fitch, said at the hearing "He was suffering from clinical depression due to the worry of Lloyd's over the past three years."

Fitch said her husband had become increasingly irrational after the Lloyd's crisis, though his condition improved when he was on medication.

She recounted finding her husband in the garage of their home, and said that he had died despite her efforts to revive him through heart massage.

Christopher Stockwell, chairman of the Lloyd's Names working party, estimated that about 30 deaths were directly attributable to Lloyd's, either through suicide or ill-health.

Judge asked to withdraw

Own Correspondent

EASTERN Cape Judge President Neville Zietsman will hear an application next week that he recuse himself from the reopened Goniwe inquest. (252)

The application will be brought by SADF lawyers on the grounds of a "reasonable suspicion of bias" on the Judge President's part.

The judge yesterday reluctantly adjourned the proceedings until next Wednesday to give the SADF lawyers sufficient time to prepare the application, including scouring the almost 5 000 pages of evidence for instances of bias reflected in the record.

If the judge agrees he should withdraw from the inquest, the hearing will have to start from scratch before another judge.

If the application fails, SADF lawyers could ask for another court to review the decision. (257)

Third victim to testify at roadblock trial

SUSAN RUSSELL

THE trial of seven AWB members charged with murdering four blacks and attempting to murder six others at a bogus roadblock last year was interrupted in the Rand Supreme Court yesterday when some court staff were allowed to go home early because of Sharpeville Day.

Other criminal trials were also adjourned at lunchtime to help court interpreters who had transport problems as a result of Sharpeville commemorations.

Shortly before the trial was adjourned the third victim allegedly fired on by the AWB men took the witness stand William Segotsane, who was wounded in one leg, was a passenger in one of the two vehicles stopped by AWB members on the Ventersdorp-Krugersdorp road on December 12 last year.

The trial continues today.

Political comment in this issue by J Jones, newshills by D Armour headlines and sub-editing by C Pickard-Cambridge, all of 11 Diagonal Street Johannesburg

TEC set to issue its own report

KZP to come under intensive scrutiny

Star 21/3/94

BY ESTHER WAUGH
POLITICAL
CORRESPONDENT

The KwaZulu Police can now expect to come under intensive scrutiny following the release of the Goldstone Third Force report

The report, made public by President de Klerk and Mr Justice Richard Goldstone on Friday, contains chilling testimony suggesting the existence of one or more hit squads in the KZP. The report strongly implies that investigations undertaken up until now have been wholly inadequate

The Star understands that, independently, the Transitional Executive Council is due to release a report tomorrow on these alleged hit squads. This report is the result of an investigation by a specially appointed task group which began its work in December

The Goldstone Commission's report said there was also evidence "indicating the involvement of members of SAP security police in hit squad activities"

COMMISSION'S report strongly implies that investigations undertaken so far have been wholly inadequate

in Natal

The judge said in his report that the possibility of the existence of KZP hit squads had not been properly investigated

"The commission is satisfied that the KZP is presently dragging its feet — probably a generous description — in investigating the presence of other hit squads within its ranks"

The judge said he had met De Klerk, Law and Order Minister Hernus Kriel and Justice Minister Kobie Coetsee in December to brief them on "at least one hit squad operating in the KZP"

At the meeting Brigadier E du Preez was appointed to investigate the possibility of other hit squads in KZP ranks

"Little or no progress" had been made in the investigation,

as KZP Commissioner Lieutenant-General Roy During told the TEC last month

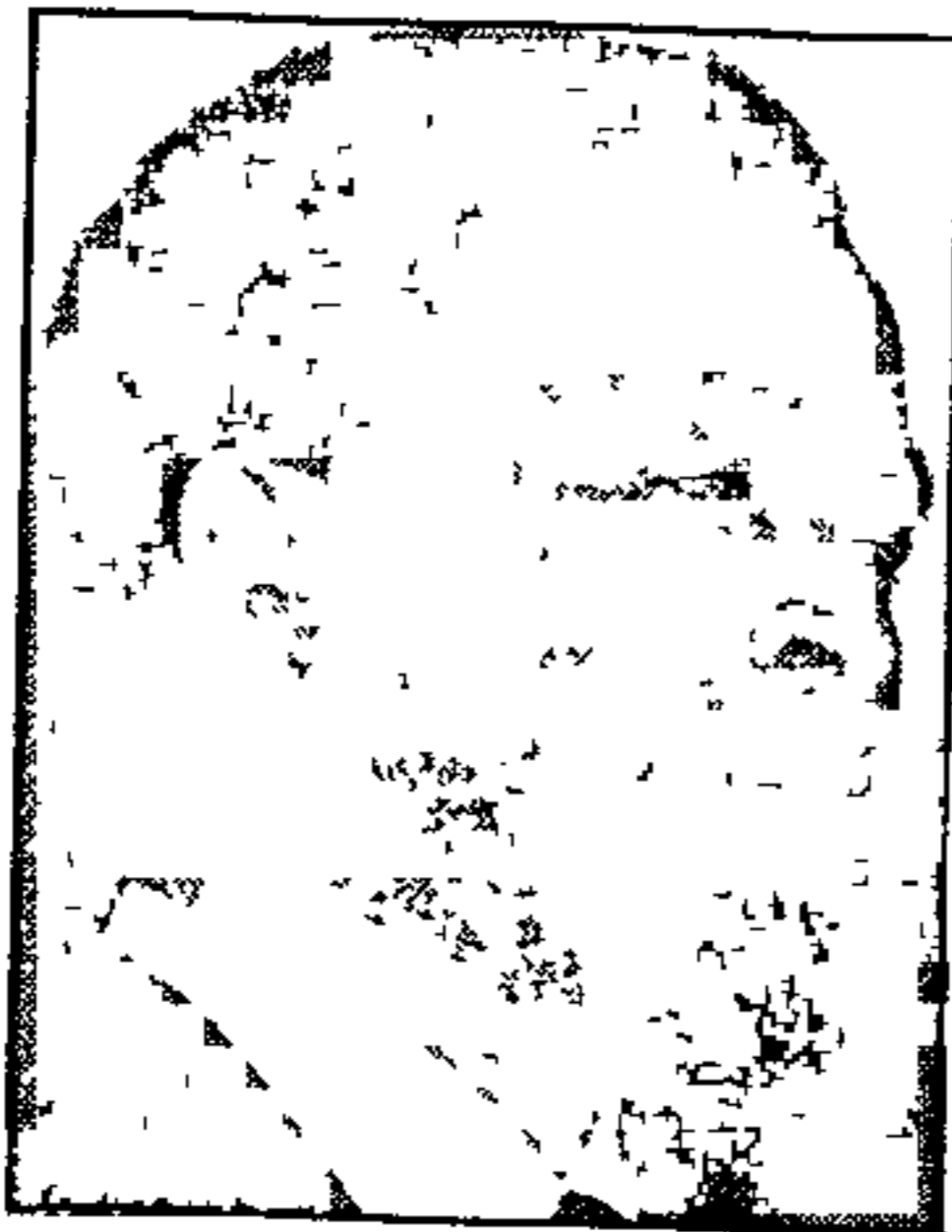
The judge said he was "unhappy with the apparent lack of progress" and asked the two police officers, appointed by Du Preez, to meet him in Johannesburg. One of the police officers, a Captain Scholtz, informed the meeting that he had about 100 dockets relevant to the KZP hit squad investigation

"At about the end of November or beginning of December 1993 it was made clear to both Major van Aswegen and Scholtz by Du Preez that they were not to continue with any further investigations"

Judge Goldstone said in the report that the blocking of the investigation by Du Preez was in direct contradiction with the decision reached at the meeting with De Klerk

"According to Captain Scholtz there is convincing evidence that elements in the KZP have been and are still involved in hit squad activities in Natal and also in the Transvaal"

'Terrorists must be punished'



Mbeki . . . it never was black-on-black violence.

King William's Town — The ANC would ensure that those guilty of fomenting violence were brought to book no matter what political positions they held, ANC national chairman Thabo Mbeki said yesterday

Speaking at an ANC rally, he said the Goldstone report had identified senior police officers as having been involved in a campaign of violence and death

"I am certain that the ANC is going to pursue this matter no matter how high it reaches"

"It doesn't matter how high people are, it does not matter how big their titles, it doesn't matter where they are within the politics of South Africa. The ter-

rorists must be punished"

Mbeki said the commission's report gave the lie to the belief that what had been happening in South Africa was black-on-black violence

"What is Goldstone saying? It's not black-on-black violence. It's people who are opposed to change, people who like apartheid, people who want to maintain apartheid (who were responsible)"

"It was the violence of the apartheid system against our people. It was a violence carried out over many decades to ensure that our oppression continued," he said — Sapa

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Report gets mixed reaction

Star 2/13/94

■ STAFF REPORTER

Political parties implicated in the allegations made in the Goldstone report of gun-running, hit squad activities, the illegal manufacture of weapons and the orchestration of violence have hit out against the report, but others have supported it

In a statement, former Police Commissioner Jannie Geldenhuys said the allegations by the commission were at best untested and biased (252)

He said the commission had arrived at its conclusions from the evidence of a "faceless" officer in the SAP who had been offered R10 000 for his story

The IFP central committee passed a resolution on Saturday calling on President de Klerk "to inform the world that there is no evidence whatsoever of any official IFP knowledge of the allegations" and resolved to advise members and supporters that this was a series of "dirty tricks" designed to discredit the IFP

In a statement the ANC said



Holomisa . calling for resignations.

the report contained "highly disturbing information about serious criminal activity" It said the report was "an absolute indictment against certain elements within the KwaZulu Police, the SA Police and the IFP

"The information indicates the existence of a sinister conspiracy committed to the destabilisa-

tion of the country and the subversion of the transition to democracy," the ANC said

The NP said in a statement that De Klerk's actions in handling the report had been "honourable and correct"

However, Transkei leader Major-General Bantu Holomisa said De Klerk's possible complicity in alleged gun-smuggling should be investigated by the Transitional Executive Council

He also called for the dismissal of Law and Order Minister Hernus Kriel and Police Commissioner General Johan van der Merwe in light of the report. De Klerk, in his capacity as head of the State Security Council, must have had knowledge of "the generals' dirty tricks"

The Democratic Party said that despite repeated allegations, De Klerk "chose to shrug it off in his typical holier-than-thou Inkathagate fashion"

Pan Africanist Congress president Clarence Makwetu said his party had maintained all along that the Government was behind political violence

ORIGINAL PAVE

Franchise offer
for the

Mandela indemnity call for informers

ANC president Nelson Mandela yesterday suggested the possibility of indemnity for members of the police force and army who came forward with evidence of security force involvement in criminal activity

Addressing a Sharpeville commemorative rally at Odi Stadium near Pretoria, Man-

~~Star~~ 22/3/94
Mandela said "We must seriously consider giving indemnity to police and officers of the defence force who would like to confess about the criminal activities of certain officers in the police force and defence force" (252)

It would be fair that those who now wanted to provide evidence be indemnified, "so

that the criminals who are slaughtering our people are brought to justice"

"It is important that those policemen and officers should themselves have the confidence that they can give this information without exposing themselves to criminal prosecution." — Sapa

(Report by C Molusi, 141 Commissioner St, Jhb)

ANC plot against KwaZulu alleged

Star 23/3/94

BY KAIZER NYATSUMBA
POLITICAL CORRESPONDENT

The IFP will ask the Goldstone Commission today to subpoena TEC member Pravin Gordhan to answer questions on an alleged ANC-SACP plan to make KwaZulu ungovernable, according to IFP central committee member Suzanne Vos (252)

She told The Star her party believed Gordhan, a member of the ANC-led tripartite alliance, "had sight of the document" in which the plan was detailed

Vos, who has sent a letter to Goldstone Commission chairman Mr Justice Richard Goldstone asking that the plan be investigated, said Gordhan's recent statements that the TEC should intervene in KwaZulu coincided with some of the things suggested in the secret plan

Following its receipt of the IFP's letter, the Goldstone Commission yesterday asked the IFP "for sufficient detail" to enable it "to launch a meaningful inquiry

into the allegations"

Vos yesterday said the IFP believed Gordhan had to be subpoenaed to answer questions on the alleged plot.

In a letter to Goldstone on Monday, Vos said her party was in possession of an alleged ANC document — provided to the IFP by an informant who insisted it was "genuine and produced by a senior member(s) (sic) of the SACP-ANC alliance" — detailing plans to topple KwaZulu Chief Minister Mangosuthu Buthelezi and prepare the ground for a South African military intervention in the homeland.

Vos said the document, headlined "Towards a programme of action in Natal", was discussed by her party's central committee at its meeting on Saturday, and IFP leader Buthelezi had subsequently asked her to bring the document to Goldstone's urgent attention for investigation

The ANC has not commented on the IFP allegation

(47 Sauer St, Johannesburg)

Gordhan knows of plot — IFP

Sowetan Correspondent

THE Inkatha Freedom Party will today ask the Goldstone Commission to subpoena Transitional Executive Committee member Mr Pravin Gordhan to answer questions on an alleged ANC-SACP plan to make KwaZulu ungovernable, according to IFP central committee member Ms Suzanne Vos

She said yesterday the IFP believed

Sowetan 23/3/94
Gordhan, a member of the ANC-led tripartite alliance, "had sight of the document" in which the plan was detailed (252)

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In a letter to Goldstone on Monday, Vos said the IFP was in possession of an alleged ANC document "produced by a senior member(s) of the SACP-ANC alliance" detailing plans to topple KwaZulu Chief Minister Mangosuthu Buthelezi

Top policeman pledges to help Goldstone probe

31 Dec 23/3/94
TIM COHEN

POLICE commissioner Gen Johan van der Merwe yesterday pledged "all possible assistance" in the investigation of allegations arising from the Goldstone commission's report on "third force" activities.

But he complained about SABC's Agenda programme on Monday which was presented by Max du Preez, former editor of Vrye Weekblad, which first reported many of the allegations in the commission's report. Du Preez's guests were former Vrye Weekblad journalist Jacques Paauw, who wrote about the Vlakplaas base where many actions allegedly took place, and his main source, former policeman Dirk Coetzee.

Van der Merwe said the SAP would not conduct a debate through the media regarding "wild allegations" by people who had "been found to lack credibility during various inquests and legal proceedings".

He took a swipe at the commission, saying certain SAP members had been confronted with allegations without any details being disclosed to them.

The NP also objected to the Agenda programme, saying it was "nothing but pure anti-NP propaganda".

It said the programme resembled a meeting of Vrye Weekblad editors rather than an SABC programme which upheld the principle that a person was innocent until proven guilty. The SABC, which needed to level the playing fields for all parties, has caused "immeasurable damage to its image" with the broadcast.

Sapa reports that Law and Order Minister Hernus Kriel said yesterday he took the strongest possible exception to police public relations head Maj-Gen Leon Mellet's remarks on Goldstone's "third force" investigation.

Mellet said on Monday that President FW de Klerk had lost a lot of white support and was doing something dramatic to gain black support.

Kriel said Mellet did not possess relevant information on the matters he spoke about. His comments were "inappropriate for a serving SAP general and do not reflect my views or those of the SAP as an institution".

Report by T Cohen, TML, 11 Diagonal St, Jhb

focus on **third force**

Sowetan 28/3/94

The Goldstone Commission's report on a "third force" has evoked denials and harsh criticism of the judge. **Hugh Robertson** analyses events leading up to the sensational report: **(252)**

IT IS DIFFICULT to take seriously many of the expressions of surprise and dismay that have followed the Goldstone Commission's finding of *prima facie* evidence linking the police with a "third force" and of the SAP illegally supplying weapons to the Inkatha Freedom Party

Such allegations have been made for years by rational and responsible South Africans. Besides, the circumstantial evidence pointing to the existence of a "third force" has long been overwhelming

And the increasing use by IFP supporters of firearms — which could only have been obtained illegally — has been a matter of public record since shortly after the negotiating process began

Indeed, the day before Mr Justice Richard Goldstone's report was made public, national television showed IFP supporters, in civilian attire, carrying military-issue weapons in Ulundi, but there was not a word of dismay or surprise

Lack of will

What is indeed surprising, and what really does deserve expressions of dismay, is the lack of will in the leadership of the IFP, the Government and the police to get to the bottom of these long-standing allegations, and to adequately investigate the spoor left by the "third force"

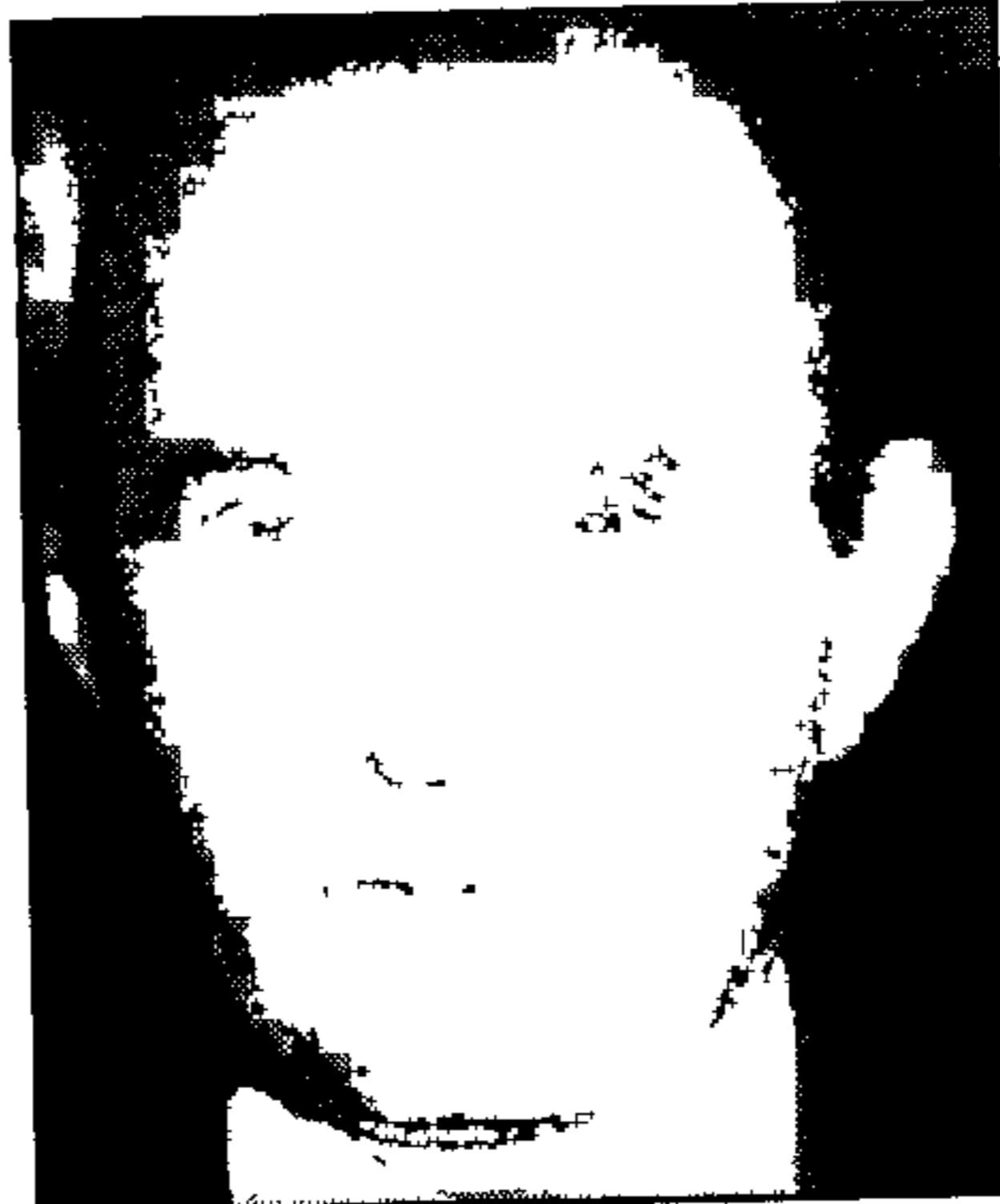
For almost five years, unidentified gunmen, acting with military precision and in possession of military weapons, have opened fire indiscriminately on commuter trains over and over again, killing IFP, ANC and PAC supporters alike

The perpetrators could not possibly have known what the political or tribal affiliations were of their victims. And almost invariably such random attacks coincided with a crucial step in South Africa's journey towards true democracy

It did not require a Sherlock Holmes to conclude that some force was in existence which did not support any of the major parties, which had the aim of fomenting confusion and violence and retarding negotiations, and which had access to sophisticated weapons and well trained personnel. Yet the Government, and the SAP brass, continued to say there was no evidence of a "third force" and refused all appeals to investigate the apparently strong probability that there was indeed such a force!

For well over three years there have been allegations of the police arming the IFP. In February 1990 ANC president Mr Nelson Mandela made such a charge. It was denied so quickly by the Government and the IFP that no serious investigation could possibly have been undertaken by the police or anyone else

Two months later the charge was repeated by Mr Jay Naidoo of Cosatu. Again it was refuted



Mr Justice Richard Goldstone ... exposes the "third force".

within hours in response to media inquiries

More than three years ago caches of ANC and IFP weapons were publicly paraded by the police. The world knows where the ANC weapons probably came from, nobody appeared to be seriously interested, though, in where the IFP got theirs

Towards the end of 1990 General Bantu Holomisa submitted a memorandum alleging collusion between the SAP and the IFP. It patently required investigation, but it was summarily rejected

Nonsense

Chief Mangosuthu Buthelezi later said he had told Holomisa that the allegations were "nonsense" and that he (Buthelezi) was sick and tired of being accused of violence without this being substantiated. But on what evidence could he have concluded, then and there at the meeting, that the allegations were nonsense?

In September 1990 Women Against Repression met the Minister of Law and Order of that time, Mr Adriaan Vlok, to complain that he believed police denials rather than eye-witnesses who could testify to the police assisting the IFP. Their complaint was noted — and then ignored. Among several such cases, there was evidence in the Natal Supreme Court in September 1991 from a self-confessed police informer that a white security police officer had been

supplying weapons to IFP supporters since 1986, and had been involved in planning the assassination of IFP opponents. As with other such cases, the testimony was met with outright denials, but without any evidence of an investigation either by the IFP or the SAP or the KwaZulu police. One might reasonably ask the Government, the IFP, the KwaZulu police and the SAP leadership why nothing was done to get to the bottom of these many and diverse allegations over many years, why they did not deem it their duty — to the police, if to no one else — to test the truth of these claims?

What has Buthelezi, the leader of the IFP and also Minister of Police in KwaZulu, done about the Goldstone Commission's finding that nine KwaZulu policemen were involved in a "hit squad"?

Other than to obstruct the Transitional Executive Council's further investigation of the matter by ordering the head of the KwaZulu police, General Roy Doring, not to co-operate with the entirely lawful TEC inquiry, apparently he has done nothing!

In the appalling saga of political bloodshed and death in South Africa, the angels do not all sing in the same choir, or the devils all dance around the same fire. Mandela, indeed, has freely acknowledged that the ANC has been embroiled in violence, and has expressed his great regret that this is so

And President de Klerk has acted commendably in announcing that an international panel of experts will look into these allegations, at long last, while Buthelezi has disclaimed all knowledge of the events alleged in the Goldstone report

But that does not absolve the IFP, the Government, the KwaZulu police, or the SAP from the charge of gross negligence in the past, negligence on a scale sufficient to justify wide public cynicism — negligence towards the police themselves, who have to serve the broad community in difficult circumstances and who now face the implications of dramatically heightened public doubt and suspicion

Is it any wonder that people are demanding the withdrawal of police units in the townships, but are holding welcoming celebrations in honour of the SADF?

Given the country's challenging security situation and the demands that are being made on the huge majority of decent and hardworking police, that is a national disgrace

Gordhan and ANC deny knowledge of alleged plot

BY KAIZER NYATSUMBA
POLITICAL CORRESPONDENT

The ANC and the Natal Indian Congress's Pravin Gordhan have vehemently denied any knowledge of a plan to destabilise KwaZulu and make it ungovernable so that South Africa would intervene militarily in the homeland.

Reacting to the IFP's request this week that the Goldstone Commission investigate an alleged ANC-SACP plan to render KwaZulu ungovernable, both Gordhan and the ANC said this was an attempt by Chief Mangosuthu Buthelezi's party to deflect attention from the reports of alleged hit squad activities in KwaZulu.

Gordhan said he had not "had sight of the document" as alleged by IFP central committee member Suzanne Vos, and that the attempt to connect him with the "concocted document with suspect origins was a regrettable but transparent" effort to smear him personally.

He said the "false claims of the IFP are made with the intention of detracting from the

central issues". These were the creation of a climate for a free and fair election in Natal, and the escalating violence ravaging the area and how to end it.

Vos, who sent a letter to Goldstone Commission chairman Mr Justice Richard Goldstone asking that the plan be investigated, said Gordhan's recent statements that the TEC should intervene in KwaZulu coincided with things suggested in the secret plan.

Gordhan said he would have no hesitation answering any questions from the Goldstone Commission, for which he had the highest regard.

After its receipt of the IFP's letter, the Goldstone Commission asked the IFP for sufficient detail to enable it to launch a meaningful inquiry into the allegations.

(252)
The commission said that if the IFP was unable or unprepared to furnish such information, then it would have to ask the party what action it proposed the commission take in the matter.

(47 Sauer St, Johannesburg)

(MS D BRN)

FW drags heels on scrapping sect 29

(252) ~~252~~
Chris Louw

WM 25-30/3/94

SECTION 29 of the Internal Security Act, allowing for detention without trial, is still on the law books — almost three weeks after President FW de Klerk was instructed by the Transitional Executive Council to scrap the controversial provision.

It is now probable the clause will only be scrapped after the National Party cabinet has decided on the issue.

Government officials deny the TEC has the power to instruct De Klerk to scrap the provision. A spokesman for the State President's Office said this week they were aware of the TEC decision, but that the necessary proclamation had yet to be drafted by the department of law and order.

However, a legal official in the ministry of law and order, Colonel Inus Sonnekus, said: "Constitutional opinion is

that there must be consensus between the TEC and the State President's Office on the issue. This means that the ministry of law and order has to advise the state president, after which the state president will come to his own decision."

Sonnekus said the issue may be referred to the cabinet.

The Democratic Party's TEC representative, Colin Eglin, this week expressed concern "that a decision taken by the TEC and which was conveyed to the state president in writing has not elicited any response".

He said the ball was now in De Klerk's court. "We have done our bit."

The reluctance to get rid of the controversial section flies in the face of a decision last year by the multiparty negotiating forum that detention without trial should be scrapped at the first possible opportunity.

Star 25/3/94

Come forward / - Goldstone

The Goldstone Commission's report accusing senior policemen of involvement in Third Force activities had encouraged more witnesses to come forward, a commission statement said last night.

The statement encouraged any other witnesses to also bring evidence to the commission's attention.

The statement also said the commission had, on the request of Police Commissioner Johan van der Merwe, amended last Friday's statement regarding former Vlakplaas commander, Colonel Eugene de Kock (252).

The colonel was allegedly involved in violence aimed at destabilising South Africa by supplying weapons to the IFP.

The commission amended its initial report concerning rumours that De Kock had approached the ANC for indemnity. The report should have read that a witness had heard that De Kock had approached the ANC to "explain certain allegations" — Staff Reporter

GENERS, KILLERS, CAR THIEVES ... AND A FEW HEROES

THE "Iron Man" was how one Johannesburg newspaper described Mr Justice Richard Goldstone, the supreme court judge who has supposedly bust South Africa's "third force". The hero of the moment had his face plastered across the front page, gazing pensively out of a hotel window. An accompanying story suggested the secret of his personal dynamism lay in a combination of adrenalin and a sense of achievement and vindication after he had named Deputy Commissioner Basie Smut and two other police generals as having allegedly been behind political violence in the country.

The report which has caused all the excitement — "the interim report on criminal political violence by elements within the South African Police, the kwaZulu Police and the Inkatha Freedom Party" — is an extraordinary document in many respects. Curiously, the least of them is the disclosures it makes, few of which amount to much that is new to those who have had the frustrating experience of following the "third force" controversy in South Africa. More striking is the illustration the report provides of the style of the judge and the character of the commission.

In the South African legal fraternity Judge Goldstone is known fondly, if a little cruelly, as "Richard-Richard". Cruelly, because the nickname is a play on Boutros Boutros-Ghali and is intended to suggest that the judge's personal ambitions include the United Nations secretary-general's post.

While there is no suggestion that such ambitions have any influence on his work on the bench — he is recognised as a brilliant member of South Africa's highest court, the Appellate Division — his overt political "sensitivity" where the activities of the commission is concerned is disturbing.

The essence of a judicial commission of inquiry is self-evidently its independence of political influence. Once it has been granted its terms of reference and powers by government it should, ideally, proceed with its investigations without reference back until the time comes for a report to be presented. But Judge Goldstone has shown himself at pains to involve the politically-distinguished in the conduct of his inquiry.

Last week, for example, when he released a press statement announcing a delay in the release of the report he declared that he was keeping ANC leader Nelson Mandela briefed on the progress he was making. Why he should find it necessary to confide in the leader of a political party, and why he should exclude from his confidence the leaders of rival parties — the Pan Africanist Congress or, for that matter, the Soccer Party which is also fighting next month's election — is difficult to imagine.

But the judge clearly feels himself to be at the centre of a political drama, as is evident from the breathless narrative of the report. And he shows himself constantly open to outside advice.

On March 15, for example, "at the request of the state president" he informed the Minister of Law and Order, Hernus Knel, of the allegations being made against the generals. "The minister then requested that the allegations be put to the commissioner of police." The commissioner "expressed the view that it would be fair and just" if the allegations were put to the three accused police generals. The learned judge, having thus been appraised of the "audi et alteram partem" rule, duly agreed.

The Goldstone Commission is probably the most powerful judicial inquiry in South African legal history. Armed with extremely wide terms of reference, with its own task force of "untouchables", with powers of subpoena and search and

with seemingly limitless funding (there is now even a Goldstone research institute) he has been ideally placed to rip open the cess-pit of conspiracy and murder to be found among the foundations of the governance of South Africa.

His lamentable failure to do so — "lamentable", because it has incalculable consequences in terms of lives — has been underlined by the reverse achievements of the press, by the breakthroughs of investigative journalism which the commission has, ironically, only impeded. In June last year, for example, the commission effectively shot down an investigation by the *Mail & Guardian* showing that graduates of a combat school run for Inkatha members by South African military intelligence were central to "hit squad" activities in Natal and the Transvaal. Friday's report adds weight to the original allegations.

The characters and units named in Friday's report are almost all familiar, at least to readers of South Africa's "alternative" press: the assassination unit on the farm, Vlakplaas, its commander, Eugene de Kock, his mysterious "Badger Unit" (mis)representing itself as an old boys' club of laid-off state assassins, Jan Buchner, a key figure in the "dirty war" against the ANC who became commissioner of police in kwaZulu, Leon Flores, sent to London to plan the murder of Captain Dirk Coetzee, De Kock's predecessor.

Sections of the report could almost be paraphrases of press cuttings now yellowing with age. "A large quantity of weapons from Koevoet in the former South West Africa was transported to Vlakplaas in the late 1980s. They included AK47s, mortars, RPG7s, hand grenades among others," reported the commission on Friday. In an interview with *The Guardian* published in August 1991, Coetzee was quoted as saying "De Kock went to Namibia with some of his men from Vlakplaas and came back with truck-

loads of Russian arms from Koevoet-captured arms caches: unregistered weapons, land mines, SKSs (assault rifles), AK47s and bullets by the million." It was these weapons, the captain said, which were being used by the "third force" to destabilise South Africa.

The interview would well have been commended to Goldstone at the time, he might have discovered from Coetzee that "the third force is a loose alliance between the dirty tricks departments of the military and the police, involving personnel and equipment from South Africa's frontline wars, in Rhodesia, Mozambique and Namibia." The strategy, the captain went on, "based on that used by the security forces against Swapo, is one of undermining the ANC and boosting its political opponents to cheat it at least of overall political control of the country." The guilty men, he added, were headed by former commanders of the security branch, men he named, like General Basie Smut.

In the two and a half years since Coetzee made those allegations the guilty men have gone a long way towards achieving the goals he accused them of pursuing. Distributing weapons, training dissidents, deliberately fostering hatred, fear and polarisation, they have brought closer than ever before the civil war which is their only chance of cheating the ANC of its populist heritage. During that time the Goldstone Commission has been little more than a rubbish bin, used by the government — whether or not as co-conspirators — to avoid public confrontation with the reality of the rottenness of South Africa. The Goldstone Commission's "disclosure" of the "third force" offers little ground for celebration. It amounts to little more than a demonstration of the inadequacy of judges when engaged in the deadly game that is South African politics.

Goldstone got lost in the deadly game of politics

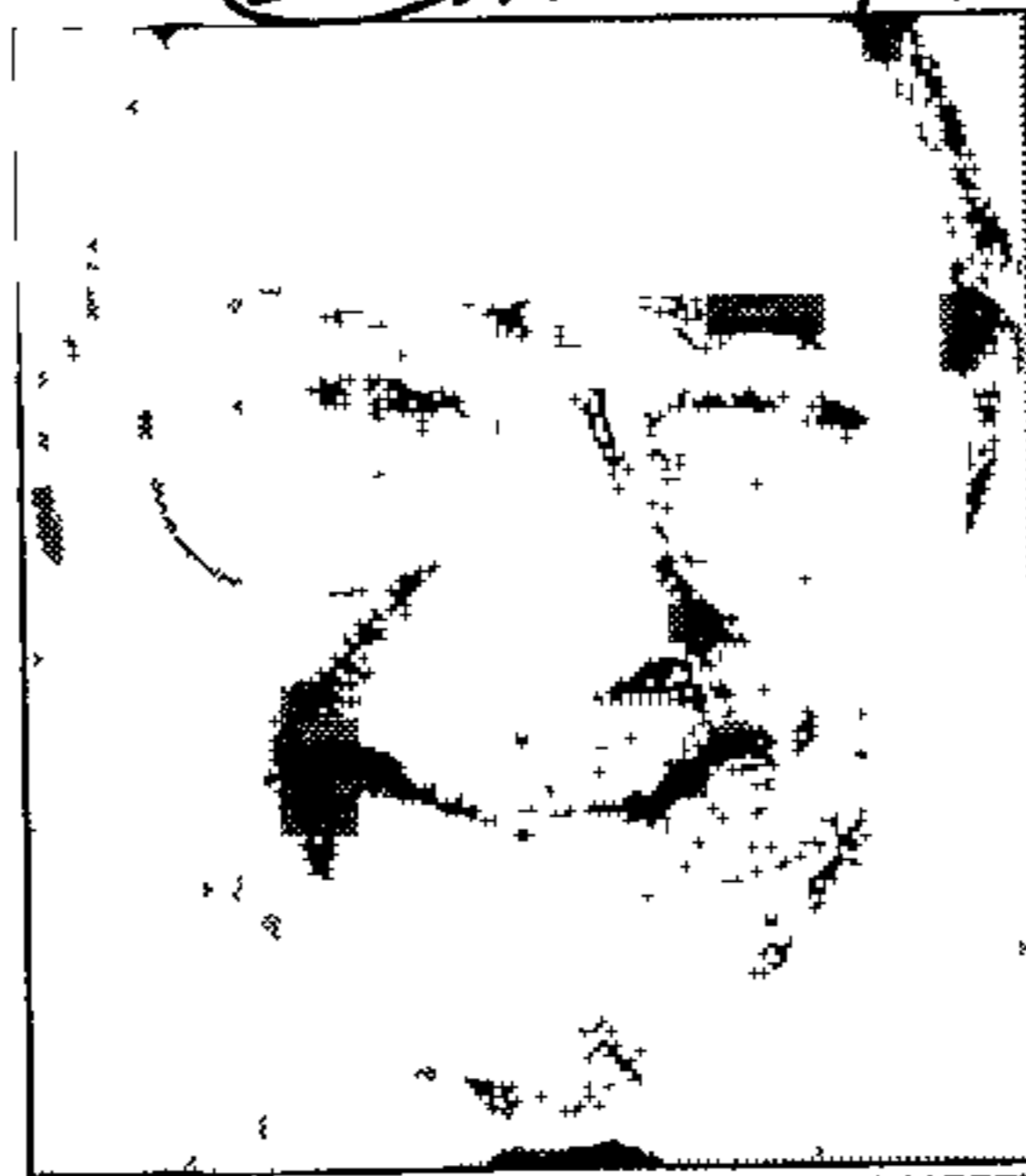


PHOTO STEVE HILTON BARBER

Judge Richard Goldstone's commission of inquiry has long been used by the state as an instrument to deflect criticism, argues *The Guardian's* David Beresford

RAISING THE STATUS OF WOMEN

W. M. M. 25-30 March 94

Because the new South Africa can only benefit by a rapid improvement in the status of all our women, and because many women are suffering and have endured great hardship through disempowerment caused by their legally and culturally subordinated status in family, religious institutions, the workplace and society in general, therefore:

1. We support the equal participation of women and men in constitutional rights and in politics, in all the structures and at all levels including the leadership.
2. We oppose all aspects of beliefs, traditions and practices that hinder women in achieving their best potential, whether in the home, in society or in career opportunities
3. We acknowledge that the family today may take different forms. We believe that women are equal partners with men in marriage or family partnerships. Women have the right to make their own decisions, based on the fullest information, and supported by legislation, in regard to family planning, contraception, abortion and any other medical procedures.
4. We believe that men must share equitably with women the responsibility and work of childcare and domestic duties, not only to relieve the exhaustion of mothers, but to ensure good parenting of children.
5. We undertake to work for maternity and paternity leave and for proper creche facilities at the workplace, so as to enable women and men to pursue careers outside the home if they so wish. We oppose the sexual division of labour and the stereotyping of job roles which prevent women from doing work for which they are qualified. We undertake to scrutinise all legislation, to ensure it does not impact adversely on women.
6. All violence against women must cease, including sexual harassment, rape and physical abuse. Women have the right to feel free and secure in the home and abroad. We are committed, both in private and public life, to upholding the right of women to be free from abuse and will campaign vigorously for this liberation from violence.

The following signatories have endorsed this Declaration:

Individuals		Organisations
Denise Ackermann, Karin Chubb, Jenny Clarence, Dot Clemminshaw, Rodney Davenport, Jenny de Tolly, Sheena Duncan, Marj Dyer, Pippa Green, Rhoda Kadalié, Barbara Klugman, Cawe Mahlati, Dolly Maister, Frank Molteno, Thandabantu Nhlapo, Ilse Olickers, Wendy Orr, Aviva Pelham, Bo Petersen, Jane	Raphaely, Doris Ravenhill, Jeremy Sarkin, Michael Savage, June Sinclair, Babette Tabak, Carla Sutherland, Helen Suzman, Ivan Toms, Sue Valentine, Charles Villa-Vicencio, Shirley Walters, Caroline White, Helen Zille	Abortion Rights Action Group, Black Management Forum, Black Sash, Civil Rights League, IDASA, Rape Crisis, Lawyers for Human Rights, SA Legal Defence Fund, Women's Development Banking, Women's Health Project, Women's Legal Status Committee, Women's Lobby

Get your leaders, political organisations and those who canvass your vote, to undertake to work for the aims expressed in this Declaration.

Inserted by D Clemminshaw, Gender desk, 5 Long St, Mowbray 7700

THE BLOODY WEB OF 'THIRD FORCE' VIOLENCE ...

WM 25-30/3/94

THE Goldstone Commission's latest report leaves a sense of déjà vu. The operating style, political motives and many of the villains fingered as implicated in destabilising South Africa are all too familiar.

The report corroborates the increasingly undeniable fact—repeatedly denied, of course, by the South African Police and men like Inkatha's Thembu Khoza—that former and current members of the security forces have stoked, sustained and orchestrated violence aimed at thwarting the country's democratic transformation.

The report also endorses the long-held view that these men have worked closely with members of the Inkatha Freedom Party and its military wing, the kwazulu Police. The IFP's motive is a simple one: democratic elections will

expose it for the marginal grouping it has always been.

The signs of a guiding anti-democratic hand in destabilisation since the unbanning of the ANC and start of constitutional talks have been there for all to see.

●The outbreak of violence on the Reef in August 1990 coincided with the launch of the IFP in the area and has recurrently peaked at strategic junctures—for example, during the referendum and the Hani commemoration, and on the signing of the national peace accord.

●Violence in the PWV has leapt from township to township, staying constantly ahead of attempts at pacification. Over 1990, for example, it moved every month: from Sebokeng and Evaton (July), to Thokoza, Kagiso and Katlehong (August), to Tladi, Tembisa,

Vosloorus and central Johannesburg (September), to Naledi (October) and Dobsonville (November).

●Much of the PWV violence has been arbitrarily directed at whole communities. In three years, 600 people have died in nearly 500 train, bus and taxi attacks.

●As of June last year, the HRC had recorded 173 assassinations by hit squads, implying the provision of training and weaponry.

●Inkatha-dominated hostels have repeatedly been at the centre of Reef township clashes. According to the HRC, 44 percent of Soweto's 1 106 political deaths have been hostel-linked.

●In contrast with their much-trumpeted successes against ANC guerrillas, the police have a miserable record of solving crimes of political violence post-February 1990. *The Mail &*

Guardian knows of one successful prosecution of a train killer.

All of this has been copiously reported in the media. But it was the "alternative" press which got behind the statistics to the actual mechanics of destabilisation, and which foreshadowed almost every aspect of Judge Richard Goldstone's latest report.

In essence, Judge Goldstone hints at a destabilising network run by officers of the SAP's notorious Transvaal hit squad base, Vaalplaas, with the knowledge and assistance of key police generals. This provided weaponry, training and money to senior Inkatha officials in the Transvaal for train and hostel-based violence, as well as carrying out "hits" on its own account.

On the SAP side the central figures accused

THE BLOODY WEB OF 'THIRD FORCE' VIOLENCE ...

From PAGE 13

■From PAGE 13
"gate" expose, which proved police funding for an Inkatha rally at a time when Basle Smit was security police chief Central to the operation was Buthelezi's personal aide, MZ Khumalo, who also knew of the Caprivi training.

●Later in 1991, *The Weekly Mail* returned to the Caprivi story by revealing the location of an SADF-funded base at Mkuze, Northern Natal, where the trainees had been housed and given training after returning from Namibia and before they were absorbed into the KZP.

●In early 1992, *The Weekly Mail* carried an interview with former Inkatha Youth Brigade official Mbongeni Khumalo in which he said that Thembu Khoza had received training from Military Intelligence before Inkatha's bloody push on the Reef in 1990. MI front organisations had also given political and leadership train-

ing to Inkatha officials at Mkuze, he said. Khumalo also revealed that a Caprivi trainee and Inkatha central committee member had headed a hit squad in the township of Wesselsfontein, assisted by local police.

●In its next edition, *The Weekly Mail* gave details of acts of criminal violence perpetrated by Caprivi trainees on their return to Natal.

●In November 1992, *The Weekly Mail* first revealed the existence of the secret Badger Unit and De Kock's role in it. The story was fleshed out eight months later by *The Star*, which revealed that it also included former CCB officials such as Staal Burger, MI operatives and other Vlakplaas men such as Paul van Dyk and "Snor" Vermeulen. The unit was said to "concentrate on investigating illegal arms supplies."

This *WM* article reveals that in documents before the Webster inquest, De Kock had offered to expose the

"third force" network to the National Intelligence Service on condition of immunity from prosecution. "Krap-

Engelbrecht also features in this report, as having tried to suppress a probe into De Kock's role in a scheme to monitor and arrange Dirk Coetzee's assassination in Britain. (252)

The Goldstone report suggests Engelbrecht has tried to scotch both Goldstone and police investigations into "third force" activities.

Two roots of the "third force" which have been extensively covered by the "alternative" press and are not touched on in Goldstone's report are the roles of the Crime Intelligence Service—the new home of the old security police—and of MI.

In mid-1992, *The Weekly Mail* blew the lid on a secret network of police houses in the Vaal linked by two witnesses to the orchestration of violence. The witnesses, semi-educated township residents, fared poorly at a subsequent Goldstone Commission inquiry. But the houses fell under the CIS. We may yet hear more of them.

The Mail & Guardian has also reported on the part played by MI operatives in installing and propping up Ciskei's ousted military leader Oupa Gqozo and attempting to topple Transkei's Bantu Holomisa, an ally of the ANC. More recently, it has suggested an MI hand, via a Ciskei-based arms smuggling network, in violence in the Western Cape.

It is significant that a certain ex-MI operative in the Eastern Cape, Anton Nieuwoudt, implicated in many of the dirty tricks there, is a member of the Badger Unit.

There are also growing suspicions that alleged Apla attacks on whites in the Cape may ultimately be the work of the "third force".

One thing is clear: the unravelling of the bloody web woven by the destabilisers has only just started.

Detention laws are still in place

CT 25/3/94 (252)

By BARRY STREEK
Political Staff

THE controversial provisions of section 29 for detention without trial have not been scrapped yet

President FW de Klerk has not been given a draft proclamation for their abolition

The Ministry of Law and Order, which is responsible for the drawing up of the proclamation and which has opposed the scrapping of section 29 of the Internal Security Act, appears to be sitting on the matter

The Black Sash has slammed the bureaucratic tangle engulfing the repeal of section 29. It said yesterday this seemed increasingly like "another delaying tactic by the Nationalist government"

Asked if the ministry was blocking

the matter, a spokesman for the President's Office said "I think the necessary paper work is being prepared and it will get to the President's Office shortly"

The Transitional Executive Council decided more than two weeks ago to implement clause 7 of the Abolition of Political Restrictions Act, which provides for the scrapping of section 29

"We find it highly unlikely that the State President, whose authority over his cabinet under the 1983 constitution is renowned, cannot cause this advice to arrive post haste," Black Sash spokesman Mrs. Martha Bridgman said

The police have continued using section 29. A recent occasion was the detention of two German right-wingers at the weekend

GOLDSTONE REPORT

FM 25/3/94

Hunting the rotten elements

Guilt and innocence in the SAP must be established swiftly (252) (251)

The most explosive allegation in the latest Goldstone Commission interim report is that three serving police generals were in command of (or knew about) operations by police units to destabilise SA, including the orchestration of train and hostel violence

Presented to the State President on March 18, the report had its origin in February with allegations from a police officer identified by the report as "Q". His contact with Judge Richard Goldstone's commission was facilitated by two majors of the SAP's Efficiency Services department. It is not clear why Q should have come forward at this stage.

The accused officers — lieutenant-general Basie Smit (SAP deputy commissioner) and Johan le Roux, and Major-General Krappies Engelbrecht — have responded with outrage and said they are determined to prove their innocence. Police commissioner General Johan van der Merwe has apparently said he will retire if Smit and Le Roux, at least, are found guilty of any crime.

Inevitably, politicians have seized on the report for whatever advantage they perceive might be gained, as if the findings were conclusive. But all that Goldstone has done is point out that there is a prima facie case to be answered. The report is also at pains to point out that "the persons named in this report have not been found guilty of the allegations made against them."

Essentially, it is alleged by Officer Q that

- The SAP's Vlakplaas unit, under Colonel Eugene de Kock, orchestrated violence "from 1989",
- The Vlakplaas group was involved in the manufacture of guns at premises on the East Rand and in Silverton, Pretoria,

- These were delivered to senior Inkatha members, including Themba Khoza, Inkatha Transvaal leader,

- When the Vlakplaas unit was disbanded, "some of the transferred members as well as others who are no longer in the SAP continued and still do operate in hit squads,"

- Members were given false IDs and passports, with De Kock (discharged from the SAP last year) apparently having used a false passport as recently as a month ago on a trip to Zurich.

The commission decided to test some of the evidence and found examples of aliases

for the men named by Officer Q. Further inquiries led to Le Roux who told the commissioners on February 15 that false documents are sometimes issued to SAP members involved in covert investigations. However, later the same day it emerged that none of the men in question was involved in such investigations.

Goldstone was then contacted by the two majors who told him that, since the commission had begun making inquiries, information had emerged that

- A Colonel Cronje had told the former Vlakplaas members to bring in their false documents to be destroyed, in advance of investigations by the commission, and

- Engelbrecht had ordered the destruction of files relevant to Inkatha involvement.

Within the next few days Goldstone took

cer Q, Engelbrecht had ordered a halt to a police investigation into alleged arms smuggling by De Kock.

Meanwhile, it emerged that De Kock and Engelbrecht, along with a Brigadier Oosthuizen, had met the ANC's Joe Nhlanhla on March 1 at a Midrand hotel. Apparently they discussed questions of indemnity and De Kock's possible reinstatement in the

SAP

Further written evidence supplied by the two majors suggested that the Vlakplaas unit's activities were continuing as late as 1992.

This was apparently confirmed by a weapons register seized by the commission, which confirmed that weapons and ammunition were bought by members of the unit on the dates alleged by Officer Q.

By March 15 it was agreed that the alle-

gations should be put to the three generals concerned. They denied all allegations of criminal conduct. Le Roux said he had not been aware that false passports were still held by former Vlakplaas members. Engelbrecht admitted the meeting at the Midrand hotel, which he said concerned the future of former Vlakplaas members. Smit confirmed that large payments had been made to De Kock and others when their service was terminated in April 1993 (in De Kock's case, more than R1m) — but that the amounts had been approved by the Cabinet.

Further evidence was heard on March 17 from former Vlakplaas members. It concerned weapons transported to Vlakplaas from the Koevoet unit in the late Eighties; and weapons bought in June 1992 from a Brooklyn arms dealer by a company called Badger Arms — a front company for De Kock. The evidence of the former Vlakplaas members seems especially to implicate De Kock and Engelbrecht.

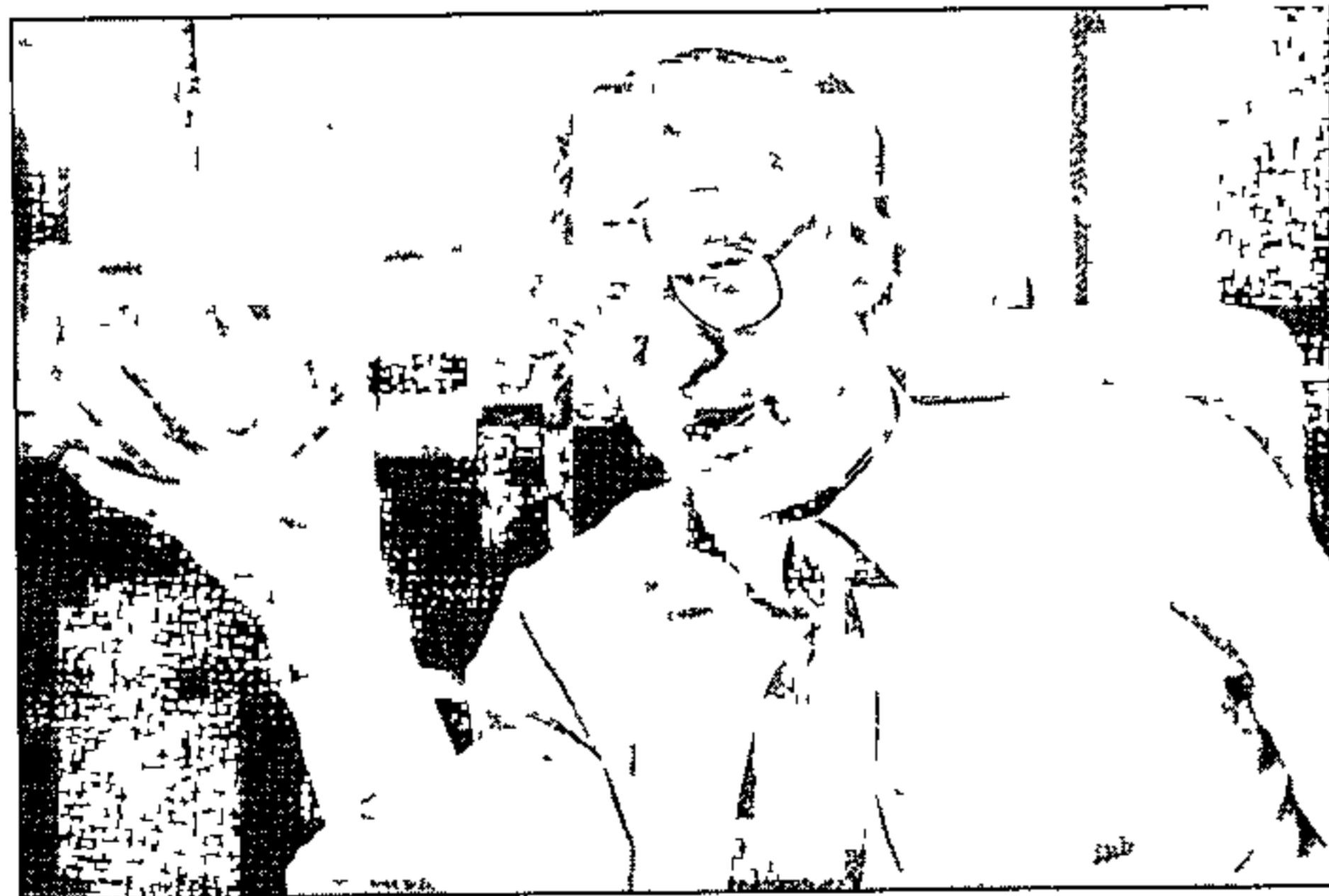
The remainder of the report raises serious questions about the activities of the Kwa-Zulu police, as well as certain SAP members in Natal, in relation to political violence.

Goldstone believes that some of the major allegations by Officer Q have received corroboration in the documentary evidence of weapons transactions. In addition, awkward questions arise. For instance

- Why do certain SAP members have false documents which are not needed for their



Engelbrecht many allegations



Van der Merwe promised Goldstone support

into his confidence General George Fivaz, chief of SAP Efficiency Services and regarded as one of the brightest young reformist generals. Van der Merwe was informed of the investigation, both he and Fivaz promised co-operation. On February 20 President F W De Klerk was informed and he immediately urged the commission to proceed with his full support.

The commission was told a week later that Engelbrecht had asked former members of the Vlakplaas unit for information which could be used to compromise Judge Goldstone himself. In addition, according to Offi-

Ln 2513194



Judge Goldstone commends the majority

with the results of his investigations over the past month. However, the accusation against Smit and Le Roux appears to be based only on the original statement by Officer Q — whose motive in making the allegations is not known (252) (251)

A full investigation should now be carried out and the results must be passed to the Attorney-General so that the men concerned can either be prosecuted or cleared.

Van der Merwe has promised all possible help, while the State President has already announced that an independent investigating team — consisting of an attorney-general and other persons who may be appointed and supported by members of foreign police services — will be constituted as soon as possible in order to investigate thoroughly the allegations contained in the Goldstone report.

This latest report by Goldstone shows up the commission's best and worst features.

It was established just over two years ago in terms of the National Peace Accord as a judicial commission into the causes and prevention of public violence. It immediately began a punishing schedule of inquiries into the causes of violence. It was also Goldstone who paved the way for international observers to monitor violence.

From the beginning the commission enjoyed general respect for its integrity, independence and impartiality.

Its judicial inquiry format greatly simplified the gathering and presentation of evidence.

The disadvantage has been that the commission's reports have been quickly snapped up and selectively exploited, even though it is always at pains to emphasise that it produces findings rather than convictions.

In May 1992, the commission blamed ANC/Inkatha rivalry and the involvement of individual policemen for violence, having found no hard evidence suggesting the existence of a secret and cohesive "third force" committing acts of political violence. In October 1992 another Goldstone report came to a similar conclusion.

Now it seems clear that there are rotten elements which must still be rooted out from the SAP, and that the purge of senior generals early last year may not have been comprehensive enough.

However, the latest report commends the courage and integrity of several officers who assisted in this investigation, from the two majors who facilitated the early communication, to the officers on the commission's Natal Investigation Unit, to Van der Merwe and Fivaz.

The commission's report states that "these honest and dedicated police officers are not the exception — it would be unfair and dangerous to tar the whole police force with the brush of Vlakplaas."

present work?

- Why does De Kock, no longer a policeman, still have such a document?
- Why did De Kock approach the ANC, and
- Why are serving senior officers, like Oosthuizen and Engelbrecht, still associating with De Kock?

It is clear why Goldstone felt that there was enough prima facie evidence to go public

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Team briefed Star 29/3/94 on Third Force

■ BY HELEN GRANGE

The team investigating the Goldstone Commission report implicating senior SAP officers in arms-smuggling was briefed by the commission yesterday — and will begin its probe immediately after all documentation has been studied.

All members of the team except one — a senior SAP officer — were present at the briefing held in the Pretoria office of Transvaal Attorney General Dr Jan D'Oliveira, SC, who is heading the team.

There are two foreign police experts on the team — Colonel Gilles Aubry of the Paris Police security branch and Zimbabwe Police assistant commissioner Francis Mapuranga.

Other members include stalwart human rights lawyer Arthur Chaskalson, SC, and Major-Gen-

eral Martin Nel of the SAP Commercial Branch.

It is understood that Nel, currently in Paris at an Interpol conference, might be replaced by General Daan le Roux.

Le Roux had, however, not been informed of his possible appointment to the team by yesterday.

D'Oliveira said most of the documents compiled by the Goldstone Commission on the investigation had been handed over.

The rest would be furnished and thoroughly studied before the team launched its practical investigations. (252)

He doubted that the probe would be completed in two weeks.

The Goldstone Commission investigation names a host of top SAP officials, including Generals Basie Smit and Johan le Roux, as being allegedly involved in arms-smuggling to the IFP in Natal.

Commission turns down SAP request

THE Goldstone commission has turned down Police Commissioner Johan van der Merwe's request for it to hand over to the SAP evidence on "third force" violence.

Commissioner Solly Sithole said yesterday the commission would not hand over evidence on links between senior police officers and violence and gun running.

Van der Merwe asked for the "record of proceedings" to find out whether there were sufficient grounds to suspend senior policemen implicated in the report.

Sithole said the SAP did not have any jurisdiction over the commission.

If the completed investigation found prima facie evidence of a crime, it would

29/3/94
TIM COHEN

be referred to the attorney-general.

The investigating team appointed last week to look into the Goldstone report held its first meeting yesterday. Transvaal, Attorney-General Jan D'Oliviera said the investigation aimed to find out whether anyone should be prosecuted. (252)

Law and Order Ministry spokesman Craig Kotze said the SAP representative, Maj-Gen M J Nel, would not be biased, despite being an immediate subordinate to one of the three generals concerned Lt-Gen Johan le Roux. (252)

Report by T Cohen, TML, 11 Diagonal St, Jhb

Commission wants details

Sowetan 30/3/94

■ SUBMISSIONS INVITED

Judge wants to know why marchers
went past Shell House:

Sowetan Reporters and Sapa

252

THE Goldstone Commission is considering holding a preliminary inquiry into Monday's shooting incidents in Johannesburg and has requested interested parties to furnish it with written submissions by April 15.

Mr Justice Richard Goldstone said yesterday that the commission was especially interested in submissions by the South African Police, the African National Congress and the Inkatha Freedom Party.

Submissions are sought regarding, among other aspects, whether any party, especially the SAP, had received information indicating violence might erupt before, during or after the march. If so, what precautions, if any, were taken by the relevant parties to avoid violence.

It also wants to know whether permission was sought and granted for the march, and if so, details of the route that was to have been followed. It is also interested in knowing the reason or reasons for the marchers passing ANC headquarters at Shell House and the PWV offices of the ANC in Jeppe Street.

Meanwhile yesterday, panic and rumour abounded in Johannesburg in the wake of Monday's violence.

Police yesterday put the death toll at 53, revising their previous figure of 25 from the running gun battles that raged in the city on Monday.

A police statement also said an investigation into the killings had begun under the leadership of Brigadier Louis van der Westhuizen.

Rumours of a regrouping of the Zulu marchers led to several shops shutting

yesterday morning. As sirens sounded from ambulances on their way to routine calls, pedestrians in downtown streets scurried for safety and shopkeepers closed their doors or rolled down their metal window covers.

Gunmen fired several shots outside the ANC headquarters at Shell House, Johannesburg, yesterday afternoon.

Police spokesman Lieutenant Jan Combrinck said yesterday that nobody was injured or killed. Police said the occupants of a white car reportedly fired shots at Shell House about noon.

Tension gripped Soweto yesterday with two hostels being the flashpoints as armed hostel dwellers and youths were poised for battle.

The heavy presence of soldiers and police defused the situation at Dube and Jabulani hostels, described by peace monitors as "full of potential for violence".

Police detonated a handgrenade which was dropped by a youth. No injuries were reported.

Soweto police spokesman Major Joseph Ngobeni said there were isolated incidents of stone-throwing in some areas of the township.

Ngobeni said the area around Dube Hostel was "calm but tense" and police were maintaining a strong presence around the hostel.

Hostel dwellers also gathered around the premises and South African Defence Force soldiers and police separated them from a crowd of youths.

Ngobeni said there were isolated incidents of stone-throwing in some areas of the township.

The area around Dube Hostel, however, was "calm but tense" and police were maintaining a strong presence around the hostel.

Our telephone number: (011) 474-0128

Political comment in this issue by Aggrey Klaaste and Joe Thloloe. Newsbills, sub-editing and headlines by Mike Tissong and Sy Makaringe. All of 61 Commando Road, Industria West, Johannesburg. The reproduction or broadcast without permission of articles published in this newspaper on any current economic, political or religious topic, is forbidden and expressly reserved to Argus Newspapers Limited under Section 12 (7) of the Copyright Act 1978.

No trace of snipers, say police

POLICE found no evidence of snipers during searches of buildings and rooftops surrounding Johannesburg's Library Gardens after Monday's gunfights in the area, police spokesman Maj Eugene Oppermann said yesterday.

Police searched all the buildings in which members of the crowd below had reported seeing gunmen, but no sign of them had been found, Oppermann said. However, police had not discounted the possibility that snipers had been active and they would act on any new evidence brought to their attention, he said.

The Goldstone commission announced it would hold a preliminary inquiry into the march that left at least 56 people dead in and around Johannesburg, Judge Richard Goldstone said yesterday.

The commission will look at accusations made by both the ANC and the Inkatha Freedom Party that they had received prior warnings of violence and that police had failed to act on the information.

Police yesterday launched their own probe into the claims, and said murder docket would be opened into all the deaths.

Meanwhile, police have confirmed that Inkatha's PWV leadership applied for permission to hold the march.

Sapa reports that Inkatha also sought permission from the Johannesburg City Council. Acting city secretary Gert Marais said a letter

GAVIN DU VENAGE

signed by Inkatha West Rand chairman Humphrey Ndlovu had been handed to the council on March 23 requesting permission to hold the march. Town clerk Dr Nicky Padayachee granted Inkatha permission in writing to hold a rally at the Library Gardens, subject to certain conditions.

Inkatha Transvaal leader Themba Khosa has claimed the march was not an Inkatha event but a response to a call by traditional leaders for a show of support for King Goodwill Zwelithini.

The gunfight which erupted in Library Gardens was one of a number of clashes involving Zulu marchers, unknown gunmen, police and ANC security officials during the day.

Thousands of marchers loyal to the Zulu king gathered in the Library Gardens to hear speeches, but came under fire, sending thousands of people diving for cover.

The shots appeared to have come from surrounding buildings and members of the crowd returned fire, killing at least one office worker. Customs House in Market Street, which houses the offices of the Customs and Excise Department, was particularly hard hit. Several floors were raked with gunfire, forcing customs workers to cover under their desks.

Office workers and security personnel in surrounding buildings, including Absa-owned Volkskas House and First National House,

denied snipers had used their premises to shoot at the crowd.

A spokesman for Absa said access to its buildings was controlled by a privatized security company. The spokesman said Absa had not been approached by Inkatha about allegations of snipers.

Yesterday, Library Gardens was almost deserted. Piles of abandoned sticks and clubs, as well as shoes and blood stains dotted the square, usually a lunch-hour retreat for office workers.

LLOYD COUTTS reports that international observer missions in SA yesterday criticised all the parties involved in violence in Johannesburg and elsewhere in the country, saying failure by political leaders and security forces to act together to prevent senseless slaughter was inexcusable.

Speaking on behalf of the UN, the OAU, the EC and the Commonwealth, UN special representative to SA Lakshar Brahmi called for reason and responsibility from political leaders. "This means they must carry the message — and actions — of peace and democracy to all corners of the communities they claim to serve and represent."

He called on President F W de Klerk, Inkatha leader Mangosuthu Buthelezi and ANC president Nelson Mandela to negotiate a way out of the impasse.

Report by G Duvange, L Courts, TML, 11 Disposal St, Jhb, and K Smart, Sapa, 141 Commissioner St, Jhb

Judge to probe corporation

JACQUE GOLDING 30/3/94

BOPHUTHATSWANA's joint administrators yesterday appointed Judge JAM Khumalo to head a commission of inquiry into the financial and general affairs of the Bophuthatswana National Development Corporation.

The commission will investigate all affairs of the corporation and its affiliates' administration, manage-

Mangope seeks court order

ADRIAN HADLAND

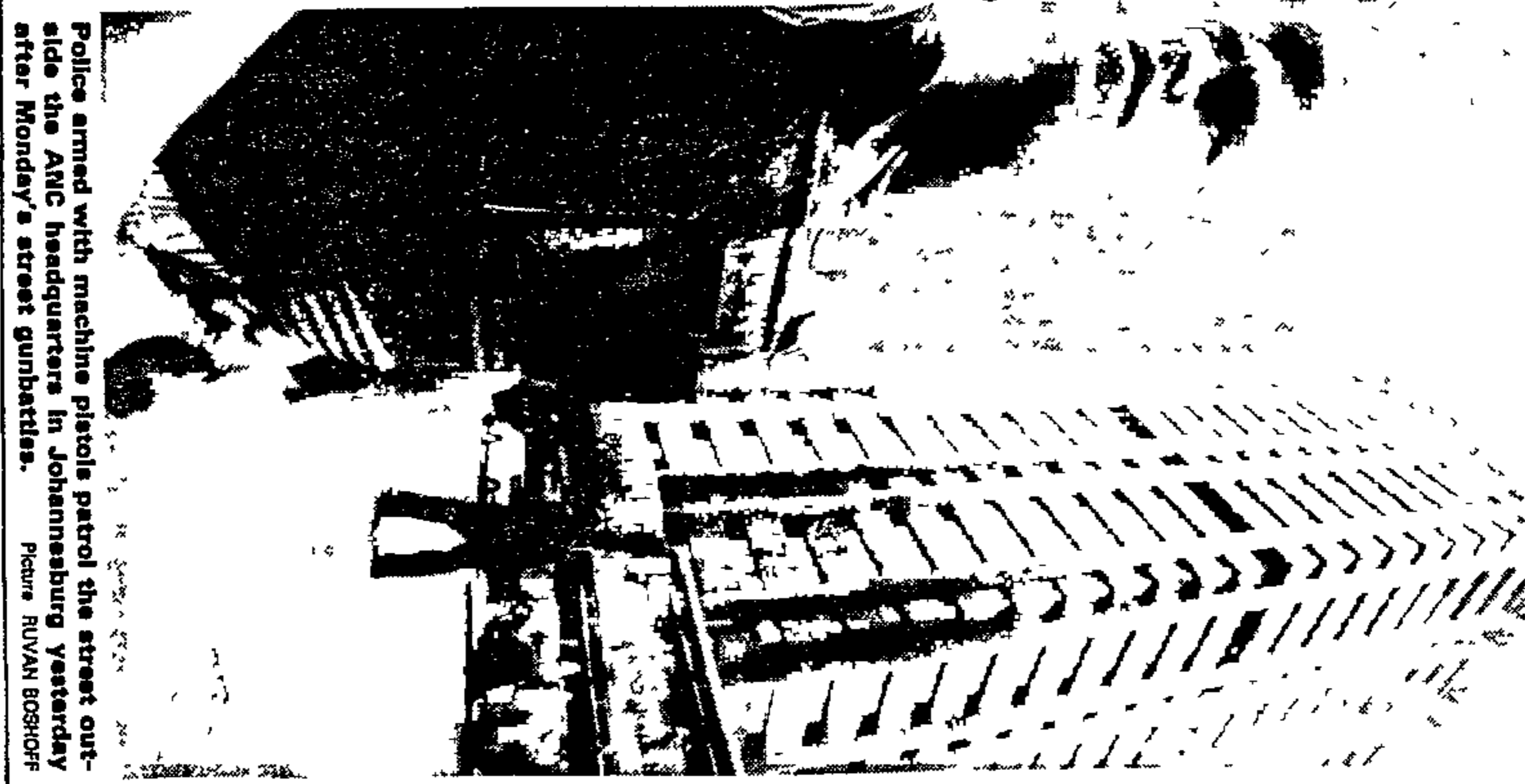
PRETORIA — Former Bophuthatswana president Lucas Mangope has filed an urgent Supreme Court application seeking to set aside the appointment of two administrators for the territory. **30/3/94**

In a notice of motion before the Bophuthatswana Supreme Court Mangope also

denied snipers had used their premises to shoot at the crowd.

The application is scheduled to be heard in Mmabatho tomorrow.

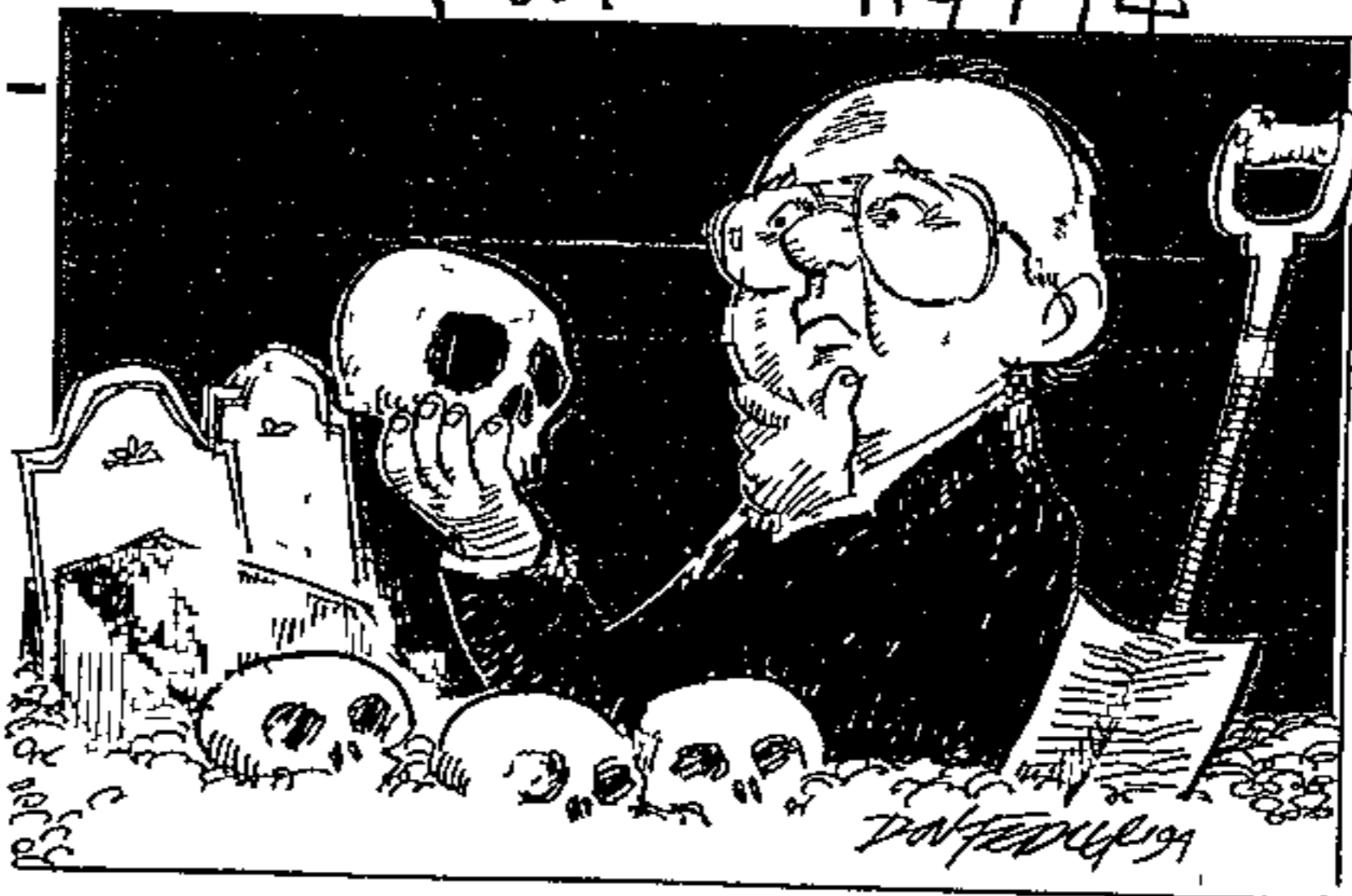
TEC joint executive secretary Fanie van der Merwe said the TEC had appointed a



Police armed with machine pistols patrol the street outside the ANC headquarters in Johannesburg yesterday after Monday's street gunbattles. Picture RUVAN BOSHOFF

FM 114194

252



under way)?
 But Goldstone is not in SA to answer these questions. He is abroad on commission business. That, one could speculate, means he may be completing interviews with witnesses, moved abroad under the commission's protection programme, at the time of the release of the report.

That would certainly give credence to suggestions that other third force members have turned State witness.

The task of establishing the validity of the report's claims has been handed to Transvaal Attorney-General J A D'Oliveira. He heads a team which includes an advocate, the Paris commissioner of police, the deputy commissioner of the Zimbabwe police and an SAP general.

The team's main task is to establish whether any criminal offences have been committed. Though nobody has said so, it is imperative that the AG deals with the issue quickly. Failure to do so would suggest that the generals have no case to answer.

On the basis of an earlier Goldstone investigation, which included a raid into the Department of Military Intelligence and information provided by Mozambican deserter Jaoa Cuna, 23 officers, including two generals, were dismissed. What is disturbing is that no charges have subsequently been laid, suggesting that there was no case to answer or that the issue has been swept under the carpet.

The same must not be allowed to happen with the SAP generals.

and Johan le Roux as well as Major-General Krappies Engelbrecht.

The latest Goldstone investigation relates to Vlakplaas — originally identified by the Harms Commission as the base for a counter-insurgency unit which included an assassination squad to kill anti-apartheid activists, possibly including Wits University lecturer David Webster.

Goldstone's cloak-and-dagger investigation began on February 15 when the commission's Natal investigator and chief council, J J du Toit, checked out an "astounding story" related to the judge by a policeman — the mysterious Q, subsequently identified by newspapers as Captain Chappies Klopper. Klopper had given information about third force activities in fomenting train and hostel violence and the manufacture of weapons supplied to Inkatha. Smit and Engelbrecht allegedly headed the operation, which was apparently carried out with the knowledge of Le Roux.

The first crucial and unanswered question is whether the alleged activities are still being carried out or whether they were curtailed some time ago. Another is whether Goldstone has more evidence which he has not revealed in his report and is holding back as a trump card in anticipation of a battle royal with SAP commissioner Johan van der Merwe. Speculation suggests that this could include a video tape incriminating several people named in the report, the discovery of a Swiss bank-based slush fund to finance third force activities, and that several third force members may have panicked and turned State witness.

The three named police generals protest their innocence in the strongest terms and, to be fair to them, the Goldstone report presents only a prima facie case. Furthermore, Goldstone has already been forced to make one correction to his original report, where an error had crept in because of "extreme" pressure to get the final report completed.

There is also some question about the timing of the release of the report. Was Goldstone's hand forced by Transkei General Bantu Holomisa threatening to spill the beans before the commission's investigation had been completed? And did the judge, who has always scrupulously maintained a distance from the political parties, inadvertently allow himself and the commission to be used for political purposes (to support De Klerk and Nelson Mandela) and embarrass Inkatha just as its anti-election campaign got

GOLDSTONE COMMISSION
Nagging questions

FM 114194

252

Several disturbing, unanswered questions are emanating from the Goldstone Commission's latest report on public violence.

On the face of it, the report (presented to President F W de Klerk on March 18) contained little new other than that it seemed to confirm the long-standing charge by the ANC and others of the existence of a "third force". It also presented a prima facie case, alleging that three serving SA Police generals were in command of (or knew about) operations by police units to destabilise SA. They are Lieutenants-General Basie Smit

Case of court as you drive

Star

4/4/94

■ BY BUNTY WEST

Mobile courts are in operation along many of South Africa's major routes over the holidays and will continue to hand out immediate justice to errant motorists until April 11.

Normal court procedures will be followed, but the aim of the courts is to ensure that cases are finalised so that holiday-makers do not need to return at a later stage for the adjudication of their cases.

A total of 81 mobile courts are being manned throughout the holiday period, excluding Sundays and public holidays.

There are 36 courts along the length of the N1 from Pietersburg to Cape Town, while the N2 has 13 between Cape Town and Port Elizabeth. (252)

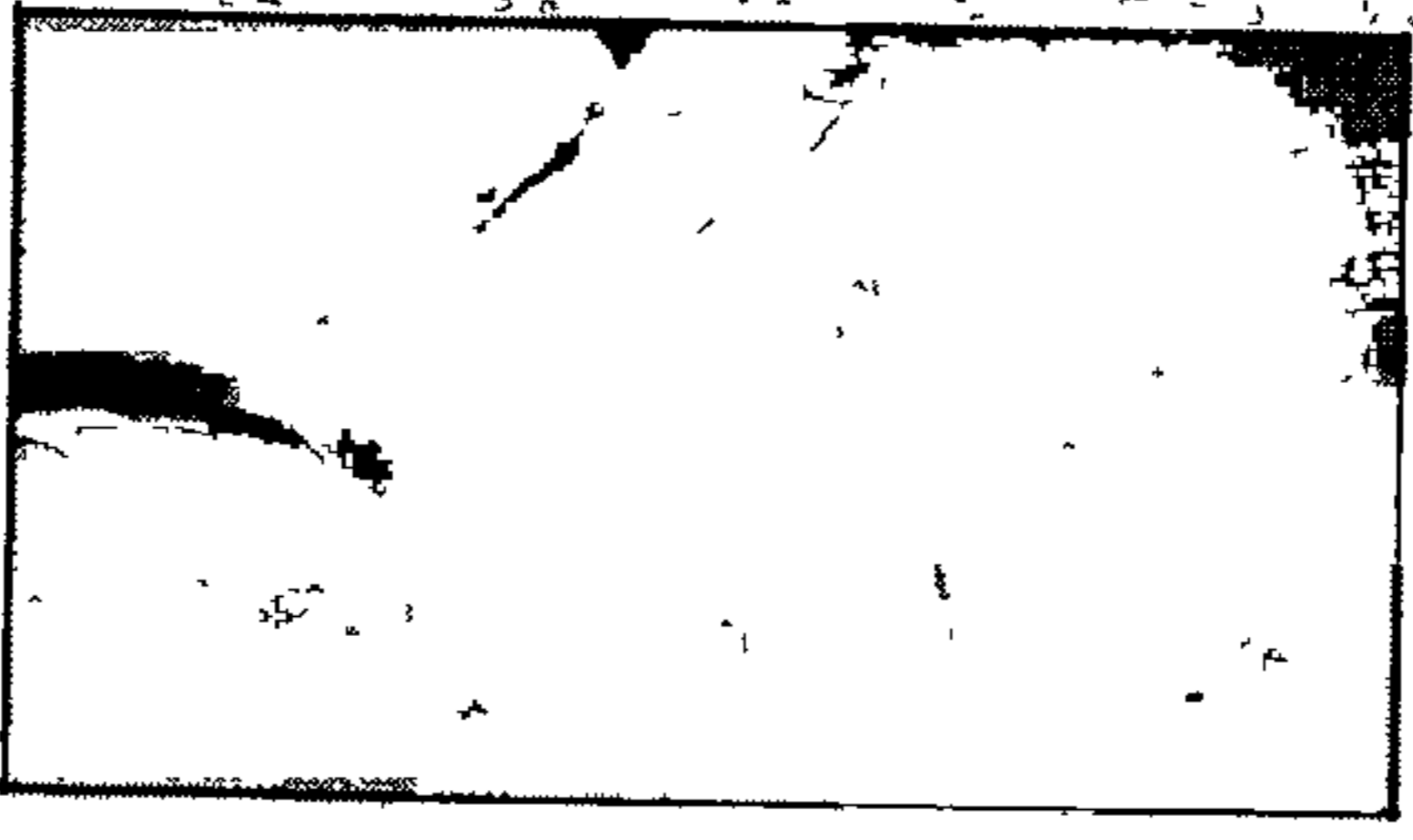
There are 25 courts along the N3 between Pretoria and Durban and on the N4 there are seven courts between Pretoria and Nelspruit.

Storm as judge finds fault with Goldstone's investigation methods

Boipatong probe criticised

MR JUSTICE Richard Goldstone describes as 'misguided' remarks made by a judge while finding 17 men guilty of 1992 massacre

BY BRENDAN TEMPLETON



Mr Justice Richard Goldstone ... disputed judge's finding.

A Pretoria Supreme Court judge's criticism of the Goldstone Commission has resulted in an unprecedented public spat with the head of the commission.

Mr Justice Richard Goldstone yesterday described as "misguided" Mr Justice Smit's remarks on his commission's investigation methods into the 1992 Boipatong massacre.

The Pretoria judge made the criticisms last week while finding 17 men guilty of the 1992

massacre.

Mr Justice Smit said the Goldstone Commission "improperly" allowed rumours adverse to the police to be spread, that the commission caused the police to be distrusted, and that it did not allow the police any proper chance to defend itself.

But Mr Justice Goldstone disputed the finding yesterday. "The commission regrets having to join issue with a judge through the media. However, the comments have received wide publicity and cannot be left unanswered."

The Pretoria court judge was "misguided" because

■ The police were represented by senior and junior counsel throughout the hearing.

■ The commission had to follow up allegations made by some witnesses that the police were involved in the massacre. During

its hearings, the two witnesses which Mr Justice Smit found to be untrustworthy were called forward — but they were brought to the commission by counsel for the police. A "substantial number" of witnesses before the commission later refuted the allegations against the police made by the two.

■ The erasure of tapes of police radio conversations resulted in a huge public outcry and even counsel for the police agreed that the tapes should be investigated by independent experts. The commission could not be faulted because the tests were inconclusive.

■ The commission did not complete its inquiry because Kwa-Madala Hostel residents were charged and "it was considered inappropriate to bring out a report prior to the conclusion of

the criminal trial." A report would be submitted when the trial was completed.

Mr Justice Goldstone denied that any untested evidence was led during its hearings. All witnesses were subjected to thorough cross-examination by counsel for all sides.

While Mr Justice Smit had said the time had arrived for methods of investigation and actions of the commission to be "seriously considered", he had not said which aspects needed consideration.

"What is perhaps more important is that he does not suggest by whom they should be considered or why he found it appropriate to make these highly contentious remarks at this particular time."

6 **Killers refused bail** - Page

Out of District Six and into the senate

□ Activists' lawyer poised to take place in government

ART 5/5/94 (252)

DENNIS CRUYWAGEN
Political Staff

ALMOST three decades after being forced to leave District Six, lawyer Essa Moosa is poised to take his seat in the same parliamentary buildings where the laws which turned black South Africans into second-class citizens were formulated.

Hurt and angered by apartheid laws, Mr Moosa, an African National Congress candidate for the senate, sees himself playing a watchdog role in this body.

The senate will pass all laws made by parliament and Mr Moosa is determined not to allow South Africa to repeat mistakes of the past and promulgate discriminatory legislation.

His commitment to human rights and equality made him turn down an opportunity to go to the national assembly as an ANC representative.

"I'm confident for our future I believe that only a nonracial, legitimate and democratic government can save the country. The post-April 27 government will meet these demands."

Although wedded to the struggle for justice and freedom, he did not believe freedom would come in his lifetime, but he changed his mind in 1989.

"The period from 1976 to 1990 was marked by state repression and I could not see freedom happening in my lifetime. The turning point came with sanctions, international pressure and the defiance campaign of 1989. It broke the apartheid camel's back."

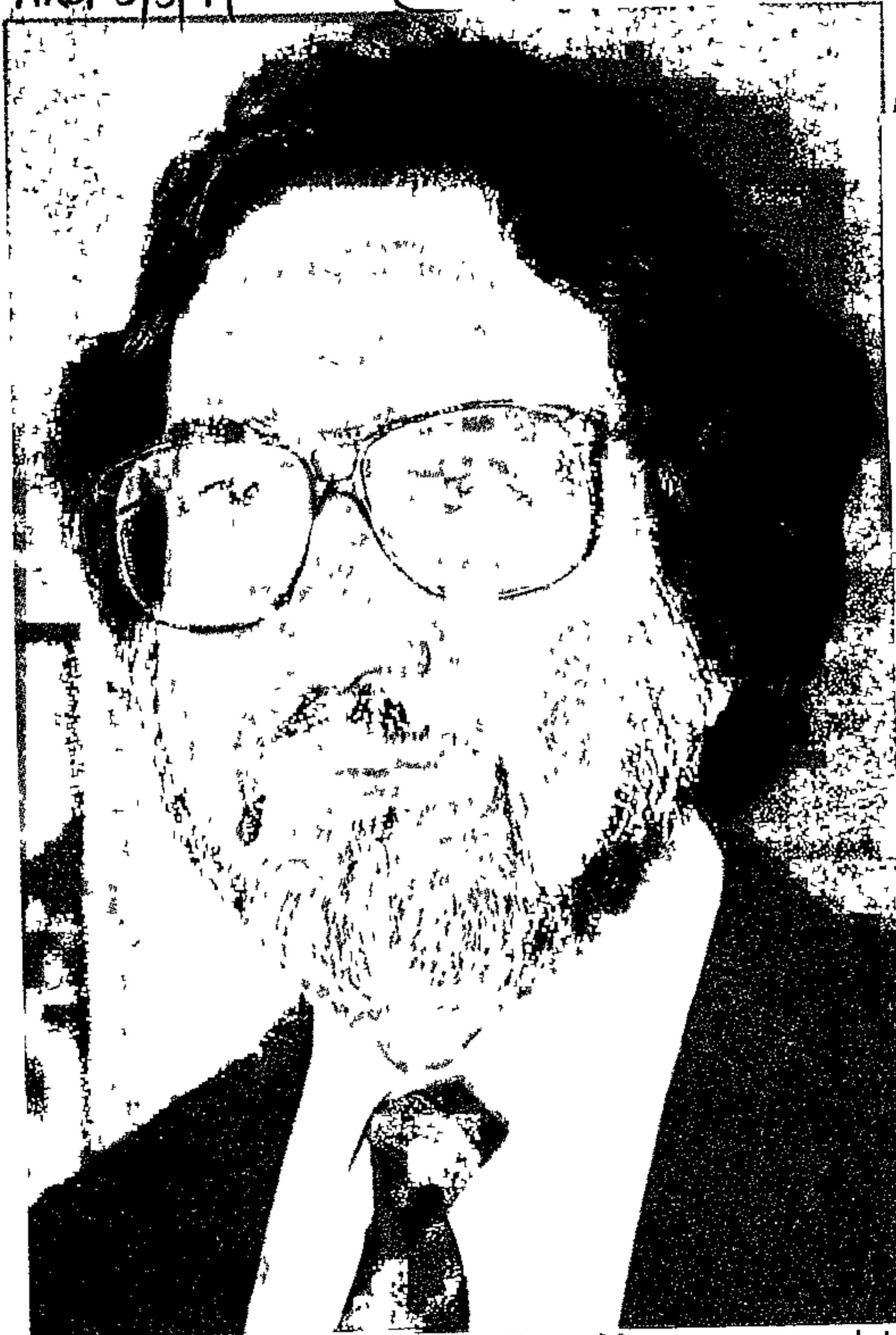
Today, he firmly believes President De Klerk changed because he was forced to, and not because of a "Damascus" conversion.

Unassuming and modest, the Athlone attorney has risen from humble beginnings to become one of the leading human rights lawyers in the country.

His clients at various times included ANC president Nelson Mandela, his wife Winnie, Western Cape ANC head Allan Boesak, United Democratic Front activist Matthew Goniwe (later murdered), trade unions and a host of anti-apartheid organisations.

Surprisingly, the law was not his first choice.

He wanted to be a doctor, but his poverty-stricken background



WATCHDOG ROLE: Lawyer Essa Moosa is poised to take his seat in the senate, where he hopes to play a watchdog role.

had him eyeing accountancy and the legal profession.

"After matric, I couldn't afford to go to university, so I went to work for Woolworths as a clerk."

But, he scoured newspapers looking for an entry into the legal profession.

After two years, he saw an advertisement for an articled clerk.

"I followed it up, but the lawyer, Ephraim Kluk, was surprised to see me. He said he didn't know how his clients would react when

a non-white acted for them. I said 'Obviously I don't qualify' and left."

"He said he had reconsidered the matter because his white articled clerks were not up to scratch. He was prepared to give me a chance."

At the time, Mr Moosa was supporting himself and his parents on a salary of £20 a month.

"We haggled about my salary. He told me articled clerks had to be grateful and generally were not well paid. I replied that I was happy to drop down to £15. But he offered me £2 a month."

During the haggling Mr Kluk told him "this is not a coolie market."

They agreed that Mr Moosa would earn £5 a month.

"I went home to my family to discuss the offer. They left it up to me. I joined Mr Kluk."

Mr Moosa mused that, at the time, few white attorneys were prepared to employ blacks as articled clerks.

"Mr Kluk, who has since died, was an exception. My stint with him was tough and demanding, but I stuck it out, opening the doors at his firm for people such as Dullah Omar."

Mr Omar is now University of the Western Cape community law department head.

"We had separate entrances for whites and non-whites. Even at the table for attorneys, although there were not separate signs, we knew one section was for us and the other for whites."

Magistrates also were extremely prejudiced.

"They gave us little leeway. Because of their attitudes, our people preferred to go to white attorneys. There was a perception that blacks would be convicted if they used non-white attorneys."

After completing his articles, Mr Moosa opened a practice at Castle Bridge, the Darling Street gateway to District Six, to become one of the first black lawyers in the area.

But, the Group Areas Act forced him to close his practice.

His political work began in the early 1960s when he began to represent members of Pogo, as the military wing of the Pan Africanist Congress was known then.

He opened a practice in Athlone in 1978 and immediately began to act for activists.

STEPHANE BOTHMA

JUDGE Richard Goldstone has dismissed as misplaced and highly contentious criticism by a Transvaal Supreme Court judge of his commission's methods.

Goldstone yesterday took issue with Judge J Smit's suggestions that the commission had wrongly allowed negative rumours about the SAP's involvement in the 1992 Boipatong massacre to be spread throughout the world

The massacre, which left 45 people dead and 22 injured, was the subject of a Goldstone commission inquiry in August 1992.

Giving judgment in the Transvaal Supreme Court last Wednesday in the trial of 28 men charged with the massacre, Smit said he could find no evidence of any police involvement in the attack. The two men

Goldstone dismisses judge's criticism

89504 514/94
who had testified in the trial and before the Goldstone commission were lying and unreliable witnesses, he said

"It is unfortunate that after the Goldstone commission's investigation, rumours were spread around the world that the police had been involved," Smit said

He suggested it was time for the commission's manner of investigation and its actions to be seriously reconsidered (252)

Goldstone said the suggestions that the commission was responsible for the broadcast of reports which led to suspicion and distrust of the SAP were incorrect, as were

□ To Page 2

Goldstone

81504 514/94
assertions that the SAP had not been given sufficient opportunity to defend itself

"Judge Smit is misinformed concerning the course of events and the proceedings during the Boipatong inquiry" He said the inquiry had been held in public and that all parties, including the SAP, had been represented by their lawyers. (252)

All witnesses were "vigorously and fully" cross-examined by counsel appearing for the SAP and witnesses were called to refute those allegations, Goldstone said

It also emerged during the inquiry that all radio messages relevant to the massacre received by the police had been erased in error. The erased tapes had been subjected to expert testing, but examinations were inconclusive, he said. This delayed

completion of the commission's report

"Before the commission was able to complete its report, the police investigation into the massacre was concluded

"The trial before Judge Smit then began and it was considered inappropriate to bring out a report prior to the conclusion of the criminal trial," he said Only after finalisation of the court proceedings could the commission submit its report

"In the light of the foregoing the statements of Judge Smit can only be regarded as misplaced," Goldstone said, adding that the commission's activities had always been transparent

He said Smit did not suggest what aspects of the commission's methods required consideration, or by whom

□ From Page 1

New judges for Cape court

Supreme Court Reporter

INCREASING crime and an increased criminal workload in the Cape Supreme Court will lead to nine criminal courts operating daily from April 18, the Judge-President, Mr Justice G Friedman, announced yesterday

Judge Friedman said a backlog in cases had built up because long-running cases last year — such as the Griessel forex trial and the Mississippi Spur murder trial — had held up the courts

Three of the Cape Provincial Division's judges needed replacing. They are Judge H C Nel, who is conducting the Masterbond inquiry, Judge G A Kuhn who will go on leave next term from April 18 to June 26, and Judge C T

Increasing crime rate leads to backlog

Howie, who has been appointed to the Appellate Division

Judge Friedman said Mr Kobie Coetsee, the Minister of Justice, had also authorised the appointment of an extra acting judge to

deal with the increased criminal workload

The number of judges dealing with criminal cases since the beginning of the year has now increased to nine, Judge Friedman said

Acting Judge J H Steyn will stay on for another term

Meanwhile Mr Peter Hodes, SC, Mr G D van Schalkwyk, SC, and Mr Johan van der Westhuizen, SC, have been appointed from the Cape Bar

In order to have more than nine criminal cases it would be essential to increase the size of the Bench, Judge Friedman said

● This may probably be the last month that Mr Coetsee appoints judges. After the new constitution is adopted judges will be appointed by the Judicial Service Commission (252)

Indemnity wrangle

Stephen Laufer

WM8-14/4P94

(252)

JUSTICE Minister Kobie Coetsee and Democratic Party representatives have delayed moves by the Transitional Executive Council to grant indemnification powers to Judge Richard Goldstone for "third force" members who agree to give information.

The indemnity issue suddenly became acute three weeks ago when Goldstone named three generals in his report on the third force. The judge is understood to want the powers so that he can encourage further security force members to break ranks.

But the indemnity measure has been caught in political wrangling. Coetsee is unhappy about the departure from criminal procedure which gives witnesses assurances in return for evidence in court.

His initial response to TEC demands was that indemnity would have to be passed by a parliamentary sitting, not planned before the election.

The TEC believes a meeting of parliament is unnecessary. The law currently contains no indemnity provisions, only granting the state president the right of pardon after conviction, and Goldstone is restricted to writing formal letters promising sources his best efforts to get them indemnity if they talk.

Police 'fled' during Shell House attack

GAVIN DU VENAGE

POLICE stationed at ANC headquarters in Shell House, Johannesburg, fled when it became clear their lives were in danger and there was nothing they could do to stop an Inkatha Freedom Party attack on the building, the Goldstone commission heard yesterday.

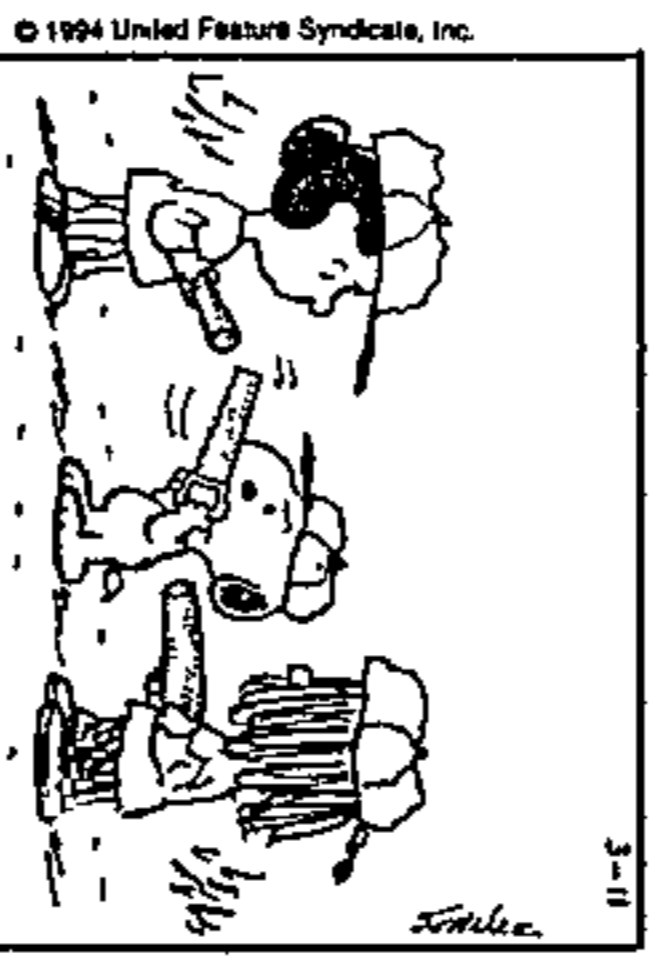
ANC representative advocate George Bizos said this at the first day of the commission's hearing into the shootings in Johannesburg last month during which more than 53 people were killed and hundreds

were injured. Morris Basshan, representing Kwazulu, said it would not be possible to make a submission as notification of the hearing had been received only last week. Chairman Judge Richard Goldstone rejected Basshan's submission, saying it was Inkatha that had called for an urgent hearing on the matter. Goldstone said a detailed explanation was expected from the Kwazulu government today as to why it could not present its case to the commission.

Bizos said the policeman and colleagues stationed around the building then "went away", leaving the ANC security guards to defend the building. Bizos rejected an earlier submission by police counsel Barry Roux that the guards should not have made their first line of defence in the street but in the building's foyer, which had security facilities.

PEANUTS

By Charles Schulz



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Political comment in this issue by J. Jones, news editor; D. Armour, headlines and sub-editing; by C. Pickard-Cambridge, all of 11 Diagonal Street, Johannesburg.

In his submission Roux said the ANC guards were ill-disciplined and untrained. They had acted impulsively and refused to obey police instructions to stop firing, Roux said. An application had been made for a gathering, not a march.

Meanwhile, the Institute for the Study of Public Violence, a commission official, has accused the TEC of holding up legislation that could have prevented last month's events from taking place.

No evidence had been found of snipers on surrounding buildings. It was possible police spotters po-

The Act regulates public gatherings and marches, building permission for any such events around agreements worked out between the three parties involved — police, march organisers and the relevant local authority.

It was promulgated in January but has to be passed by the TEC before it can come into effect.



CT 1414/244

Section 29 still on the books

252

By BARRY STREEK

THE controversial detention-without-trial provisions of the Internal Security Act, which the Transitional Executive Council voted to abolish five weeks ago, are still on the statute books

A spokesman for the State President's Office, Mr Richard Carter, confirmed yesterday that President F W de Klerk still had not signed the proclamation abolishing section 29 of the act

He added that the Ministry of Law and Order, which was responsible for drafting the proclamation, had not yet sent a draft proclamation to Mr De Klerk

A spokesman for the Ministry of Law and Order, Mr Craig Kotze, said he was unaware of the situation about the proclamation, but said the TEC had the power to communicate directly with the State President's Office

In effect, detention-without-

trial for interrogation purposes remains the law, even though the Multi-Party Negotiating Forum, Parliament and TEC have all voted for its abolition

It is significant that the police and the Minister of Law and Order, Mr Hernus Kriel, were the only people opposed to the scrapping of section 29 and it seems more than bureaucratic inertia is delaying its final abolition

Albinos to fight discrimination

Sowetan 14/4/94

By Joe Mdhlela

THE Albinism Society, concerned about discrimination against Albinos in South Africa, will hold a workshop at the Lionel Kent Centre, Daveyton, on Saturday at 9am

The assistant co-ordinator of the organisation, Mr Jerry Mabatamela, said as a minority group, albinos had to take it on themselves to fight against the discrimination they experienced in their day-to-day lives.

Mabatamela said the meeting in Daveyton was one of a series of workshops planned to deal with the issue of albinism

He said his organisation would seek

ways to involve pressure groups to bring the message home that albinos were humans deserving of respect

He said children were the main group affected by discrimination as they regularly interface with "hostile camps" at schools and other venues where children meet

"We feel people should see us as part of the society, and refrain from treating us as lepers," Mabatamela said

He complained about a lack of funding, which was detrimental to holding workshops that would help to deal with the issue

"We don't have the funding and have to rely on contributions from our members, who in the main are not even employed," he said

(252) (134)

CONFIDENTIAL documents leaked to the Mail & Guardian make it clear that the Transitional Executive Council favours detention without trial — despite its public commitment to abolishing it.

TEC stalls on detention law

It is almost certain that detention powers will remain on the statute book until at least the election.

Five weeks ago, the TEC resolved that section 29 of the Internal Security Act, providing for detention without trial, should be replaced by the Abolition of Restrictions on Free Political Activity Act, giving the state president a wide range of powers to "abolish matters that impede free political activity".

However, the *Mail & Guardian* was leaked documents this week showing that the issue of special powers for the police to replace those provided for under section 29 was discussed by the law and order sub-council in a closed meeting on March 28.

"In view of the deteriorating security situation and in the light of intelligence reports now made available," the subcouncil recommended alternatives to section 29 providing for detention for purposes of interrogation.

WJMS-2114/94

252

Despite agreeing to scrap detention without trial five weeks ago, the TEC still favours section 29, reports **Chris Louw**

ments of the new constitution. TEC backtracking on detention without trial is also suggested by its unwillingness to force De Klerk's hand on the issue.

The TEC proposed as long ago as March 8 that section 29 be scrapped and replaced by the Abolition of Restrictions on Free Political Activity Act. Five weeks later, De Klerk has yet to sign the new legislation.

And although the TEC this week sent a delegation to De Klerk to insist that prisoners be allowed to vote in

accordance with its recent decision, the detention issue was not raised.

A spokesman for the state president's office said this week De Klerk had not signed the new Act because he had not yet received the relevant documents from the Ministry of Law and Order.

However, TEC liaison officer Dries van Heerden insisted the TEC's decision that detention without trial be scrapped was conveyed to De Klerk at the first possible opportunity.

He quoted TEC executive secretary Mac Maharaj as saying that the TEC's position on the issue was "unaltered".

Much of the jousting between the TEC and De Klerk is for public consumption — it has become clear that on most issues, they are at one.

The prisoners' vote issue is a case in point. Playing to its constituency, the NP made a show of resisting the proposal — NP representative at the TEC Dawie de Villiers insisted that his party strongly opposed voting rights for prisoners.

"We are against allowing prisoners the vote, they have totally shown disrespect for the fundamental rights of other people, in some cases the most fundamental right of all — the right to life — and I cannot see how they can be allowed to vote," he said.

De Villiers added, however, that provision was made in the Electoral Act for certain categories of prisoners to vote.

One of the Independent Electoral Commission's concerns was it could not draw a distinction between those entitled to vote and those without that right.

"They argue that trying to implement that will create chaos and violence. The question is how practically one can deal with that in a prison situation. There are logistical and practical problems also involved, not only the the issue of principle."

The final decision, he said, would be taken by De Klerk, "and I cannot speak on behalf of the state president".

Probe of SAP's role in gun deal

■ 1 000 RIFLES The approval of R2,1 million sale to KwaZulu:

By Carl Peters

THE SOUTH AFRICAN POLICE's approval of the attempted R2,1 million sale of 1 000 LM4 rifles from power grant Eskom to the KwaZulu government will be partly investigated by the Goldstone Commission when it sits again on Wednesday

An Eskom official, Mr Gaf van Nickerk, said on Friday that a legal "export" permit to sell the surplus weapons which were part of an armoury of 5 475 weapons, had been granted by the SAP. He said the permit had been signed by a Major Le Roux on behalf of Police Commissioner General Johan van der Merwe.

When the Goldstone Commission met on Friday, police representatives did not turn up to give any evidence. Van Nickerk said the purchase of the weapons was arranged by a Johannesburg arms dealer, Ivan Garbs, and brokered by a company called Seyeh International.

He said a KwaZulu government cheque for the amount of R2,1 million was tendered to Seyeh International who paid over R1,07 million to Garbs. Garbs in turn paid R675 000 to Eskom.

Van Nickerk said the money was returned when the safe collapsed. Eskom director Dr George Lindeque had found men loading the rifles into KwaZulu police trucks on the company premises on the night of March 25.



General Van der Merwe.

Fomenting violence

Eskom chief executive Mr Allen Morgan said there was no evidence that Eskom was involved in illegal gun running or the fomenting of violence as Garbs, the dealer, told Eskom the weapons were destined for outside the country.

Morgan said the 1 000 LM4s were part of a stockpile it had been able to collect after the National Key Points Act was passed.

Eskom and trade unions operating in the company have agreed to further investigation by Independent Mediation Services of South Africa to examine arms sales and the possibility that there may be Eskom people trying to destabilise the democratic process in the country.

The National Union of Mineworkers has accused the company of training Inkatha people at one of its stations. These include the sale of 50 LM4 rifles to a gun shop, Shotgun Willie's Arms and Ammo, the sale of 18 similar rifles to Armscor and the sale of 10 Striker Shotguns, a pump-action shotgun and a pistol to a company called Gun and Sport.

Sowetan 18/4/94

Garbs in turn paid R675 000 to Eskom

252 Detentions without trial in Natal slammed

DURBAN — Human rights organisations and the Democratic Party have condemned the continued detention without trial of at least 92 people in Natal under emergency regulations during the past 18 days.

The earlier total of 42 increased with the detention of 46 men believed to be African National Congress members. They were caught in a combined SADF/SAP operation at the weekend while allegedly undergoing paramilitary training at Marranhill Primary School outside Durban. A further four deten-

tions were reported yesterday. Inkatha spokesman Mr Ed Tillet said the arrest of the ANC men belied claims by the ANC that it was the IFP which was mobilising for war in the province. ANC spokesman Mr Dumsani Makhaye denied any knowledge of any such

training or of the arrests. Neither the IFP nor the joint SADF/SAP Natal Security Committee could confirm rumours that 17 IFP members had been detained in Vryheid last week, but Mr Tillet claimed security forces had been

singling out Inkatha members for detention. An advocate and two other men have been appointed by the justice ministry to visit detainees, ensure their conditions are satisfactory and make recommendations about releases or detentions.

Police warned of 'attack plan'

March 'bid to kill Mandela'

Star 19/4/94

■ BY ABDUL MILAZI

The alleged attack on the ANC's national and regional offices during a "Zulu" march in Johannesburg on March 28 was an attempt to assassinate ANC president Nelson Mandela, the Goldstone Commission heard in Sandton yesterday.

Advocate George Bizos was leading evidence for the ANC into the march, which claimed the lives of at least 53 people.

Bizos said the ANC had known about the proposed attack a few days before the march and had relayed the information to senior members of the SAP. No action had been taken by the police, he added.

Bizos said. "Information was received that both Shell House (ANC head office) and Lancet Hall would come under attack.

"The rumour was that, as the planned assassina-

JUDGE expresses surprise when IFP team fails to present submissions

tion of Mandela in Ulundi had failed to materialise, the IFP would kill him at Shell House.

"The plan was to bring Johannesburg to its knees by killing and injuring as many people as possible. The belief was that the ANC and the Government would only respond to demands for a Zulu kingdom when people died in large numbers" (252)

SAP representative, advocate B Roux, admitted police had received telephone calls from ANC leaders, including Mandela, warning them of attacks on ANC offices and trouble at IFP hostels.

Roux accused the ANC guards of firing the first

shots at the marchers without provocation. He also accused the IFP of deliberately inciting violence by organising a political gathering in the city centre. He denied that the police had not heeded the ANC's warnings.

IFP representatives, led by advocate M Basslian, did not present submissions, saying they were instructed only on Thursday.

Mr Justice Richard Goldstone said he found it strange when it was the IFP that had requested an urgent inquiry into the shootings.

The judge demanded an explanation from the organisation's leadership by 9 am today.

He also instructed the representatives to ask the IFP leadership to explain why their supporters had ended up at the ANC offices instead of the Library Gardens.

The hearing continues.

ANC fired on marchers — SAP

Sowetan

19/4/94

AFRICAN National Congress security guards opened fire on Inkatha Freedom Party supporters as they marched past ANC headquarters at Shell House during a Zulu royalist march in Johannesburg on March 28, a preliminary Goldstone Commission hearing was told yesterday.

Eight IFP supporters were killed and about 20 injured (252)

Counsel for the South African Police, Mr B Roux, said police at the scene reported IFP members to be "relatively disciplined" at about 11 10am when an ANC security guard armed with a shotgun fired in their direction from a Shell House balcony.

About 12 ANC security guards, one of whom was armed with "brand new AK-47 rifle" and others with pistols and shotguns, moved from Shell House's

main entrance to the corner of Klein and King George streets.

Another policeman asked the 12 security guards to return to the main entrance, whereupon the guard pointed his 9mm pistol at the police sergeant's chest and ordered him out of the way. He also threatened to shoot the policeman, according to the police submission.

As the vanguard of the march approached to within 50m to 70m of the guards, proceeding along King George Street, the ANC guards opened fire.

Shots were also fired from a Shell House balcony, and marchers then returned fire. Roux said security forces deployed at Shell House at no stage saw gunmen among the marchers.

Police said there was no reason whatsoever for the ANC guards to shoot at the marchers — Sapa

1914/194

'Open dirty tricks report'

OWN CORRESPONDENT

Port Elizabeth — Without access to the Steyn Commission's report on "dirty tricks" it would not be possible for Major-General Bantu Holomisa to substantiate remarks made at political rallies, an electoral tribunal has been told

The tribunal follows allegations by the National Party that Holomisa had made inflammatory, defamatory and false statements that the NP was planning to falsify votes, put ink in "pap and vleis" to make it impossible to vote, and rig votes.

Silas Nkanunu, appearing for Holomisa and the ANC, said the general had reliable information

but he had to protect his source

If the Steyn Commission report was made available, the tribunal would be able to tell whether his statements were true or false

An application for the report to be brought before the tribunal was dismissed. (252)

In an affidavit, Holomisa denied that the statements were inflammatory or prejudicial and said they were in the public interest

NP counsel Ben Niehaus said Nkanunu was "going on a fishing expedition".

The hearing resumes tomorrow.

(P Candido, St George's Mall, Cape Town)

NEWS No evidence of SADF or SAP involvement in shooting, says ANC counsel

SOWETAN Wednesday April 20 1994

IFP blamed

for chaos of *Sowetan* 20/3/94 **'Zulu' march**

■ POLICE VIDEO Humphrey (252)

Ndlovu's statement referred to IEC:

THE INKATHA FREEDOM PARTY should take full responsibility for its actions and the death of the people who died during the "Zulu" march in Johannesburg on March 28

This was said by Advocate George Bizos to the Goldstone Commission yesterday. Leading evidence for the ANC, Bizos said there was no evidence that the SADF or the SAP were involved in the shootings at the Library Gardens, Shell House or Lancel Hall.

Bizos said it was incorrect that the march was organised by Zulus as it was IFP Transvaal chairman Humphrey Ndlovu who had applied for permission for the

gathering in his capacity as chairman of the IFP. IFP representative Advocate M Basslian, said the reason for his not being prepared on Monday was that they couldn't obtain evidence from witnesses as many people had gone home after the incident.

He said the use of the IFP letterhead in the application for the gathering was a mistake, and the IFP had not known what the repercussions would be.

Ndlovu was a cultural leader in his own right and he was entitled to call meetings of that nature, Basslian said. Ndlovu's inflammatory statement in police video footage, saying the election won't take place would be referred to the IEC — *Sowetan Correspondent*

Indemnity bid

Mandela moves to secure police loyalty

By ANTHONY JOHNSON
Political Correspondent

MR Nelson Mandela moved yesterday to secure the loyalty of South Africa's increasingly jittery security forces by holding out the carrot of an indemnity for past political crimes.

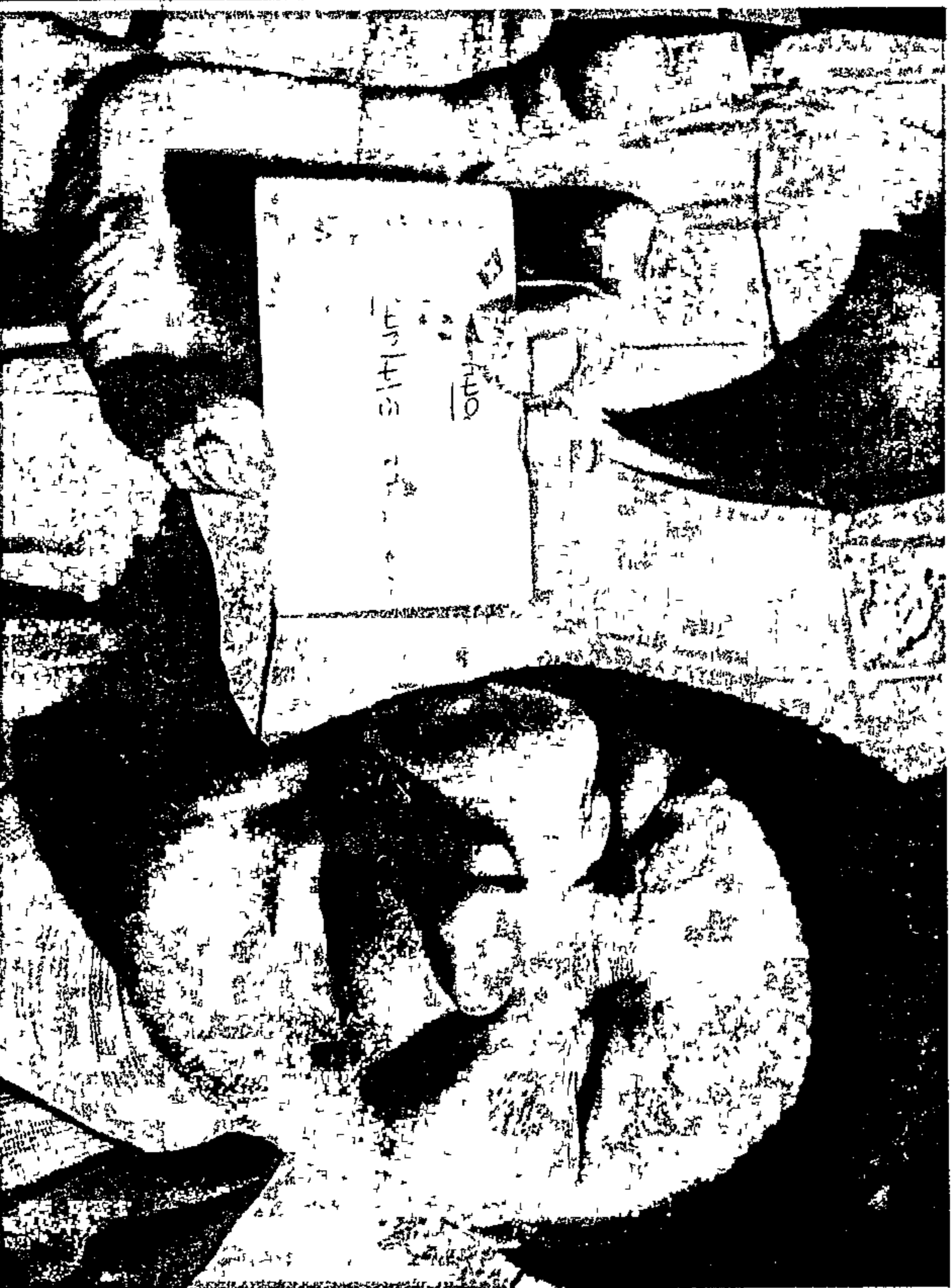
The ANC leader hinted at a far-reaching deal on indemnity — which could form part of a trade-off on a new franchise agreement for prisoners — after meeting President F. W. de Klerk at the Union Buildings.

Mr de Klerk hinted in a radio broadcast on Friday night that a decision regarding votes for prisoners, which would satisfy the IEC, would be made on Monday. The IEC is in favour of granting all prisoners the vote.

After yesterday's summit — which followed a meeting earlier this week between Mr De Klerk and ANC secretary-general Mr Cyril Ramaphosa — Mr Mandela said it was important that members of the security forces should be able to carry out their duties without fear of being prosecuted for "political crimes" after the election.

He added that security force members could not be expected to carry out their tasks properly if they suspected that they would face prosecution for past actions.

A senior ANC source said last night that the party had been receiving "a lot of information" that members of the police force see "becoming jittery about the future" at the



THE FACE OF A VOTER . Mr Gert Wilschutte, 53, a homeless man, was overjoyed at becoming a voter. Here he displays all he needs to make his mark in next week's election — a temporary voter's card

Picture: BERNIE GOOD

very time when their co-operation and loyalty were essential for a smooth transition.

Turning to the second item on yesterday's summit agenda — votes for prisoners — the source added "We don't want more riots and dead prisoners".

After yesterday's meeting with Mr De Klerk, Mr Mandela said on the prisoner franchise issue "We are more or less looking at the problem from the same angle."

This raised hopes that a compromise deal is in the offing. Up to now the ANC has been insisting that all prisoners be given the vote, while the government has argued that certain categories — such as rapists and murderers — should not be allowed to vote.

Sources close to the talks said compromises on the prisoner issue could lead to a trade-off designed to secure security force loyalty.

The government has come under increasing pressure in recent weeks from the police and the Defence Force to secure a sweeping indemnity for past political offences.

One government source said last night an indemnity deal could involve extending the deadline for those who committed political crimes in the past, but emphasised such a move would have to be approved by the cabinet.

The ANC's official policy "rules out Nuremberg-style trials in a new South Africa, but the ANC remains committed to a "truth commission" designed to secure maximum disclosure of excesses committed by agents of the state.

An ANC source said the ANC might be prepared to "refine" its position on indemnity "to encourage people to come forward with information"

De Beer slams rivals on human rights

TOS WENTZEL

Weekend Argus Political Staff

THE National Party and the African National Congress both played fast and loose with human rights when there was political advantage to be gained, Democratic Party leader Zac de Beer told the party's closing election rally in Cape Town city hall.

He told an enthusiastic crowd of about 1 000 that the DP had fought for human rights for many years.

The DP had never been accused of any part in violence or corruption.

It stood for sound, liberal democratic government and free en-

terprise economics

It upheld democratic values, politically expedient or not.

Economic policy had come to the fore in the election campaign.

The quality of life of all South Africans depended on the restoration of rapid, sustained economic growth.

Socialism had been proved to be disastrous and only a few of the world's remaining communists still believed in it. Many of them were in the ANC.

The National Party's economic policy was there for all to see. It had made South Africa poor, with 40 to 50 percent unemployment.

DP Western Cape leader Henrie Bester said the party's poli-

cies for the region were geared to make it the premier state in the country. They also underlined a deep and practical commitment to federalism.

Democrats were people who practised freedom and understood liberty.

This, Mr Bester said, was why thousands of South Africans were throwing their weight behind the DP in the last days of the election campaign.

The National Party was politically bankrupt and the ANC was talking of reconstruction and development while it was slipping in the blood of its own people.

(News by T Wentzel, 122 St George's Mall, Cape Town)

Indemnity out — ANC

Sowetan 25/4/94

By **Musa Zondi and Sapa**

THE ANC would consider indemnity for members of the security forces who committed politically-linked offences between October 1990 and December last year but would not pardon those responsible for current violence, ANC president Mr Nelson Mandela said yesterday

"I want to state very clearly that those people involved in killing members of the ANC in Ulundi, no matter what position they hold, will be dealt with according to the law," he told tens of thousands of supporters at a rally on a field outside Durban's King's Park Stadium "They must pay for those crimes and they are going to pay"

The ANC Northern Natal yesterday

said three of their members were killed in Ulundi at the weekend One of them was allegedly shot at the police station Seven of a group of 11 were still missing

Mandela criticised the security forces for not confining the KwaZulu Police to barracks or weeding out hit squads within that force, claiming this had been agreed in terms of the State of Emergency regulation (252)

Our telephone number:

Cabinet to discuss indemnity

By ANTHONY JOHNSON
Political Correspondent

252
25/4/94
THE cabinet meets this morning to grapple with the thorny questions of the prisoner franchise and indemnity for security force members for past political crimes

President F W de Klerk confirmed at the weekend that these issues would be on the agenda of today's meeting, but he

would not be drawn on a possible outcome.

However, ANC secretary-general Mr Cyril Ramaphosa was confident at the weekend that the Electoral Act would be amended after today's cabinet meeting to increase the categories of prisoners who would be allowed to vote

Mr Ramaphosa said the issue of indemnity for security force members for past political crimes was a "very complex and

sensitive matter" and that discussions with the government would continue

Mr Mandela said yesterday the ANC would consider indemnity for members of the security forces who committed politically-linked offences between October 1990 and December last year but would not pardon those responsible for current violence

This included those involved in killing ANC members in Ulundi, he told a King's Park rally in Durban

FW predicts amnesty after the election

252

Political Staff

pensation

CF 26/4/94

PRESIDENT F W de Kerk predicted yesterday that a general amnesty would be declared after the election

Mr De Klerk — who is understood to have discussed the matter with ANC president Mr Nelson Mandela yesterday — said the ANC's position on amnesty had changed.

It seemed amenable to a general amnesty for all people guilty of, or associated with, political crimes.

Mr De Klerk has been under pressure to resolve the issue by security force members who fear they might be made scapegoats under the new dis-

Speaking in Parliament, he said important breakthroughs had been achieved. The ANC realised there would not be a new police or defence force after the elections and broadly the same people would have to run the forces.

The ANC said last night its position was that, subject to full disclosure, it was fully committed to granting indemnity to all members of the security forces for acts of commission or omission that violated the rights of others, committed before the agreed October 8, 1990, cut-off date.

UNIT 15/10 10



President FW de Klerk talks to the media outside his Cape Town office en route to the Parliament buildings yesterday

Picture AP

De Klerk predicts general amnesty

By Day 26/4/94
TIM COHEN

CAPE TOWN — President FW de Klerk has predicted that a general amnesty will be declared in SA after the elections

De Klerk, who is understood to have discussed the matter with ANC president Nelson Mandela yesterday, said the ANC's position on amnesty had changed

The organisation seemed amenable to a general amnesty for all people guilty of, or associated with, political crimes

De Klerk has been under pressure from security force members to resolve the issue because they fear they might be made scapegoats

De Klerk told Parliament important breakthroughs had been achieved on the issue after negotiations with the ANC. The ANC realised there would not be a new

police or defence force after the elections, and broadly the same people would have to run the force

He did not specify what the terms of the amnesty might be or the cut-off date, saying only that existing legislation set the deadline at October 8 1990 (252)

The new constitution stated that this date could be shifted forward until not later than December 1993, but this could be revised in the course of negotiations on further constitutional amendments

He said government was committed to October 8, but changes could take place

Report by T Cohen, TML 11 Diagonal St, Jhb

focus on

Sowetan 28/4/94

The new constitution is like a bridge from the old to the new. Constitutional experts, professors Marinus Wiechers and John Dugard discuss some of its features with reporter **Mzimasi**

Ngudle:

252



UNLIKE PREVIOUS constitutions, the new constitution which came into force yesterday is of a higher order and not at the same level as other laws

"Grondwet", the Afrikaans translation for constitution, tersely describes the essence of the Constitution of the Republic of South Africa no 210 of 1993

It sets ground rules which no future government can circumvent. At least, not with ease. It cannot be amended in the same way as other laws

It is a constitution out of which apartheid could not have been possible. And without which democracy can only be a travesty

This is the view of Professor Marinus Wiechers of the Department of Constitutional Law at the University of South Africa

Scorned by fathers of apartheid for decades, the constitution now finds the embrace of apartheid practitioners

When defeat was inevitable, the National Party government decided to accede to what it steadfastly rejected in the heyday of apartheid

The fact is that the country has never had a constitution properly so called. Wiechers said the 1910, 1961 and 1983 constitutions were just like ordinary laws, which could be easily amended through political brinkmanship

The new constitution breaks with the past. "It creates a new order of things," Wiechers says

Wiechers says the efficacy of the constitution will be buttressed by the culture of human rights which developed through years of oppression

Wiechers notes that strong institutions of civil society that will balk at the infractions of constitutional principles have developed over the years. "We are locked in a world culture of human rights which no government can ignore," Wiechers says

In addition to its superior status to ordinary laws, Wiechers says the constitution enjoys the broadest base for legitimacy in that it includes all citizens

He notes that a bill of rights is the pith of the constitution. While a political party which gets a two-thirds majority may write the final constitution, fundamental principles entrenched in a bill of rights cannot be changed

Also the separation of central and regional powers and recognition of cultural rights have been entrenched

This means these fundamental rights will have to go to the final constitution which can come into operation within two years

"These principles cannot be changed in the final constitution," Wiechers says

Lastly Wiechers says the constitutional court will act as an effective safeguard to protect the constitution

Wiechers says principles entrenching fundamental rights have built a constitutional bridge from the old to a new order

"They are also a bridge from the interim to a final constitution," he says



Professor John Dugard

Another constitutional lawyer Professor John Dugard concurs. "While the new constitution might differ drastically from the interim constitution, fundamental rights entrenched in a bill of rights will have to be enshrined in the final constitution"

He says civil and political rights like freedom of speech, assembly, the right not to be tortured, fair trial and the right to privacy will find their way to the final constitution

Dugard adds that the constitution is the supreme law of the land and that the Constitutional Court will declare invalid acts of parliament which are in conflict with the constitution

Wiechers says that, while provinces will have their constitution, the central parliament has powers to pass laws overriding provincial laws which are at variance with the main constitution

The provinces could even incorporate bills of rights in their constitutions. However, Dugard says a provincial bill of rights will be subject to the main constitution

The constitution keeps the present property relations intact. However, it provides for the restitution of property rights to people who were dispossessed of their land through forced removals and expropriation

Fundamental rights

Some of the fundamental rights entrenched in the new constitution

- Right to citizenship, franchise
- Equality before law
- No person shall be unfairly discriminated against on the grounds of race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language
- Right to life and human dignity
- Right not to be detained without trial
- No person shall be subject to torture of any kind
- No person shall be subject to servitude or forced labour
- Right to privacy which includes the right not to be subject to searches of his person, home or property, seizure of private possessions and the violation of private communications.
- Right to religion, belief or opinion
- Right to freedom of expression
- Freedom of assembly, demonstration and petition, association, movement and choice
- Right to basic education and equal access to institutions and language of your choice.

The constitution provides for a special court which will adjudicate claims on compensation

Dugard says a heated debate on a controversial clause on right to property left the matter not satisfactorily resolved

While the clause provided that everyone shall have a right to own property, it further provided that expropriation shall be permissible for public purpose and on agreed compensation

"Failing such agreement, the compensation shall be determined by a court of law," he says

Wiechers concludes that the constitution, backed by the support of the people, will reshape the country into an absolute democracy

Detention law now in history's dustbin

By BARRY STREEK
Political Staff

THE controversial detention without trial clause in the Internal Security Act finally disappeared yesterday with the implementation of the interim constitution

CT 28/4/94
This was acknowledged yesterday by the Commissioner of Police, General Johan van der Merwe, while discussing the arrest of 31 right-wingers for bomb attacks in the Transvaal

He stressed that the men had been arrested, not detained under section 29 of the Internal Security Act, which provides for detention without trial

(252) (251)
"In any event, there is no section 29 after today," General Van der Merwe said

The law conflicts with the Charter of Fundamental Rights in the constitution

Court interpreters strike

Weekend Argus Reporter

INTERPRETERS at several magistrate's courts in the Western Cape went on strike yesterday and held a sit-in protest at Wynberg Magistrate's Court.

ARG 30/4/94
Interpreters at the Wynberg, Bellville, Goodwood and Cape Town courts are demanding a pay rise, claiming they are paid less than court orderlies

The Cape Town courts shared the services of an interpreter from Malmesbury yesterday and no cases were postponed because of a lack of interpreters, employed for their fluency in at least Xhosa, English and Afrikaans, said a prosecutor.

A Cape Town magistrate said there could be problems if the strike continued on Monday.

Although not many cases were heard in court this week because of the possibility of disruption during the election, proceedings would be normal by next week and interpreters would be sorely needed.

ELECTION CLASH . . . Angry party agents with some of the unused ballots discovered in a parked car at Nasrec yesterday. In the centre is the deputy district electoral officer Mr Mohamed Hussain. Fists flew as enraged IFP and ANC agents clashed over allegations of IEC collusion. An inquiry is to be held

ANC and government in new amnesty agreement

By EDYTH BULBRING
Political Correspondent

ANC leader Nelson Mandela and Mr F W de Klerk have agreed to grant an amnesty for political crimes committed before December 6 last year.

The agreement between the leaders was concluded with the security forces in mind and is aimed at ensuring stability during the transition. It will be announced within six weeks.

The interim constitution makes provision for an amnesty for political crimes committed between October 8, 1990, and December 6 last year. But the new amnesty agreement will have the effect of indemnifying members of the security forces for crimes committed in the 1980s.

The agreement between Mr de Klerk and Mr Mandela extends the 1990 indemnity arrangement to apply to members of the security forces for crimes committed before this date. It also includes further legislation to deal with crimes committed between October 1990 and December 6 last year.

Government and ANC sources said amnesty would be granted to people who applied for it, and would not be a blanket amnesty. Their names would be published in the Government Gazette. However, the crimes for which they were seeking indemnity would not be publicly linked to the applicants.

Details of the categories of political offences have not been completed, but there is agreement between Mr Mandela and Mr de Klerk that crimes such as the assassination of SACP secretary-general Chris Ham will not qualify.

The sources said the ANC had over the past two months come to a keener realisation that to ensure the stability of a government of national unity it would need the co-operation of the security forces and the public service

Buthelezi says elections offer hope for the future

By PETER DE IONNO
INKATHA Freedom Party leader Chief Mangosuthu Buthelezi said the elections offered hope for reconciliation in South Africa.

However, he warned that if there was proof of widespread election malpractice, he would challenge the results.

Chief Buthelezi, speaking in Umtata yesterday, said peace at the polls had been "a triumph for democracy" and had raised his hopes for harmony in the new South Africa.

"We have shown that any problem can be solved by sitting and working together," he said.

While he had severe reservations about fairness in the conducting of the elections, he had no complaints about the freedom to vote.

His followers had never been unwilling to participate in the election — only the issue of the recognition of King Goodwill Zwelithini and the king's claims for the Zulu nation had stood in their way.

Chief Buthelezi said a new government in South Africa had an obligation to make black poverty and joblessness their first priority.

"The chief, struggling to fight off the effects of severe flu, said Friday's additional day of voting in KwaZulu had helped ease pressures and disappointment after the confusion that had marred the first two days of voting.

He added the IFP was

the business community, the security forces and the civil service.

With this in mind, two ministers in the present NP cabinet who are assured of jobs are Mr Koba Coetsee, who is likely to retain the defence portfolio, and

● Ec included industry ● Soc education, for adm This

STUDY WHILE YOU SKI

ALPINE SCHOOL OF HOTEL MANAGEMENT, SWITZERLAND
GUARANTEED PAID WORK EXPERIENCE
ENTRY DATES: JULY AND JANUARY
2-YEAR SWISS/AMERICAN DIPLOMA

U.S.A. to give 55,000 "Green"

Immigrant visas are offered lottery. Live, work in US

Advocates criticise Constitutional Court

SUSAN RUSSELL

THE professional body representing SA's advocates has reiterated its opposition to the Constitutional Court which came into being with the implementation of the interim constitution last Tuesday. 31/5/94

The General Council of the Bar of SA voiced its criticisms and recommendations in the April edition of its official mouthpiece, Consultus

It said the council had opposed the institution of a separate Constitutional Court from the outset and repeated a call for the Supreme Court's present Appellate Division, appropriately reformed, to be empowered to adjudicate constitutional issues (252)

The new court, whose job it is to enforce and protect the new constitution and Bill of Rights, has the power to judge the validity of an Act of Parliament, and rule on constitutional disputes between central and regional government as well as issues such as affirmative action, abortion and land rights.

One of the council's objections to the Constitutional Court was that it would, in certain important instances, sit as both the first and last forum to adjudicate a dispute.

"Such a situation will be entirely undesirable," the council said "All the courts are staffed by ordinary people and all people can make mistakes."

"Except perhaps in relatively minor disputes, there should invariably be a higher tribunal where an appeal can be lodged."

"The Constitutional Court has been glorified and blown up to such a degree by politicians and the media that the general public might have gained the impression that it would be run by super-people endowed with special wisdom and would therefore not be capable of making mistakes"

"In actual fact, the Constitutional Court will be composed of ordinary people. Indeed, some of the 10 judges to be appointed need not have previous judicial experience"

"To leave the destiny of litigants or accused persons in the relevant instances exclusively in the hands of this group of people is unfair if not ill-considered"

Meanwhile, Sapa reports from Cape Town that prominent legal academic Prof Albie Sachs, an ANC stalwart for more than three decades, is being widely tipped to head the Constitutional Court.

Interpreters' strike delays court cases

DENNIS CAVERNELIS

THE second day of a national strike by court interpreters demanding wage parity caused hundreds of matters to be postponed at magistrate's courts throughout the Peninsula

More than 80 cases in the Mitchells Plain court were postponed

Some 950 members of the black SA Court Interpretation Officers and Allied Workers Union are demanding that their non-pensionable allowance of R168 a year — granted to them by the Department of Justice in 1991 — be raised to that of white administrative officers, who receive R2 466

Union president Mr Melusi Bengelula and director-general of the Department of Justice Mr Jasper Noeth met in the city yesterday to discuss the matter. By late afternoon, however, Department of Justice liaison officer Ms Amanda Haasbroek would only confirm that the meeting had taken

place. The union also declined to comment.

Of the 84 cases postponed in the Mitchells Plain Court — as a result of the absence of 12 interpreters — 26 were trials and the rest first appearances and cases which were previously postponed and had to be postponed again

Senior prosecutor Mr E E Smit said "In cases where the accused speak English and Afrikaans we could proceed, but in cases where Xhosa speakers were involved, it would not have been right to use policemen as interpreters. If things are not sorted out in a day or two we will have to do something — maybe hire casual interpreters"

Cape Town Chief Magistrate Mr A J Jooste said the Cape Town Regional and Magistrate's Courts encountered few problems, but some cases had to be postponed to later this week. Court officials said "it was not a crisis"

Hanging ruling reserved

BLOEMFONTEIN — Judgment on whether the Appeal Court or the Constitutional Court should consider appeals in cases where the death penalty was imposed, has been reserved by the Appeal Court in two cases that came before it yesterday

The appeals were those of Robert Hayes, of Pretoria, and David Masiza, of Sebokeng. Hayes was sentenced to death by

the Transvaal Supreme Court on April 29, 1992 for the rape of a six-year-old girl and Masiza received a double death sentence from the Transvaal court for the murder and rape of a nine-month-old girl

Mr J G van den Berg, for Hayes, submitted to the Chief Justice Mr Justice Corbett, Mr Justice Nestadt and Mr Justice

Howie, that — since the new constitution had come into effect, which incorporates a bill of rights — everyone has the right to life.

For the state, Mr P G Huygens, submitted that there is a clause in the new constitution that legal proceedings begun under the old constitution must continue under the same system. — Sapa

252

3/5/94

Interpreters fighting off substitutes in strike

252
122

APR 4/5/94

□ 'Casuals are sympathetic'

Staff Reporter

COURT interpreters on strike in Cape Town courts have had their hands full trying to prevent substitutes from filling their places while they are considering an offer from the Department of Justice

Yesterday, four Xhosa-speaking casual interpreters started work in the Wynberg Regional and Magistrate's Courts, but refused to continue after representatives of the South African Court Interpretation Officers and Allied Workers' Union told them they were striking, said union president Malsu Benguqula

About 300 court interpreters in the Western and Eastern Cape have been on strike since Friday.

They are demanding the same monthly allowance as clerical staff — R205,50 They say their present monthly allowance of only R14 is the result of racial discrimination and want increased payments backdated to July 1991

The Department of Justice agreed to increase the allowances, but were not prepared to backdate the pay to the extent demanded

Mr Benguqula said negotiations were continuing

He confirmed that a union delegation met Wynberg chief magistrate Jaco van Heerden yesterday to complain about casual interpreters being hired without being told of the strike

Mr Benguqula said Mr Van Heerden had been asked to ensure that the casual interpreters were paid in full, even although they had stopped work, because they were unaware of the strike

Mr Van Reenen said he was trying to manage his office to the best of his ability, but refused to comment further.

Interpreters were disappointed when Wynberg Regional Control prosecutor Gilbert José acted as interpreter yesterday

"He is neutralising our actions Is he not sensitive to what we are fighting for?" asked Mr Benguqula

Mr José refused to comment, but Wynberg senior public prosecutor Esther Steyn said Mr José interpreted only during postponements and not in a trial or judgement

"He is not insensitive He tried to be of service to the public and accused We have a duty to do our work We still have cases on the roll which have to be postponed," said Mrs Steyn

Malmesbury court interpreter and Guguletu resident Nathan Shiba said his superiors had told him that few interpreters were working in Cape Town and asked him to help out on Friday When he was told of the strike, he stopped work

Pickard wants case to go on



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'Third force' generals seem to be off the hook

MARK ASHURST

THE resumption of normal duties by police generals Basie Smit and Johan Le Roux constituted an "implicit acquittal" in the wake of allegations by the Goldstone commission of inquiry into "third force" activities, sources said yesterday.

Police spokesman Col Reg Crewe confirmed that the two generals and Gen Krappies Engelbrecht had "voluntarily withdrawn" their services in March on the advice of police commissioner Gen Johan van der Merwe, Law and Order Minister Hernus Kriel and Transvaal Attorney-General Jan D'Oliveira.

The men returned to work yesterday after a team of international investigators led by D'Oliveira failed to find "substantive evidence" to support the Goldstone commission allegations.

However, Sapa reports that Van der Merwe said Smit would retire at the end of the month, Engelbrecht retired because of ill health on May 1. (252) (25)

Law and Order spokesman Craig Kotze confirmed that Kriel had known of Van der Merwe's intention to reinstate the men. ANC president Nelson Mandela had also been informed. "In spite of speculation by the commission and the media, no evidence had been found against the generals and the principles of justice have been upheld," he said.

ANC spokesman Neil Coleman called on De Klerk and Kriel for an explanation

"De Klerk's call to suspend the generals was based on substantial prima facie evidence from the Goldstone commission. We do not understand what has happened to reverse the situation. B/Nay

"Restructuring the security services to make top officials more accountable will be a priority for the new government," Coleman said. The government of national unity would have to look at the record and performance of officials in the security services to enable it to take action to make the police more representative.

Government spokesman Dave Steward said President FW de Klerk's insistence that the generals be suspended had prevailed, although the president had no authority to suspend police officers or send them on leave. Kotze said De Klerk had admitted making a mistake. 445194

The responsibility for disciplinary action was exclusively in the hands of Van der Merwe and Kriel. Van der Merwe had honoured an agreement made with the attorney-general that the generals implicated in the report would be placed on leave for two weeks. Crewe said Van der Merwe had not doubted the innocence of the men at any stage and declared he would step down if adequate grounds for suspension were found.

New court 'threat' to Bill of Rights

LONDON — South Africa's appeal court was likely to be sidelined by the new Constitutional Court which would have the power to override the Bill of Rights, an article in the Times yesterday argued.

While theoretically the two separate courts would have equal status, the Supreme Court could sidestep the Appeal Court and send cases on appeal to the Constitutional Court, providing

they had constitutional implications. "But in a country in the throes of testing out a new Bill of Rights, very few transactions and laws will be clear of constitutional overtones," the article said.

The article quoted Rhodes University law professor Andrew Grogan as saying the architects of the Constitutional Court had created a structure that might end up crushing the Bill of

Rights it was designed to support. This was because the Bill of Rights contained a limitation clause which the Constitutional Court judges would be free to apply in any case that came before them.

For example, the court would be able to endorse affirmative action even though it contravened the right to no discrimination on the grounds of race.

Prof Grogan said this in-built limitation on the Bill of Rights was bound to make it a toothless beast. The Constitutional Court would be free to pass or veto whatever acts it pleased, irrespective of the Bill of Rights.

"If the constitutional-bench is politically sympathetic to the party in power, cynics would say that there is nothing to prevent it acting as a mere rubber stamp for that party."

of 4/5/94 R52

Stand-in talkers feared action

252
CF 4/5/94

Staff Reporter

ATTEMPTS by the Mitchells Plain Magistrates' Court to obtain temporary interpreters to stand in during the national interpreters strike failed yesterday because the temporary workers said they feared intimidation.

Acting Chief Magistrate Mr J C van Rensburg said yesterday most court cases had had to be postponed. "Most of our cases are from Guguletu, Nyanga and Khayelitsha and we need all 11 interpreters. We did arrange to get casual interpreters in, but they decided not to work because they feared intimidation," Mr Van Rensburg said.

This is the third day of the strike called by the South African Court Interpretation Officers and Allied Workers Union, who are demanding that their non-pensionable allowance of R168 a year be raised to equal that of white administrative officers, who receive R2 466.

Cape Town and Wynberg Magistrates' Courts were less affected as they had fewer cases which needed interpreters.

The union's national secretary Mr Dumile Siko said yesterday they had played no part in the intimidation of casual workers.

"All the striking interpreters are here in Wynberg Magistrate's Court so someone else must have done the intimidating," Mr Siko said.

He said the union had met the director-general of the Department of Justice, Mr Jasper Noeth, on Monday.

"The ball is in their court. If they meet our demands, we will call off the strike tomorrow," Mr Siko said.

Police deaths blamed on rhetoric

STEPHANE BOTHMA

THE irresponsible rhetoric and demonising of the SAP by some political leaders played a major role in attacks on and killing of policemen, the Goldstone commission reported yesterday.

Judge Richard Goldstone's investigation into the origins of the increased number of attacks on policemen since July 1991, was requested by President FW de Klerk.

The commission found that although no official ANC or Umkhonto we Sizwe policy to kill policemen existed, many individual members and supporters were responsible for the murder of policemen.

During 1993, 176 policemen were killed, many when off duty. Attacks on policemen had increased 106% compared with 1992. In 1989, 24 SAP members were killed (252).

It was strongly recommended that no police union or staff association be allowed to have political affiliations and that no official of such organisations have any public role in any political organisation.

The commission said the killing of policemen was inextricably linked to violence in SA.

The commission further said that:

- Policemen were attacked for political and criminal considerations,
- Self-defence units and criminals who became part of the units were involved,
- Apla members were responsible for some killings but not to the extent claimed by Apla, and
- The success rate of investigations of crimes committed against SAP members was unsatisfactory.

The report said it was of the utmost importance that a new image of the police force be created "It is difficult to forget and forgive but if that is what is required to achieve lasting results, all parties should strive to attain that goal."

Goldstone further recommended that urgent attention be given to self-defence units. There was no place for unstructured units with no accountability and the SAP and peace structures should take steps jointly to organise proper units, where such need existed.

It was also recommended that the SAP review the manner in which the police victims of violence could be assisted, and immediate steps be taken to encourage the safe return of policemen who had been driven out of townships.

Amnesty opposed for 'apartheid criminals'

SELLO MOTLHABAKWE

APARTHEID criminals should not be included in the proposed amnesty to be granted to prisoners by the new government, the Prisoners' Organisation for Human Rights said yesterday, amid reports of rising tension over the issue in some jails. *B. New*

Organisation spokesman Marcus Cox said a committee comprising the SA Council of Churches, Lawyers for Human Rights and other democratic bodies should be involved in the screening of prisoners due to be granted amnesty. This procedure would deter prison authorities from releasing any inmate imprisoned for "apartheid crimes", he said. *515194*

Cox and fellow campaigner Golden Miles Bhudu released a report alleging abuses against prisoners by warders at Witbank and Johannesburg prisons.

The report claimed warders had assaulted prisoners yesterday, following a demand for amnesty. The warders, it alleged, also confiscated television sets and irons at both jails. *(252)*

Correctional Services spokesman Lt Rudi Potgieter said inmates detained at an open section in Witbank prison had refused to respond to the morning roll-call yesterday. They had thrown boiling water at warders. The officers had moved in to restore order. Those injured were treated on the spot, he said.

About 200 prisoners in Johannesburg Prison had refused their lunch, Potgieter said.

'SDUs' role in police attacks'

Star 5/5/94

■ BY CHARMEELA
BHAGOWAT
— CRIME REPORTER

A Goldstone Commission probe into attacks on policemen has found that ANC-initiated self-defence units (SDUs) — especially those hijacked by criminal elements — played an important role in violence perpetrated against policemen

The report was released by Mr Justice Goldstone in Johannesburg yesterday. The investigation was prompt-

ed by a drastic increase of police killings in the past five years

In 1989 there were 24 policemen killed, 68 in 1990, 50 in 1991, 96 in 1992 and 176 in 1993

The report said that in 1993 the number of policemen killed was, in proportion, 25 times higher than the number of people killed in political violence (252)

The commission made several recommendations after probing the circumstances of police murders, the people and or-

ganisations responsible for them, and the reasons for the unprecedented high number of recent police killings

Stressing that violence against policemen could not be solved without ending violence in the community as well, and that the reasons for the attacks were related to the role the police played in enforcing apartheid laws, the commission recommended "It is of the utmost importance that a new image of the force be created

"This will never be achieved by keeping alive the injustices and perceptions of the past."

Commenting on SDUs, the commission suggested that police and national peace structures work jointly to transform them into proper self-protection units as envisaged in the National Peace Accord

The commission also found that members of the ANC's Umkhonto we Sizwe and of Apla were responsible for attacks on policemen.

Attacks on policemen could result in special punitive sanctions

Sowetan 5/5/94

By Isaac Moledi

THERE was a definite connection between political violence and attacks on police, the Goldstone Commission said in a report yesterday

Releasing its final report on attacks on members of the South African Police, the commission said there was evidence that more attacks took place in areas where greater political conflict occurred "It appeared that after events

that evoked particular political emotions, like the Boipatong massacre and the Hanu assassination, violence on police increased," the report said

The commission found that attacks on police emanated from the "historical role police played in the enforcement of apartheid legislation" (251)

The SAP gave evidence that 56 percent of the police officers killed during 1991-1992 were murdered while off duty, while 44 percent were murdered

(252)

on duty

The commission recommended that politicians stop casting suspicions on the conduct of the police, that the provisions of the peace accord be implemented fully and that the role, structure and regulation of self defence units should be investigated and formalised

It also recommended that a study be undertaken to consider the imposition of special punitive sanctions for offences against members of the SAP.

Information bill ready

Political Staff

(252)

6/5/94

A FREEDOM of Information Bill giving individual citizens the right of access to government information has been drafted by the Independent Media Commission, a member of the commission, Ms Zubeida Jaffer, disclosed yesterday

The bill places the onus on the government to provide valid grounds for refusing to disclose information to individuals, Ms Jaffer said during a panel discussion on Peace Radio

The proposed measure will be similar to the Freedom of Information Act in the United States, which has opened up previously secret government files to the public

Ms Jaffer said the public's right to information should be entrenched in law. However, the IMC, which is to be dissolved today, had not drawn up any proposals on the ownership of the media or measures to stimulate the diversification of newspapers and the electronic media

'Struggles' men for top court

DAVID FRIER
Weekend Argus Political Staff

■ South Africa's powerful constitutional court is likely to be headed by one of three men with strong pro-liberation leanings

251
ARC 7/5/94

All three frontrunners for one of the most powerful positions in the new South Africa have a strong record of support for political liberation

The president of the constitutional court to be appointed soon will head an 11-member body which will in some ways be more powerful than the government itself

The constitutional court will have the power to pass judgment on whether government actions are constitutional or not. It will have the right to order the state to refrain from unconstitutional actions.

The court will have the vital power of interpreting the new bill of fundamental rights, in-

cluding the key issue of deciding whether the prohibition of racial discrimination outweighs the right to affirmative action

This court will decide whether reserving jobs and educational opportunities for blacks amounts to unacceptable race discrimination or permissible affirmative action

One of the first executive acts Nelson Mandela and his new cabinet are likely to take after his inauguration as president is to appoint the members of the constitutional court

The three frontrunners are believed to be

who lost an arm in a car bomb assassination attempt in Mozambique Cape Town-based Professor Sachs withdrew from active politics recently, apparently to position himself for a role in the constitutional court

Mr Justice Ismail Mahomed of the Transvaal who has been an outspoken enemy of apartheid for decades Judge Mahomed gained a national reputation as chairman of the panel that helped select the new SABC board. He tore applicants with Broederbond connections to shreds. He was also co-chairman of Codesa

Arthur Chaskalson SC, a Johannesburg advocate who has long been one of the ANC's

favourite lawyers. He played a major role in the multiparty negotiations

Contenders for the other 10 positions on the constitutional court are believed to include

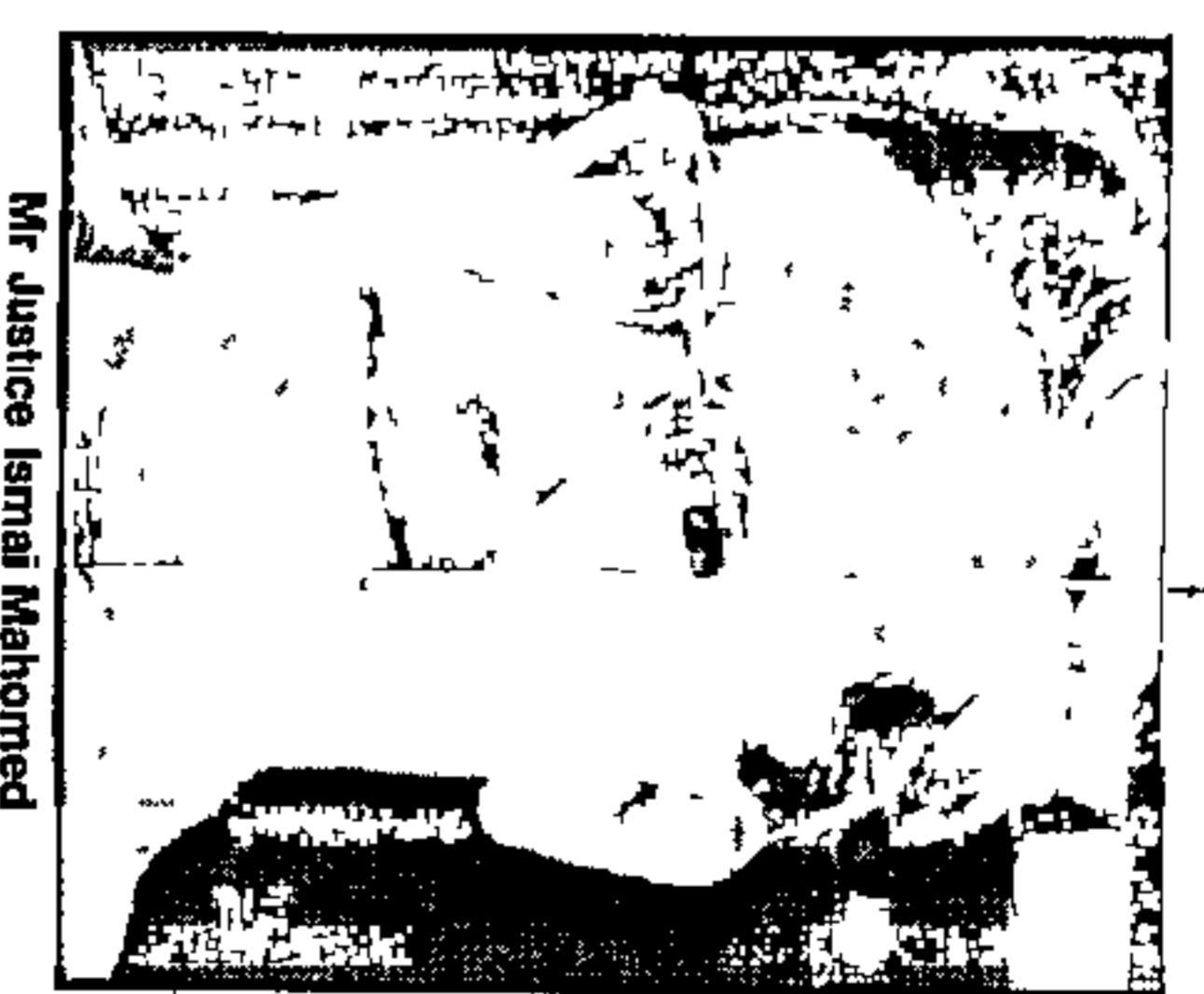
Mr Justice Laurie Ackermann who returned to the Bench of the Cape Supreme Court in 1992 after a spell as professor in the department of human rights at Stellenbosch University

Mr Justice John Dicks of the Natal Supreme Court who has a long history of opposition to apartheid laws and state suppression. He has also expressed strong views on a bill of rights such as "What a bill of rights cannot afford to do

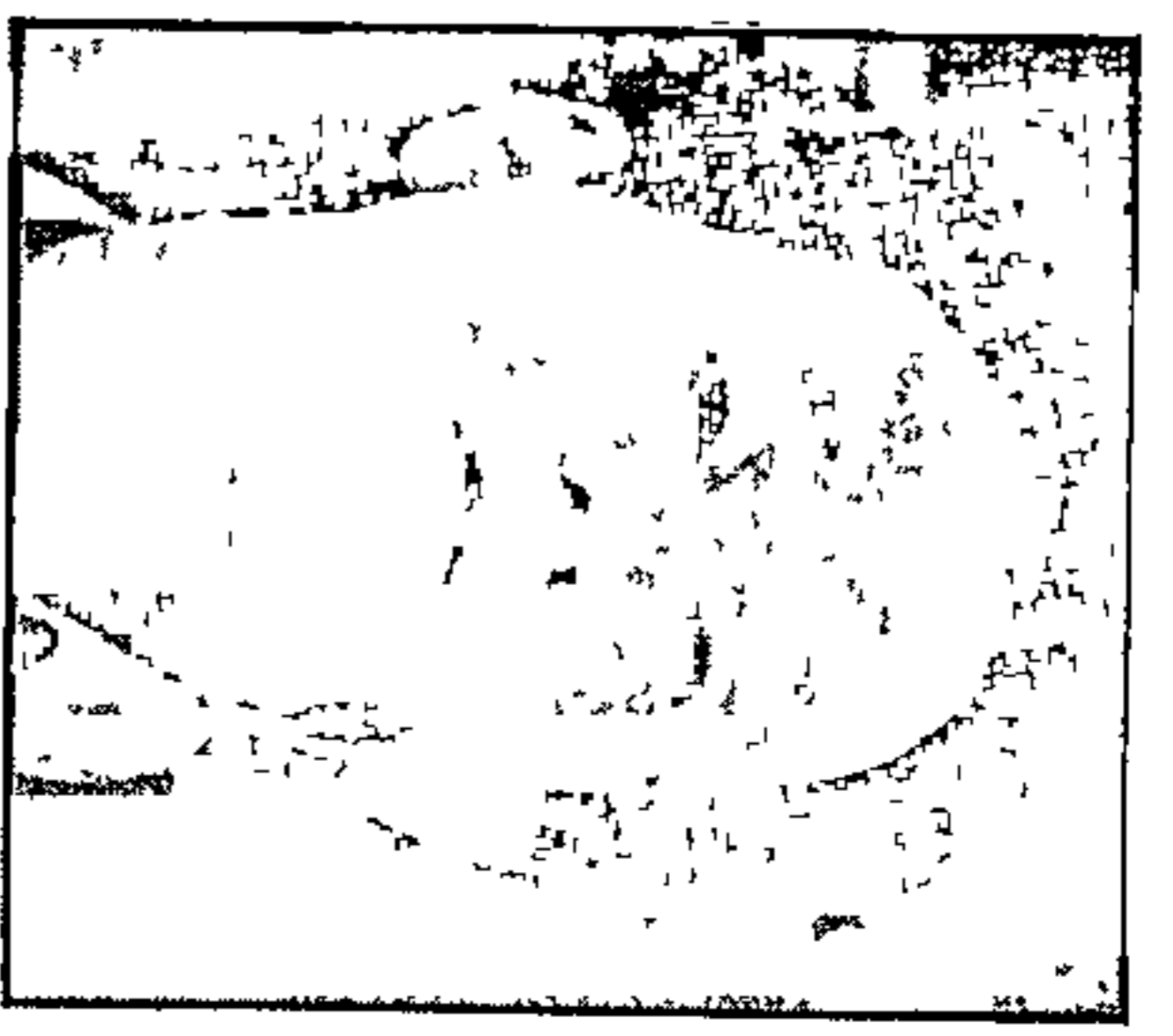
here is to protect private property with such zeal that it entrenches privilege"

Mr Justice Pierre Olivier, chairman of the SA Law Commission who did pioneering work in researching a bill of rights

Other contenders for membership of the elite court are said to include Durban advocate Pius Langa, Professor Yvonne Mokgoro, a constitutional expert with the Human Sciences Research Council, and Professor Francois Venter of Potchefstroom University who was a government technical expert at the multiparty negotiations



Mr Justice Ismail Mahomed



Albie Sachs

No reconciliation without restitution

THE birth of the Union of South Africa in 1910 was a political settlement which essentially defined South Africa as a nation for whites only

At about the same time the seeds of another more inclusive concept of the South African nation was born. This was an African nationalism which came to understand the South African nation in non-racial terms, a nation inclusive of all the inhabitants within the geographically defined borders of South Africa.

On January 8 1912, the South African Native National Congress — later renamed the African National Congress — was born.

The specific purpose for which it was brought into being was to unite the various African ethnic groups and organisations into a single political force to combat the formation of the Union of South Africa, which was seen by the leadership of the SANNC as a betrayal by the British government of the time.

Petitions to the Crown failed and this settlement was soon to have ramifications which impacted negatively on virtually all aspects of the lives of Africans. The most serious of all were the implications for land ownership.

In 1913 the land dispossession of Africans was legally entrenched by the passing of the Natives Land Act. This Act and its devastating consequences prompted Sol Plaatje, General Secretary of the SANNC to write "Awaking on Friday morning, June 20 1913, the South African native found himself, not actually a slave, but a pariah in the land of his birth."

With the coming to power of the Nationalist Party, on the strength of the ideology of apartheid, a narrow Afrikaner ethnic notion of the nation completely dominated the political landscape.

This ideology further rationalised the partitioning of South Africa, into the dominant (in geographic extent, political and economic power) Republic of South Africa owned and controlled by whites, and much smaller ethnic parcels for Africans, which were neither geographically contiguous, nor economically viable.

They were in fact no more than labour reserves and rural slums. Under the guise of "re-settlement" during the apartheid era, more than three million people were brutally uprooted from their meagre homes and dumped in these rural slums.

What will the present political transformation mean for the dispossessed people of South Africa? A vote for landless and jobless people will be meaningless to them without some tangible and concrete improvement in their quality of life.

A new constitution cannot simply wipe the slate clean of past wrongs. Starting from where we are we would simply entrench privilege on the one hand and deprivation on the other.

Land, access to the land, and past dispossession from the land is one of the key issues facing a new South Africa.

(252) The nation is on the threshold of a new dispensation. But reconciliation will continue to elude us unless there is some form of restitution for past wrongs.

**SIDNEY
LUCKETT**

Of course, the present National Party government accepts that South Africa is no longer only a 'white man's country'. The recent Land Reform Act deracialises land ownership, so that anyone may now acquire property rights in any part of South Africa.

However, it does not depart from the assumption that existing property rights are non-negotiable. Thus while admitting that there may have been wrongful dispossession in the past, the original dispossession of the land is entrenched as "legal fact" and thereby for all practical purposes it is condoned. It is an attempt to wipe the slate clean.

Communities which have been dispossessed repeatedly demand that there be some form of restitution for the dispossessed.

But can the land simply be transferred? Albie Sachs, an ANC legal and constitutional expert, condemns the original dispossession but says that the land cannot simply be transferred. "What would be transferred would not be the land but resentment, and the only issue would be who should bear the anger: the original possessors, currently dispossessed, or the current possessors, about to be dispossessed?"

The cornerstones of the call for restitution are justice and human rights. A legal framework based on the present South African notion of property rights and which recognises existing property rights would merely entrench the white (and male) privileges with respect to the land.

A true government of national unity will need to develop both a legal framework and a policy based on shared values with respect to the land, which places basic human rights, such as the right to security and family life, at the heart of the concept of property.

Present South African property rights do the opposite. They deny these basic human rights: farmers who no longer need the services of labourers do not only dismiss those labourers but also evict them and their families from the houses they live in.

Even more than a just and humane legal framework and a policy is required, systems and institutions to implement a programme of restitution will have to be put into place.

■ The Rev Sidney Lockett is a lecturer in the School of Theology in Maritzburg. This article is published with acknowledgement to Focus, a University of Natal publication.

Omar hopes SA pride can be restored

CT 7/5/94 (252)

By CHRIS BATEMAN

RESTORING the pride of all South Africans in their justice system and building a human rights culture were top priorities, proposed Minister of Justice Mr Dullah Omar said last night

Mr Omar said he would be relying on consultation at every level in facing an "awesome task" in "the most important portfolio I can think of"

"I'm fairly apprehensive because the task is so daunting. But I hope I'll be able to make justice an issue that transcends party politics — and I'll jealously guard the independence of our judiciary," he promised

He felt another major task would be to persuade all in the legal profession to make the courts more representative of race and gender

However this would be a process "and we'll work out the best way of achieving that over a period of time — I believe we should maintain high standards of justice and procedure with merit playing an important part"

Mr Omar said he would rely heavily on the experience of his predecessor, Mr Kobie Coetsee

"I'll just have to learn, learn and

learn about everything that's happening in the department," he said

Proposed Minister of Trade and Industry Mr Trevor Manuel was told yesterday to pack his bags for a G7 meeting in Poland today

Of his position, Mr Manuel said speculation had "numbed my senses"

"I really don't know how I feel — you kind of learn to take life as it comes. I'm very honest when I say this is a tribute to the department that I've headed in the ANC since 1991," he said

In spite of the short notice he wanted to "define a framework for co-operation" at the G7 meeting

"We want to make certain points ahead of the G7 presidential summit in Naples in July"

He saw his domestic priority as creating opportunities for ownership and control in small and medium enterprises

He would take full advantage of the current positive climate to "campaign for great investment flows into areas that will create jobs"

Two other Capetonian cabinet-designates, Professor Kader Asmal (Minister of Provincial Affairs) and Mr Zola Skweyiya, (Minister of Constitutional Affairs and Public Service), could not be reached for comment

Constitutional Court 'urgent'

Staff Reporter

NEWLY inaugurated Minister of Justice Mr Dullah Omar said yesterday he regarded the setting up of the Judicial Services Commission (JSC) and the Constitutional Court (CC) as "urgent" and efforts were being made for their speedy implementation

In a statement Mr Omar said

(252) U 9/5/94
that to facilitate the setting up of the JSC, a draft bill would be presented to Parliament as soon as possible

"Every effort will be made to see that the JSC and CC are created as soon as possible," Mr Omar said

In terms of the constitution the JSC would comprise the Chief Justice of the Supreme

Court, the President of the Constitutional Court, a Judge President, the Minister of Justice or his nominee, two practising advocates, two practising attorneys, a professor of law, four senators and four people designated by the President in consultation with the cabinet

Regarding the CC, Mr Omar

said the president would be appointed by the President in consultation with the cabinet after consultation with the Chief Justice, four judges appointed by the President in consultation with the cabinet and the Chief Justice and six judges appointed by the President from a panel submitted by the JSC

New head of Bar Council optimistic

(252)

Aug 9/5/94

JOSEPH ARANES
Staff Reporter

NEW TIMES call for people with vision

When the Cape Bar Council looked for a new leader to take them into the new South Africa, they found one in Senior Counsel André Blignault.

He was elected as chairman on April 26, the first day of the elections.

Mr Blignault said he saw his role as a challenging one because of the changes in the country.

"Our country has a new constitution and coupled to it is a bill of human rights.

"This means the laws of this country now can be tested for the first time."

"In past years, we saw an increase in the amount of labour-related litigation and I have no doubt this will increase.

"Economically, things will start to pick up and, with the inflow of foreign investments, there will be an increase in commercial litigation to iron out these matters.

"So, I am very hopeful and optimistic about the future of the country and the legal profession in particular."

To criticism that the Bar was an elitist society representing a few white advocates, he said the present 14-member council reflected the composition of the Bar.

"Historically, the criticism might have been fair because of the nature of our structure and the fact that members of the Bar tended to represent the bigger commercial and state-funded institutions, which were reluctant to employ blacks.

"This is a vicious business, but, with the changes taking place, this situation is changing and more blacks are joining the Bar."

"Last year, we had a black member serving on the council and our present intake shows that nearly a quarter of the applicants are black."

"Our record reflects our good public rights and non-discriminatory attitude to all our members and the people at large."

"This is something I trust will continue."

"It is important for people to respect the legal system and this means that those who are representing them legally must be competent and qualified."

"The colour of our members, therefore, is irrelevant."

●The Cape Bar is a voluntary society of the region's advocates and has more than 250 members.

The society's main objective is to protect and promote the interests of its members and to ensure they abide by the ethical rules of the council.

Customary law fears allayed

Status of women in Natal intact

SOWETAN 10/5/94

By Sizakele Kooma

FEARS that a six-month battle to have customary law dropped from the Bill of Rights might have been rendered futile in KwaZulu/Natal are unfounded

The African National Congress's Mavivi Manzini, who is also a member of the Transitional Executive Council's subcommittee on the status of women, made it clear that her organisation and the National Party had not made any concessions to King Zwelthini at the expense of women in the region

Two weeks ago Parliament enacted legislation that saw the Inkatha Freedom Party's participation in the election. Among the IFP's conditions for their return was that powers of traditional leaders be recognised. This raised fears that women's rights might be compromised

"I was at the TEC meeting which approved the amendments. The clause that has to do with customary law was not changed. Women in KwaZulu/Natal are covered in the same way as women in the other eight regions," Manzini said reassuringly.

On November 16 last year, women delegates at the multiparty negotiations finally made customary law challengeable in a South African court of law

This victory signalled an end to the suffering of African and Muslim women married under customary law who previously would not get any recourse from the law because their marriages were considered illegitimate.

(252)

Customary law denies women control of property, among others. Under customary law, any property belonging to the family is controlled by the male head of the household

On his death, this control may only be assumed by his immediate male relative. The wife has a right to be maintained by the heir if she agrees to continue residing in the family homestead

Maintenance for children of customary law marriages is a serious problem area

The civil law system cannot intervene on their behalf as customary marriages are potentially polygamous and not recognised under civil law.

(Some aspects of customary law extracted from *Sash* magazine)

No clue on amnesty

By Glenn McKenzie

PRISONS officials are "anxiously waiting" for President Nelson Mandela to announce a new policy regarding amnesty for prisoners, a Correctional Services spokesman said yesterday

In his inaugural speech Mandela said he would urgently address the issue of amnesty for various categories of prisoners

Department of Correctional Services spokesman Captain Koos Gerber said it would take about a week to process the paperwork after the Government had

made an announcement

He speculated the Government may give "X number of months" amnesty to certain categories

As a result, some prisoners would have to be released very soon after the order was given (252)

Meanwhile, another spokesman, Brigadier Chris Olckers, said prisons around the country were quiet yesterday as inmates waited for an announcement regarding early release

"They know something is coming but at the moment they are being very patient about it," said Olckers

Interpreters appeal to director-general

Staff Reporter

THE South African Court Interpretation Officers and Allied Workers Union has appealed to the director-general of the Department of Justice, Mr Jasper Noeth, to find a solution to the grievances of striking interpreters, a union spokesman said yesterday.

Interpreters from the Peninsula and the Eastern Cape have been on strike for the past two weeks over pay discrepancies.

CT 13/5/94

Omar ends interpreters' strike

Weekend Argus Reporter

STRIKING court interpreters in the Western and Eastern Cape provinces and newly-appointed minister of justice Dullah Omar have come to an agreement after a "cordial" meeting yesterday

The meeting stemmed from a deadlock which arose over demands by interpreters belonging to the South African Court Interpretation Officers and Allied Workers Union for an increase in non-pensionable allowances.

The strike resulted in the postponement of many cases. Mr Omar said in a statement that he had met with officials of the union.

"I pointed out to the officials that the new government had just taken office. It therefore needed time to go into the grievances of the interpreters.

"The Department of Justice has accepted that the interpreters have genuine grievances.

"These will be addressed by the department in consultation with the Commission for Administration as soon as possible." *ARG 14/5/94*

He said officials had "expressed understanding of the situation" and "undertook to immediately place the request to return to work to its membership".

(252)

Strike by interpreters suspended

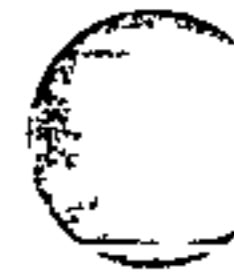
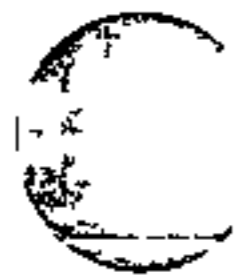
By WILLEM STEENKAMP
COURT interpreters
countrywide suspended
their two-week strike
yesterday after their
union representatives
met Minister of Justice
Mr Dullah Omar

Some 950 strikers be-
longing to the SA Court
Interpretation Officers
and Allied Workers'
Union have been on
strike to demand that
their R168 annual non-
pensionable allowance
be raised to match the
R2 466 allowance admin-
istrative clerks receive

The union, which
claimed the discrepancy
resulted from race dis-
crimination, also de-
manded backpay from
July 1991

CT 1145/94
Mr Omar said the talks
were "cordial" and the
department "accepted
the interpreters have
grievances" which
would be addressed

Union spokesman Mr
Temba Mose said the
meeting with Mr Omar
"went well"



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Hanging dilemma ^{Situated} for ANC

By CHIARA CARTER

THE death sentence imposed in the Rand Supreme Court this week on six right-wingers has posed a dilemma for the ANC.

The six were sentenced for the murder of four black commuters at an illegal roadblock near Randfontein last year. 15/5/94

But while the ANC's official policy is in favour of abolition of the death penalty, the organisation's Western Transvaal region this week applauded the severity of the sentences. (252)

Similar sentiments were expressed by some prominent ANC officials last year after the death sentence had been imposed on Chris Hani's murderers

ANC spokesman Carl Niehaus said this week that the ANC was still opposed to the death sentence.

He said the Western Transvaal region of the ANC was merely "expressing its revulsion" at the crimes committed by the six. There was no question of the ANC supporting the death penalty in "special cases".

Whether this means the ANC will push for legislation to abolish the death penalty is uncertain.

The newly appointed Minister of Justice, Mr Dullah Omar, said he was unable to comment until he had settled into his new job.

The director of Lawyers for Human Rights, Brian Currin, said they hoped the ANC would pass legislation to abolish the death penalty.

However, Professor Dennis Davis, director of the Society for the Abolition of the Death Penalty, said he doubted whether it would be dealt with in Parliament.

He said hanging was a "political hot potato" and would probably be passed to the yet-to-be-established Constitutional Court.

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Bid to amend Bill of Rights

AMANDA VERMEULEN

THE Freedom of Expression Institute has launched a campaign to amend the Bill of Rights because it is concerned about limits on freedom of speech and the right to information, says deputy chairman Raymond Louw.

The FXI was formed in January after a merger between the Campaign for Open Media and the Anti-Censorship Group.

The campaign, to be launched next month, would push for a parliamentary Act to entrench greater freedoms in these areas.

Co-ordinator Jeanette Minnie said FXI was unsatisfied with a Bill which allowed for a right to information only if other rights were threatened. Rights of access and non-access should be defined, especially where national and state security, confidential financial information and personal health details were concerned.

Minnie said the campaign would aim to promote access to information and freedom of expression to first degree rights. It would also call for the recognition of group and individual rights.

SA 'must modernise its industrial plant capacity'

CAPE TOWN — SA businessmen should speed up their investment in modernising SA's aging industrial plant capacity if it wished to be competitive in world markets, Industrial Development Corporation chairman Christo Wiese said last night.

At an SA Institute of International Affairs function, Wiese said government should also reduce trade barriers and tariffs — a move to which it was already committed under GATT — reduce or even abolish exchange control mechanisms and remove the red tape associated with dealing with other countries.

He said there was agreement in business circles that the new government should be seen to quell violence and crime, and that it should create an international image of economic control and competence.

Stellenbosch University African Politics Prof Willie Breytenbach said the re-emergence of SA into the international community, which was being divided into trading blocs, raised trade bargaining prospects, such as possible joint bargaining by African commodity producers on

EDWARD WEST

prices. SA could not afford to be antagonistic towards the US, the world's dominant economic power.

As the strongest southern African country, SA would also have to adopt a benevolent attitude towards its neighbours, Breytenbach said. SA should also not be seen to be using its production strength to de-industrialise other African countries. SA businesses should not only exploit, but contribute to the development of other African markets.

Institute director John Barrat said that with the admittance to international organisations, institutions and functions, SA should not overreach itself in relation to its commitments, with intervention in Rwanda a possible case in point.

US Vice-President Al Gore's request before the inauguration of Nelson Mandela as President, that SA intervene in Rwanda was strange, especially considering the fact that it was proving difficult for the US administration to get congress approval for US foreign intervention.

year

UNIVERSITY OF SALDURU L

Returned exiles benefit as Mandela signs proclamation

Indemnity: 1 more

Star 18/5/94

252

NOT covered is anyone who has committed a criminal act, whether or not politically motivated

BY NORMAN CHANDLER
PRETORIA BUREAU

President Mandela extended indemnity to prosecution yesterday to hundreds of returned exiles when he signed the first proclamation of his presidency since being sworn in a week ago.

Justice Minister Dullah Omar made the request to extend the terms of the Indemnity Act for the fourth time since it was promulgated in 1990. The extension runs from today until May 17 next year.

The proclamation, signed in Umtata, was published last night in a Government Gazette Extraordinary.

It gives a further period of temporary immunity only to those people who returned to South Africa and whose names appeared in three government notices published in May 1993 and February and March, last year. It does not cover anyone who has committed a criminal act, whether politically motivated or not, since that time.

The Indemnity Act — amended in 1992 as the Further Indemnity Act to allow for the formation of a National Council on Indemnity — was decided upon in terms of the Record of Understanding reached between the former government and ANC.

The amended legislation was originally defeated in Parliament and was also opposed by the ANC because of various secrecy clauses which formed part of the Act, but it was signed into law by President de Klerk when the then-President's Council accepted it.

The two Acts covered many members of the ANC as well as the Pan-Africanist Congress, the Azanian People's Liberation Army (Apla) and other similar organisations.

The Act was also used by the former government to grant indemnity to a wide range of people, most of whom were classified as "political prisoners" as well as others who were found guilty of common law crimes rather than political acts.

They included the mass murderer Barend Strydom and Durban's Magoo's Bar bomber Robert McBride.

Indemnity for ^{Biday} new ministers

CABINET members including First Deputy President Thabo Mbeki are among those who have been granted another year of temporary immunity from prosecution for politically motivated offences. 1915/194

This was authorised in a proclamation signed by President Nelson Mandela in Umtata on Monday

Among those granted the temporary immunity are Posts, Telecommunications and Broadcasting Minister Pallo Jordan, Education Minister Sibusiso Bhengu, Defence Minister Joe Modise, Housing Minister Joe Slovo, Public Service and Administration Minister Zola Skweyiya, Deputy Home Affairs Minister Penuele Maduna, and deputy Welfare Minister Sankie Nkondo

The temporary immunities were introduced by the former government to allow exiles who admitted to politically motivated crimes committed before October 8 1990 to return to SA to take part in constitutional negotiations.

In many cases the "crimes" amounted to little more than membership of the then-proscribed ANC and other organisations, and leaving the country illegally (252)

The previous indemnity period authorised by former president FW de Klerk expired on Tuesday — Sapa

Sights on more Third Force men

Star 19/5/94

■ BY HELEN GRANGE

More arrests are in the pipeline as the international team investigating the Goldstone Commission's allegations of police complicity in Third Force activities continues to probe criminal conduct in the police force. (252)

The investigation — which has already led to the arrest of four men, including former Vlakplaas camp commander Lieutenant-Colonel Eugene de Kock — has expanded beyond the Goldstone Commission's allegations of gun-smuggling to the IFP, and now includes a variety of new allegations.

The team is understood to be receiving information from a "deep throat" in the police force about a secret police slush fund — controlled by a division called Stratkom — to finance disinformation about the ANC.

Several senior policemen said to be in charge of the operation, which was allegedly still operating late last year, are now under scrutiny. Sources close to the investigation team, led by Transvaal Attorney-General Jan D'Oliveira, declined to furnish any details yesterday. One source said, however, that more arrests were likely soon.

The first men arrested were De Kock, Sergeant Jannie Hannekom and Ben van Zyl, believed to have been a Brixton Murder and Robbery detective and latterly a police informer.

Last week, a man called James Ntsibande was also arrested. All the men are charged with murder and are in police custody.

De Kock and Hannekom are scheduled to appear in the Pretoria Regional Court again today, and Van Zyl and Ntsibande will appear tomorrow.

Indemnity for Mbeki extended

1915194
A number of Cabinet members, including First Deputy President Thabo Mbeki, are among those granted another year of temporary immunity from prosecution for politically motivated offences.

The proclamation authorising their indemnity was signed by President Mandela in Umtata on Monday.

Among those who were granted temporary immunity are Posts, Telecommunications and Broadcasting Minister Pallo Jordan, Education Minister Sibusiso Bhengu, Defence Minister Joe Modise, Housing Minister Joe Slovo, Public Service and Administration Minister Zola Skweyiya, Deputy Home Affairs Minister Penuell Maduna and Deputy Welfare Minister Sankie Nkondo.

The temporary immunities were introduced by the former government to allow exiles who admitted to politically motivated crimes which had been committed before October 8 1990 to return to South Africa to take part in the constitutional negotiations. (252)

In many instances the "crimes" amounted to little more than membership of the then-banned ANC and leaving South Africa illegally.

The previous indemnity period, authorised by F W de Klerk, expired on Tuesday — Sapa.

Political immunity extended

JOHANNESBURG — Cabinet members, including Deputy President Thabo Mbeki, are among those granted another year of temporary immunity from prosecution for politically-motivated offences (252)

The proclamation authorising their indemnity was signed by President

Nelson Mandela in Umtata on Monday.

Among those granted the temporary immunity are Posts, Telecommunications and Broadcasting Minister Dr Pallo Jordan, Education Minister Mr Sibusiso Bhengu, Defence Minister Mr Joe Modise, Housing Minister Mr Joe Slovo, Public

Service and Administration Minister Dr Zola Skweyiya and Deputy Home Affairs Minister Mr Penuell Maduna

An earlier amnesty, applicable to those who admitted to politically-motivated crimes committed before October 8, 1990, expired on Tuesday

Sapa CT19/S/94

Mandela extends Indemnity Act

Sowetan 19/5/94

By Themba Molefe and
Lulama Luti

■ POLITICAL CRIMES Extension

does not cover criminal acts:

PRESIDENT NELSON MANDELA'S extension of the Indemnity Act by a year secures further immunity from prosecution for Cabinet members including first Deputy President Thabo Mbeki

Mandela signed the proclamation in Umtata on Tuesday night which gives a further period of temporary immunity from prosecution for politically motivated "crimes"

The proclamation was published in a *Government Gazette Extraordinary* the same night after the Minister of Justice requested the President to extend the terms, from yesterday until May 17 1995

Returned exiles who re-entered South Africa and whose names appeared in three government notices published in

May 1993 and February and March 1994 will be covered in the proclamation

The previous indemnity period, authorised by former State President FW de Klerk, expired on Tuesday

Its objective was to allow exiles who admitted to "political crimes" committed before October 8 1990 to return to

South Africa to engage in constitutional negotiations

First promulgated in 1990, the Act became the Further Indemnity Act after it was amended in 1992

However, the new dispensation will not cover those who have committed criminal acts, whether political or not, since May 1993

From victim of vicious apartheid laws to top justice post

S Times 22/5/94
DULLAH OMAR

By CARMEL RICKARD

LIKE many of his colleagues on the new cabinet, Justice Minister Dullah Omar has first-hand experience of apartheid's harsh security laws. In fact, one of the most important cases on detention and government powers to infringe individual rights, bears his name

In 1985, while he was still a member of the Cape Bar, Mr Omar was detained under the State of Emergency and brought an unsuccessful application for his release

The resulting Appeal Court judgment in Omar vs the State President was one of the low points in Emergency case law. However, when the Cape Supreme Court first heard the case, Cape Judge President Gerald Friedman dissented from his two fellow judges. He filed a decision which human rights lawyers say will go down as one of the great judgments in a particularly dark period for the rule of law in this country (252)

Following the Appellate Division decision against him, Mr Omar spent two months in emergency detention. Earlier that year he had already been detained for two months under security laws, with only 10 days' freedom before being detained a second time

The experience has left him a fierce opponent of detention. He says it has a devastating effect on detainees and their families and dehumanises those who "do the detaining"

Mr Omar wants to use his portfolio to transform the justice system, making it respectable and legitimate in the eyes of society, so that it can help create and maintain a human rights culture.

"The first priority in achieving this aim is to implement the new constitution. The Judicial Service Commission and the Constitutional Court must be set up, along with the Human Rights Commission, the Commission on Gender Equality and the public protector's office. All are urgent and we must help get them going."

"Fortunately, the department began working on these matters even before I got here, so we will be able later this month to present to the first sitting of Parliament any legislation needed to establish these bodies"

Giving his personal view on capital punishment, he says that as a member of the ANC and the National Association of Democratic Lawyers, he has long been opposed to the death penalty

On the problem of how to make the judiciary better reflect society's composition, he hints that he might consider borrowing from the Continental system, in which potential judges are selected early in their career and given specialist training

Mr Omar was admitted as an attorney in 1960 and as an advocate in 1982 and he



DULLAH OMAR ... detained under SA's draconian security laws

has previously gone on record supporting fusion of the two professions. In his new capacity, however, he wants any decision on this issue to be taken with community needs in mind

"The yardstick is improved access to justice and reduced expense for people who need to go to court"

He wants lawyers countrywide to become involved in deciding the issue. But not only lawyers. "It is important that the public also participates in this debate"

On the relationship between government and the Constitutional Court, he says that since World War 2 similar courts in Europe have played a "politico-constitutional" role

"But that does not mean they must descend into the political arena, and political parties must ensure that they respect the position of the Constitutional Court as standing above party politics"

All judicial officers, from magistrates to judges of the highest court, must take a new oath of office. Some legal activists have long supported the idea, saying it might help keep out judges or magistrates unable to identify with the values of a democratic society

The oath, however, is still a controversial issue with argument in legal circles both for and against. But Mr Omar favours the idea. He says taking the oath implies "the values underpinning the new constitution are part of your approach"

"This is exciting. It means that irrespective of the past, everybody is given an opportunity to become part of the new human rights culture and help promote it in their work"

His political life began at Trafalgar High School in Cape Town, when he joined a boycott of the Republic Festival in 1952. Eight years later, he had hardly opened the doors of his new legal practice when the whole PAC executive walked in and asked whether he would act for them. The next day they were all arrested

That started a legal career acting for political trialists, and for prisoners on Robben Island which he visited several times a week to see clients

For many years he was a staunch member of the Unity Movement, only quitting at the time the United Democratic Front was formed. His decision to join the Congress movement was partly influenced by President Nelson Mandela whose attorney he had become by that stage

Jessie in PWV's law and order hot-seat

By Sharon Chetty

SHE'S far from the dour, authoritarian face of the law and order ministry South Africans have grown to dread

In fact Ms Jessie Duarte, the new Minister of Safety and Security in the PWV region, is the kind of person to inspire confidence in even the most battle-hardened rightwinger.

She's heading a new portfolio in the most violent area of the country outside Kwazulu-Natal, and being in the hot seat is a challenge this mother of two is fast rising to

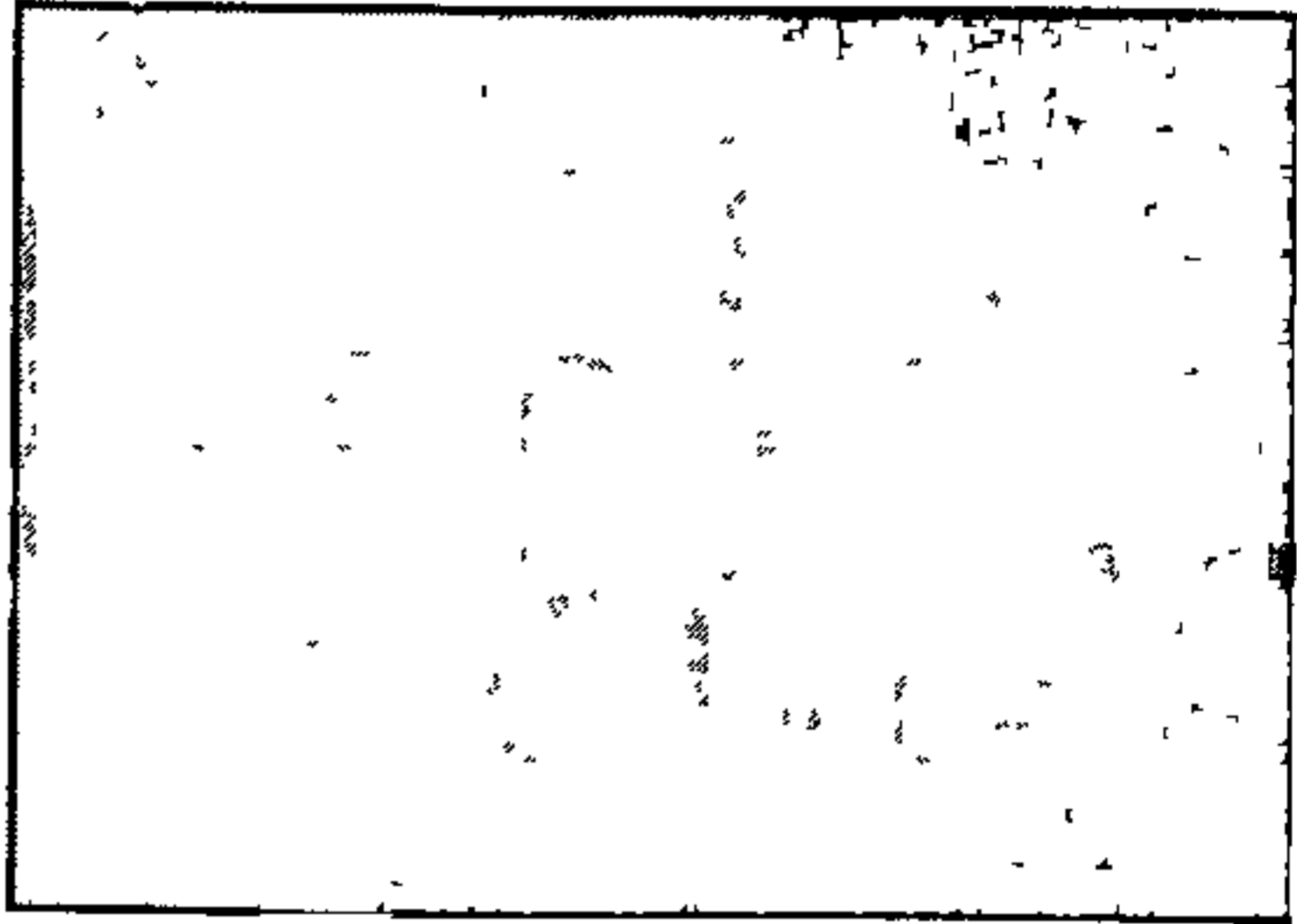
"The more time I spend away from here, the better I am able to do my job," she says, gesturing at the oak-paneled desk in her new Simmonds Street office

In only one week in the job, she fielded more than 200 queries from people concerned about the high crime rate, and often her response to them has been "what would you like to see us do?"

Community participation is vital if the police are going to succeed, she maintains

A-priority...to...set up community policing units in townships, especially on the East Rand.

Already meetings have been held with community representatives and the first units are expected within weeks



Jessie Duarte ... the pragmatic minister in charge of safety and security in the PWV.

PIC: JOE MOLEFFE

"I want to see the people reclaim the streets in townships, villages, suburbs and the city centre. Women must be allowed to go about their business without fear of rape," she says

Community policing liaison forums will ensure that there is constant contact between the police and the people and the idea is to work jointly with the paramilitary self-defence units which

SDUs have an important role to play. They are in touch with their communities and have the experience of a special kind of policing

are already well established in many townships

"SDUs have an important role to play. They are in touch with their communities and have the experience of a special kind of policing

"Those skills have to be channelled into working together with the police," said Duarte

"There are obviously some elements who are undisciplined and out of control — but the same can be said for the SAP," she added

"We want to get down to grassroots. We must reach a stage where the police are a respected and trusted part of the community

"Then people can go to the local officer and point out the criminals

"The bashing down of doors as in the past, should not be the way the police

Sowetan 23/5/94

operate in the future," she added

Unlike her predecessors in the ministry of law and order, Duarte does not want the SAP to work as party-political machinery

"We have a government of national unity that represents all the people of this country. In the same way, the police have to do the same"

Duarte, who was once detained by the same police she now leads, says the experiences of the past are a good reminder of what not to do

"We were at the receiving end of the evil arm of the law, that, if nothing else, should stop us from committing the same bad deeds," she emphasises

On Friday the national ministry met to map out its work and Duarte says she left feeling "absolutely confident" that under Minister Sydney Mafumadi, the Ministry of Safety and Security would achieve at least some of its goals

Malnstay of this ministry

"Sydney is a trade unionist who knows the value of getting people involved when it comes to issues. That I think will be the mainstay of this ministry," she said

A clampdown on car hijackings and gun controls are other short-term priorities

"Car thefts are a well-developed racket that has to be sorted out

"It is no more simply a case of a car

being stolen — people are killed, women are raped, and the crime around this is too much

"The source has to be found and wiped out," she said

Already various pressure groups, both pro- and anti-guns, have been in touch with her

"We can't take the stance that there should be no guns, but the traffic in illegal arms will have to be stopped

"We can apply laws when it comes to the licensing and regulating of firearms, but criminals have to be brought to book for us to be effective"

Duarte believes that the top brass of the SAP are firmly behind the new order in the country, but hopes to eventually win over the dissidents

"I can only outline and plan projects, but the success is going to come from the community and the police

"Because we have a plan, I think we have more chance of winning over those dissenters

"This is not going to be an elite police force that serves the government of the day

"The new SAP is going to be a part of the reconstruction of this country, and every member will be involved

"I am a pragmatist, not a dreamer, and the safety and security of every citizen is what this office is aiming for," she promised

Male dominated
court opposed

Political Staff

A TOTALLY male-dominated Constitutional Court would be unacceptable, the Black Sash said yesterday

It also urged that the selection for the court be transparent and accessible to "concerned members of civil society" (252)

Mandela pledges amnesty for political crimes

(252)

APR 24/5/94

AMNESTY legislation "to free wrongdoers from fear of retribution and blackmail, while acknowledging the injury to those who have been harmed" was to be drawn up soon, Mr Mandela said.

He also pledged his and the government's "personal support and confidence" in the security forces.

The government would not delay "unduly" the "vexed and unresolved issue of an amnesty for criminal activities carried out in furtherance of political objectives".

Mr Mandela said. "We will attend to this in a balanced and dignified way.

"The nation must come to terms with its past in a spirit of openness and forgiveness, and proceed to build the future on the basis of repairing and healing.

"The burden of the past lies heavily on us, including those responsible for inflicting injury and those who suffered.

Following the letter and spirit of the constitution, we

will prepare legislation that will seek to free the wrongdoers from fear of retribution and blackmail, while acknowledging the injury to those who have been harmed so that the individual wrongs, injuries, fears and hopes affecting individuals are identified and attended to."

Meantime, he called on all concerned "not to take any step that might in any way impede or compromise the process of reconciliation, which the pending legislation will address".

He said the problem of politically motivated violence "is still with us", and South Africa depended on its security forces to deal with the problem.

"In this, and in their efforts to deal especially with criminal violence, they have our personal support and confidence," he said.

The government would not spare any effort to ensure the security forces "enjoy the standing they deserve of being accepted by all our people".

Mandela talks to Hartzenberg about amnesty

(252)
□ Bombers and volkstaat top agenda

ARLT 25/5/94

MICHAEL MORRIS
Political Correspondent

AMNESTY for the rightwingers on trial for the pre-election bomb attacks heads the agenda for talks at Westbrooke today between President Nelson Mandela and Conservative Party leader Ferdi Hartzenberg

Mr Mandela confirmed today that discussion on amnesty for the bombers had been sought by Dr Hartzenberg.

Mr Mandela said during a photocall at Tuynhuys after meeting all nine provincial premiers that in addition to amnesty, Dr Hartzenberg also wanted to discuss a licence for the rightwing radio station, Radio Pretoria, and the volkstaat concept

"These are the issues on the table" Noting that he would also meet

Freedom Front leader Constand Viljoen this evening, Mr Mandela said his intention would be to "listen to what they have to tell me"

He met Dr Hartzenberg last Friday for a preliminary discussion, but "certain facts" had had to be determined before the discussion could continue

"So now I will listen to him," he said

Mr Mandela said of his meeting with the provincial premiers "There is a need for an exchange of views and to discuss the question of co-ordination. This is our first meeting and such questions are crucial to the harmonious working of the whole machinery"

He said his approach would be "to listen to the premiers".

"Our style is one of intensive consultation, and not one of making decisions and simply forcing them on others"

Cabinet approves Bill on new court

Bill Day 26/5/94

THE Cabinet has approved in principle proposed legislation establishing a constitutional court and the judicial services commission (252)

Justice Department spokesman Werner Krull said yesterday the draft Bills had been referred to state legal advisers and were likely to be finalised by the end of the week.

The proposed legislation would then be submitted to Parliament.

With widespread calls for the establishment of the Constitutional Court and a growing number of issues awaiting its adjudication, pressure is mounting in political and legal circles for judges of the new court to be selected soon.

The draft legislation will have to be considered by the standing committee on justice at a public hearing — in terms of a recent ruling by the rules committee.

It is not yet clear when Parliament will debate the two Bills, but they are likely to be approved by the end of

Political Staff

next month

After this, the thorny issue of selecting the Constitutional Court judges will have to be resolved before the court can start functioning.

DP leader Tony Leon, who led a fight at the multiparty negotiations for the judges not to be chosen by politicians, called yesterday on government to put an end to any doubts that Constitutional Court judges would be selected secretly.

Government should ensure that the selection of judges for the Constitutional Court — “the most powerful judicial instrument ever fashioned in this country” — was open, heard in public and in keeping with the dignity of the office, he said.

Any doubts about the openness of the selection process would “simply result in a marriage of convenience between legal conservatives and political lackeys”.

Mandela meets provincial premiers

CAPE TOWN — President Nelson Mandela held his first meeting with the nine provincial premiers at his Tuynhuys offices yesterday.

Flanked by the nine premiers and Deputy President FW de Klerk, Mandela said afterwards there was a need for him and the provincial

leaders to exchange views.

Tuynhuys said earlier the discussion with the premiers would include matters such as the relationship between the central government and the provincial administrations, and reconstruction and development matters. — Sapa.

news conference
Picture ROBERT BOTHA

DP announces its team of national spokesmen

Bill Day 26/5/94

CAPE TOWN — The DP has announced its team of national spokesmen, drawn from its 22 public representatives in Parliament and four regional legislatures.

Acting party leader Tony Leon has given his seven MPs and three senators various portfolios. He is the party's spokesman on human rights as well as justice, which includes the Bill of Rights and the Constitutional Court.

His older brother, Peter Leon, a member of the PWV parliament, is deputy spokesman on arts and culture.

The only black DP representative in Parliament, Senator William Mnsi, is spokesman for public works and deputy spokesman on health and welfare.

MP Douglas Gibson is chief whip and spokesman on administrative justice. Senator Errol Moorcroft is responsible for agriculture and land affairs and is also

Political Staff

DP leader in the Senate

MP Kobus Jordaan handles the State and provincial affairs as well as post and telecommunications. MP Mike Ellis has sport and recreation and is social services spokesman, which includes health, education and welfare.

Natal regional MP Roger Burrows is deputy spokesman on education.

Other portfolios are: safety and security (Gibson), constitution-making, foreign affairs and housing (Colin Eglin), reconstruction and development, finance and economics (Ken Andrew), arts, culture, women, gender affairs and home affairs (Dene Smuts), labour, transport and correctional services (James Selfe), mineral and energy affairs (Brian Goodall); and local government (Ian Davidson).

White 'Zulu' makes history

CAPE TOWN — Inkatha Freedom Party's Jurie Mentz made history yesterday, delivering the first full speech in the National Assembly in one of SA's new official languages.

As he walked to the podium to speak in Zulu during the debate on President Nelson Mandela's address, an MP interjected: “Here comes the white Zulu”.

As Mentz's measured tones resonated across the chamber, Inkatha leader Mangosuthu Buthelezi smiled his approval. MPs interrupted with applause.

Mentz said everyone in SA should be pleased that Inkatha had taken part in the election. It had saved SA from chaos. He stressed the importance of jobs, education, housing and land.

However, Mentz was not the first to use a language other than English or Afrikaans. Several other MPs started speeches in Xhosa before delivering the full import in English. — Sapa.

Minister calls for orderly and open approach

'Disclosure vital for amnesty'

Star 2015/194

(252)



Asmal . history must not be repeated

BY ESTHER WAUGH
POLITICAL CORRESPONDENT

Cape Town — The granting of amnesty should be accompanied by the identification and public disclosure of political offences, says Water Affairs and Forestry Minister Kader Asmal

In the no-confidence debate yesterday, Asmal said: "The past controls the present and will shape the future. Amnesty provisions are therefore based on the fundamental assumption that while we can (legally) forgive past transgressions, we cannot ever forget them. "History must not, ever, be allowed to repeat itself"

AN ORDERLY and open approach to granting of amnesty is needed, says Kader Asmal

He called for an "orderly and open" approach to granting amnesty for political offences. Spelling out the ANC's guidelines for granting amnesty, the Minister said: "There should be clear and strict criteria for identifying those eligible for applying for amnesty. "There should a strict time-frame for applications

- Full disclosure was a moral imperative
 - It should be a transparent process
 - Those persons who refuse to adhere to the amnesty process must expect the legal process to follow its course
 - Victims of political offences should be compensated
- Asmal added: "While the fact of previous misdemeanours may already be public knowledge, acknowledgement is part of the process of grappling with the past, of purging ourselves of the pathology that afflicted our country."

lathon on amnesty "which does not sweep under the carpet the crimes, sins and omissions of the past". He said amnesty should not allow "criminals, crooks and assassins to avoid disclosure of past misdeeds".

Freedom Front leader General Constand Vihonen called for a "speedy and reasonable" and not a "humiliating" approach to the granting of amnesty. He said he was under pressure to try militarily to get a volkstaat but the attitude of ANC negotiators had dissuaded him from following that route.

PAC leader Clarence Makwethu said the granting of amnesty should take into account the interests of the country.

Cabinet approves judicial draft bills

(252)
CT 26/5/94

By BARRY STREEK
Political Staff

THE cabinet has approved in principle the proposed legislation establishing the Constitutional Court and the proposed judicial services commission.

The draft bills have now been referred to the state legal advisers and should be finalised by the end of the week, ministry of justice spokesman Mr Werner Krull said yesterday.

It is not yet clear when Parliament will debate the two bills, but sources say they are likely to be approved by the end of next month.

With widespread calls for the establishment of the Constitutional Court and an increasing number of legal issues waiting its adjudication, pressure is mounting in political and legal circles for the selection of the judges of the new court to take place soon.

Yesterday, acting Democratic Party leader Mr Tony Leon called on the government to remove any doubts that there would be a secret selection process of the judges.

Judge Goldstone calls for 'truth commission'

Staff Reporter

JUDGE Richard Goldstone last night called for a "truth commission" on apartheid atrocities because victims would not be able to forgive without openness.

"If you sweep the truth under the carpet it can only lead to disaster sooner or later," the judge said at the launch in Rondebosch of the Institute for a Democratic Alterna-

tive for South Africa (Idasa) book dealing with truth and reconciliation, entitled "Dealing With The Past" *CT 26/5/94*

Judge Goldstone said it would be unjust to ignore the past, and there are too many victims to allow that to happen." *(252)*

It was essential to expose the past as part of the healing process

Dr Alex Boraine, executive director of Idasa, said he would like to call the commission a "truth and reconciliation commission" as the objective should not be a witch-hunt or revenge but reconciliation. "People are ready to forgive but they don't know who to forgive. And how do you give compensation to victims if you don't know what happened?"

● Deputy President F W de Klerk will not be able to stop the ANC from establishing a "commission of truth and reconciliation", but he will be able to stop it becoming a witch-hunt.

The ANC's Professor Albie Sachs, who has now retired from politics, made this prediction at a conference on dealing with the past

His statements are included in the Idasa book launched last night. The book is based on a pre-election conference in Somerset West, which discussed what should be done about past violations of human rights.

"The aim is not to lash out and punish those who caused pain in the past, but rather to bind us together," Prof Sachs said

Omar preparing amnesty legislation — Mandela

VUYO BAVUMA, Political Staff

AMNESTY legislation which will soon be presented to parliament is being prepared by Minister of Justice Dullah Omar

President Mandela said this yesterday at Westbrooke, the presidential residence, after a meeting with Conservative Party leader Fergie Hartzenberg

Mr Mandela said the government would also exchange views with organisations outside parliament about the matter

The government wanted an even-handed approach in dealing with those who were convicted while defending apartheid and those who were jailed opposing it

Meanwhile, AWB leader Eugene Terre'Blanche agreed to meet Mr

Mandela on Monday to negotiate a stable and peaceful volkstaat or self-determination for the Afrikaners

Concerning the granting of amnesty to the AWB, Mr Mandela said it was premature to discuss the matter because some of the movement's members who were arrested between December 1993 and the present had not been convicted

However, the government wanted to review the amnesty situation with a view to helping with the task of national reconciliation and unity

October 8 1990 was a cut-off date for amnesty but the Government of National Unity would consider incidents that took place between October 1990 and December 1993, he said.

"There's going to be a lot of rigidity, but there must be a lot of flexibility to heal wounds of the past"

APR 26/5/94

252

Widespread calls for 'truth commission'

□ Part of plan to consider amnesty for political crimes

HUGH ROBERTON
Political Editor

CALLS for a "truth commission" to look into the crimes and excesses of the apartheid era have come from across the political spectrum and from the judiciary

The broad consensus on the issue — but excluding the National Party and the far right — suggests that such a commission is almost certain to be created as part of the new government's plan to consider amnesty for politically motivated crimes

President Mandela disclosed yesterday that his government was formulating legislation on political amnesty, but gave no details. However, calls for a truth commission to be set up as part of the process came from

- One of the top ANC spokesmen on human rights, Water Affairs and Forestry Minister Kader Asmal, formerly a specialist on human rights at the University of the Western Cape

- New leader of the Democratic Party Tony Leon, who called for an amnesty policy which did not sweep the "crimes and omissions of the past under the carpet"

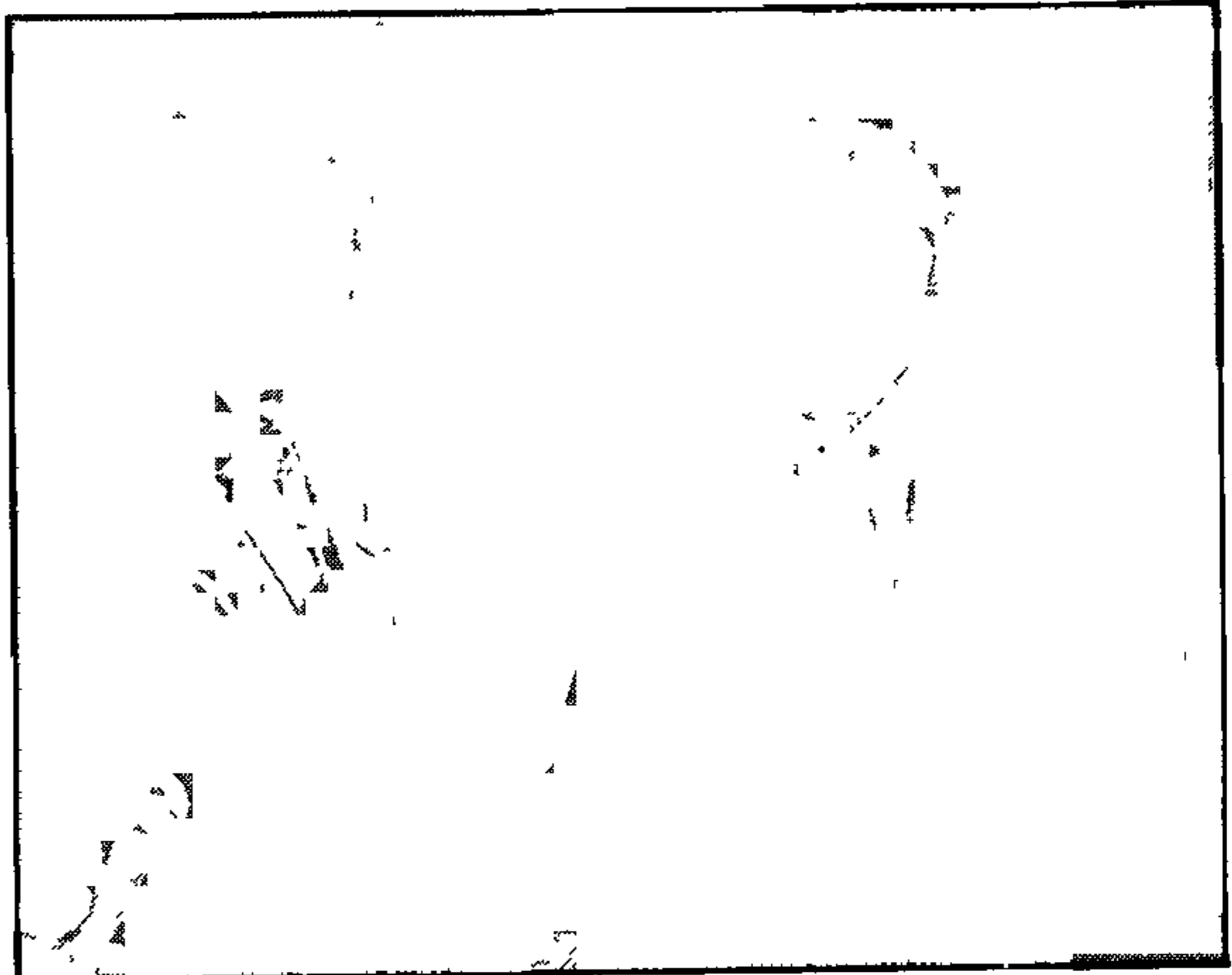
- Mr Justice Richard Goldstone, chairman of the Goldstone Commission, who warned that it would be "unjust to ignore the past"

- Senior ANC member of parliament and adviser to Mr Mandela, Carl Niehaus, who said that such a commission should be part of the process of reconciliation

- Executive director of the Institute for a Democratic Alternative for South Africa, Alex Boraine, who suggested that a "truth and reconciliation commission" be set up

Mr Justice Goldstone warned in Cape Town yesterday "If you sweep the truth under the carpet it can only lead to disaster sooner or later. He argued that, to forgive, it was necessary to know what had happened, adding that it would be "unjust to ignore the past and there are too many victims to allow that to happen"

Dr Boraine said "People are ready to forgive but they don't know who to forgive. And how do you give compensation to victims if you don't know what happened?"



HANDSHAKE: President Mandela shakes hands with Conservative Party leader Fanie Viljoen after talks at the president's Westbrooke residence

Picture **DOUG PITHEY**, The Argus

Mandela to discuss amnesty with ET

Star 26/5/94

Cape Town — President Mandela is to meet Afrikaner Weerstandsbeweging leader Eugene TerreBlanche on Monday to discuss his demands for a separate white homeland and amnesty for jailed right-wingers

After separate talks with Freedom Front chief General Constand Viljoen and Conservative Party leader Dr Ferdi Hartzenberg in Cape Town, Mandela said he hoped a peaceful solution could be found to assuage right-wing fears about majority rule

"Dr Hartzenberg has assured me that he has arranged a meeting with Mr TerreBlanche for early next week — probably on Monday," Mandela said

Earlier yesterday, TerreBlanche said Hartzenberg had no mandate to negotiate with the ANC on behalf of the AWB

He would hold talks with Mandela's Government of National Unity only on condition that all right-wing prisoners, sentenced or awaiting trial, be released

However, after meeting Viljoen last night, the President said he was to hold a meeting



Shake . . . President Mandela meets Dr Ferdi Hartzenberg yesterday

PICTURE DOUG PITHEY

with TerreBlanche and Hartzenberg next week.

Mandela said he had discussed with Hartzenberg the CP leader's request for an amnesty for rightwingers, including 33 AWB members set to stand trial over a bomb blitz before the election.

Mandela said an amnesty was "premature" Justice Minister Dullah

Omar was drafting legislation on the issue which would be presented to Parliament next week for debate, he said

Viljoen said that if right-wing parties refused to take part in the proposed Volkstaat Council he would try to secure their involvement through liaison

"I have good enough rela-

► To Page 3

President to talk to ET

From Page 1

tions I will inform them as we make progress. If they want to present any ideas to the Volkstaat Council through me, they are welcome

Earlier, speaking in Parliament, Viljoen said that the attainment of a volkstaat was the cornerstone of his party's policy

Viljoen said Afrikaners differed on how to achieve self-determination. He had come under great pressure to pursue the military option.

Many Afrikaners refused to vote because the issue of a volkstaat had not been resolved.

He praised people in the ANC who had made it possible for his FF to enter the election — Sapa, Reuter, Staff Reporter

Draft Constitutional Court Bills tabled

CAPE TOWN — Draft legislation to pave the way for the establishment of the Constitutional Court and the Human Rights Commission was approved by Cabinet this week, a spokesman for the Justice Department said yesterday. 27 15/94

The measures would

- Establish the body that would present the President with a list of 10 nominees for the Constitutional Court, and set out the framework of the court, (252)
- Amend legislation on remuneration and service conditions of judges to bring the Constitutional Court judges into the net,
- Establish the office of Public Protector as provided by the Constitution, and
- Set out how the Human Rights Commission would operate and make the appointment of the commissioners possible

The spokesman said the Bills were presented to Cabinet by Justice Minister Dullah Omar, who regarded them as "of the utmost importance"

Members of the parliamentary secretariat said yesterday morning none of the standing committees that discuss legislation before it comes up for full debate had been named

The committees would be able to discuss the legislation as soon as it was tabled — Sapa

Full disclosure with dignity is Omar's aim

Amnesty plan to stress reparation

Star 28/5/94

CAPE TOWN — Amnesty legislation to be presented soon will provide for full disclosure, as well as compensation for victims of human rights abuses, but there will be a cut-off date of December 5 1993 for amnesty applications.

Speaking in Parliament yesterday, Justice Minister Dullah Omar said the Government would keep the door open for further negotiations on amnesty. This would not necessarily involve changing the cut-off date.

Omar also announced that the moratorium on hangings would remain in place for the present, and fresh legislation on capital punishment was being prepared urgently.

He said he had had "sleepless nights" about the 400 people on Death Row and "we need to put an end to this trauma as soon as possible".

Omar said legislation would provide for an amnesty process

THERE is 'overwhelming' support for a truth commission, but it must have no connotations of revenge. MICHAEL MORRIS reports

"For all South Africans to come to terms with the painful past with dignity and in a spirit of forgiveness, but also a consideration for acknowledgement and the need to provide reparation and compensation for victims

"I want to give the assurance to those who have fears and may have perpetrated human rights violations and want to join the reconciliation process that in respect of politically motivated crimes, there will be no Nuremberg-type trials, no vengeance, no witch-hunts, no revenge and no humiliation of any person

"But at the same time, I am duty-bound for the sake of the moral integrity of the country to give the assurance that so far as

it is in my power to do so, particularly for the the victims and loved ones, there will be no cover-up, no sweeping under the carpet, no suppression of the truth, no amnesty without disclosure."

Draft legislation provided for a December 5 1993 cut-off date

Omar said, "I am aware of demands from certain quarters for indemnity for actions after that date. All I can say is that post-December 6 1993 is not covered by the draft legislation due to be presented shortly."

Legislation would provide for a tribunal or similar instrument to deal with past crimes

He noted that there had been "overwhelming support" for a

truth commission, but warned that it should have "no connotation of revenge". Whatever its name, it should reflect truth and reconciliation

Legislation would provide clear procedures for amnesty, including five key points

■ Clear time-frames within which applications must be made

■ There must be disclosure and acknowledgement

■ Ordinary crimes will not be covered.

■ Perpetrators will be indemnified against criminal and civil actions

■ There will be reparation and compensation for victims

He added that the views of other parties within and outside the Government would be considered in order that "we can come up with a proposal which will enable us to take the nation forward into the future in a spirit of reconciliation"

No ET at govt, AWB talks

ET 27/5/94

Own Correspondent

(252)

JOHANNESBURG — The meeting between President Mandela and Mr Terre'Blanche will not go ahead unless an amnesty is declared

This was said by AWB spokesman Mr Fred Rundle. However, he added that an AWB delegation was ready to meet Justice Minister Mr Dullah Omar to discuss the government's forthcoming indemnity bill.

Mr Omar said he welcomed "input" into the bill from all interested parties. The cabinet is expected to discuss the issue of amnesty for right-wingers in prison and those awaiting trial when Mr Omar presents proposals for the bill next week.

Mr Rundle said there could not be a meeting between President Mandela and Mr Terre'Blanche unless an amnesty was declared. Talks would be futile before the organisation had studied the draft indemnity bill, he said.

However, the AWB would "delegate the necessary responsible persons" to provide an input into the bill if approached by the minister.

He confirmed CP leader Dr Ferdin Hartzenberg had approached Mr Terre'Blanche on Wednesday to arrange a meeting with President Mandela, but the AWB executive council had unanimously rejected the proposal.

Meanwhile Boerestaat Party leader Mr Robert van Tonder attacked Dr Hartzenberg's "confused stance" on the issue of a volkstaat council. Dr Hartzenberg's support for the Afrikaner Volksfront had enabled Freedom Front leader General Constand Viljoen to divide the right-wing, he said.

ANC-NP court step opposed

(282) CT 28/5/94
THE Inkatha Freedom Party, Freedom Front and Democratic Party yesterday objected to a motion nominating only ANC and National Party senators to serve on the Judicial Services Commission.

However, the motion was passed with the required two-thirds majority after a vote.

Senate president Mr Kobie Coetsee said party whips had informed him beforehand that there would be no vote against the motion. The objections of the three minority parties were recorded.

Three ANC senators — Ms Isabella Direko, Mr Ernest Mchunu and Mr Bulelani Ngcuka — and the NP's Mr Ray Radue were designated to serve on the JSC, which will propose six of the 10 nominees to serve as Constitutional Court judges.

Senator Ruth Rabinowitz (IFP) said the Constitutional Court would be a critical arbiter in the interpretation of the constitution and should be as widely representative as possible.

Senator Errol Moorcroft (DP) said President Nelson Mandela's attitude was one of inclusivity. The views of the minority parties should be reflected in the composition of the Constitutional Court — Sapa

Hanging in the balance

SITimes 29/8/94

Wrangling between lawyers' organisations is delaying the appointment of a constitutional court. CARMEL RICKARD reports

252

ALTHOUGH it must have moved to the top of the post-election urgent list, the establishment of the constitutional court still seems a way off

It will consist of a president, four Supreme Court judges and six new appointments. These six must be drawn from names provided by the Judicial Service Commission, but the 17 commissioners have not been finalised because of disagreement over how the four commissioners representing the advocates and attorneys should be chosen

The General Council of the Bar, the statutory body representing the advocates, and the Association of Law Societies, which legally represents the attorneys, have drawn up their lists. GCB chairman Wim Trengove, SC, and his deputy Malcolm Wallis, SC, for the Bar; and Ashwin Trikamjee and Louis van Zyl for the attorneys

The Black Lawyers' Association and the National Association of Democratic Lawyers objected to the assumption that the bar council and the law societies were entitled to choose the four representatives

They say that although all advocates and attorneys must by law belong to these

two bodies, they have a "white" identity

Nadel and the BLA first suggested consultation with the bar council and the law societies, then they proposed choosing half the representatives. Finally, when talks failed, they published their own list. Marumo Moerane, SC, and Nona Goso as the advocates' representatives, and Phineas Mujapilo and Silas Nkanunu to represent the attorneys

Now Chief Justice Michael Corbett, who will preside over the commission once its members are chosen, sits with eight names instead of four, and the Constitution gives no guidance on how to resolve the problem

Not an auspicious start to the JSC. But the impasse illustrates one of the commission's key challenges — responding to extremely sensitive feelings about representivity.

Against this background, the commission must decide how prospective members of the constitutional court should be nominated, whether the selection forum should be open, and the qualities the commissioners should seek in candidates

The 17 commissioners could be the most important

source of nominations because of their varying backgrounds they should, between them, know and be able to list all the serious contenders. But, to ensure that the new court enjoys the confidence of the public, non-governmental organisations and members of the public should be able to nominate people

The shortlist should be published and the public given the opportunity to submit written comments on any candidate.

Then comes the most controversial question. All candidates on the shortlist ought to be interviewed: the old system of choosing judges without even this formality clearly cannot continue. However, the commission must decide between public hearings or private interviews

Some commissioners have strong views on the debate. Wits law professor, Etienne Mureinik, nominated to the commission by the law deans, wants open hearings. He says the power that unelected members of the constitutional court will wield, makes some public accountability essential, and the extra time it would take is justified

He says open hearings will re-assure the public that no secret deals have been done.

Critics claim the prospect of such an interview will put off many good candidates, unwilling to subject themselves to the type of grilling experienced by US Supreme Court Justice Clarence Thomas. Even some senior members of Nadel said they felt the demand for "transparency" could be satisfied by leaving the choice to a competent commission

On the qualities to be sought in a judge, the constitution gives some guidelines. It says the commission must be sensitive to the need to appoint a court that is "independent and competent and representative in respect of race and gender"

Integrity, independence, ability and sensitivity to the political situation are all on the list of requisite virtues. One senior member of the profession said, however, they could be summed up as credibility, scholarship and experience. He said few candidates combined all three, and so a balance would have to be found

That is precisely what the constitution seems to require even a court of 11 experienced legal geniuses would be unacceptable if its members were all of the same race or gender

No amnesty for poll bombers

RIGHTWINGERS facing charges in connection with the bomb explosions on the eve of the elections will not qualify for amnesty in terms of legislation being prepared.

But the more than 400 people on Death Row and those on capital-offence charges will not hang.

Announcing guidelines for new amnesty legislation, the Minister of Justice, Mr Dullah Omar, gave assurances in

Parliament on Friday to perpetrators of politically motivated crimes that there would be no Nuremberg-type trials, no vengeance; no witchhunts.

But, he said, the moral integrity of the country demanded that there should be no cover-up.

Amnesties would also not be granted without full disclosure of crimes.

"Yes, there have been human-rights violations on all sides, and we need a clean break from the past," he said.

The legislation would provide for (252)

- Amnesty for political crimes committed before December 6 1993;

- Clear time limits within which applications for indemnity are submitted;

By EDYTH BULBRING

- Disclosure and acknowledgment of crimes;

- Indemnifying perpetrators against civil and criminal action,

- Compensation for victims.

Mr Omar said ordinary crimes would not be covered by the legislation.

The December 5 cut-off date is the latest permitted by the constitution.

Mr Omar said the government would also place before Parliament legislation which bans capital punishment. The moratorium on death sentences which the previous government introduced in March 1992 would continue for the present, he said.

Payout plan for political victims

Biday 2015/194

CAPE TOWN — Legislation to be forwarded to the Cabinet this week proposes compensation for the victims of political crimes, according to Justice Minister Dullah Omar. (252)

Outlining the legislation due to be published soon, Omar said in Parliament it would fix clear time limits within which applications for indemnity could be submitted.

There should be "disclosure and acknowledgement", ordinary crimes would not be covered and perpetrators would be indemnified against both criminal and civil actions.

Although the constitution determined that a cut-off date could be any time between October 8 1990 and December 6 1993, the legislation would specify the latest possible cut-off date — December 6 1993.

Although the extent of the compensation had not yet been finalised, Omar suggested that crimes committed as long as 30 years ago could be covered.

SA owed a debt of enormous proportions to the families of victims.

Included among those were the families of Steve Biko, Matthew Goniwe and David Webster.

Omar said he wanted to give an assurance to past perpetrators of hu-

TIM COHEN

man rights violations who wanted reconciliation that there would be no Nuremberg-type trials.

But he also gave the assurance that for the sake of SA's "moral integrity" there would be no "cover-up, no sweeping under the carpet and no suppression of the truth".

He said "There will be no amnesty without disclosure."

He also gave notice that government would come to a decision soon on the issue of the death penalty, pointing out that the ANC had consistently spoken out against it.

Legislation would be presented soon and in the meantime the moratorium on the executions of the more than 400 people currently on death row would be extended.

Freedom Front MP Corné Mulder said amnesty arrangements should be applied uniformly for all perpetrators of offences.

There were many MPs in Parliament who had been given amnesty without disclosure.

The Freedom Front wanted to know what had happened to Stompie Seipei, and who was behind the Pretoria car bomb and the "Shell House massacre".

● Comment: Page 12

Agreement on amnesty

PRETORIA — Afrikaner Volksfront chairman Dr Ferdi Hartzenberg said at the weekend he and President Nelson Mandela had agreed that the same norms would be applied to deal with outstanding cases of amnesty for right-wingers as had been used for ANC members

Dr Hartzenberg said he intended to raise the amnesty issue again at his meeting with Mr Mandela here today

It might be necessary to adjust the cut-off dates contained in legislature for amnesty, Dr Hartzenberg said

Distancing the AVF from violence, Dr Hartzenberg announced that the organisation would establish a team to negotiate with the government on an Afrikaner volkstaat

Asked why the AVF did not join General Constand Viljoen's Freedom Front to obtain a volkstaat through the Volkstaatraad, Dr Hartzenberg said the constitution and the April accord between the FF, the National Party and the ANC, ruled out complete self-determination for Afrikaners

Analysis of the votes cast during the election indicated that more people abstained from voting than those who did vote for the FF route, he added — Sapa (252) CT 30/5/94

Right seeks amnesty

◀ From Page 1

out strongly against the extension of the cut-off date beyond September 14 1991, the day on which the National Peace Accord was signed (252)

Leon said it would be "obscene" to indemnify criminal acts committed after that date, and that such a move would "reduce any reasonable concepts of justice, law and order and judicial independence to political bargaining chips"

Hartzenberg said it was important that his party discussed the contents of draft legislation on indemnity before it went to Parliament (254)

AWB leader Eugene TerreBlanche, who has demanded indemnity for the men held over the election-related bombings, rejected an invitation to yesterday's meeting. He said he would not talk to Mandela until he had seen the draft of the

new indemnity Bill.

Meanwhile, Idasa executive director Dr Alex Boraine says consultation involving victims of human rights abuses should precede any legislation on amnesty.

Writing in the latest issue of his institute's Democracy in Action newsletter, Boraine says the country has a chance to work towards genuine healing by dealing honestly, fearlessly and sensitively with past violations of human rights.

In all this, the plight of the victims should never be ignored or forgotten.

"To ignore the suffering of the victims and to focus only on the violators of human rights is to get it only half right. The impression will be that the victims don't really matter," Boraine writes.

He says it is vital that any amnesty for human rights violators be accompanied by full and truthful disclosure.

IT IS unclear whether men accused of pre-election bomb attacks will qualify for indemnity

■ POLITICAL STAFF

The right wing looks almost set to benefit from indemnity from prosecution for politically related crimes following another round of talks between President Mandela and Conservative Party leader Dr Ferdi Hartzenberg in Pretoria yesterday (252)

However, there was no clarity yesterday on whether the 32 men who allegedly carried out pre-election bomb attacks would also benefit from the imminent indemnity.

Justice Minister Dullah Omar told Parliament last week he was drafting legislation for amnesty for politically motivated crimes, but said crimes committed after the December 6 cut-off date entrenched in the constitution would be excluded.

After meeting Hartzenberg yesterday, Mandela said his Government would apply the same criteria for amnesty to rightwingers who committed offences of a political nature between October 8 1990, the old cut-off date — and December 5 last year, as had been applied to those on the Left.

Mandela, who was accompanied by Deputy President Thabo Mbeki, said the Government did not want to have parallel discussions with those inside and outside Parliament, and would prefer talking to Freedom Front leader General Constand Viljoen and Hartzenberg at the same time on the question of an Afrikaner volkstaat.

"It would be more fruitful if we went through one channel," he said, without indicating when the envisaged trilateral talks agreed upon would get off the ground. Mbeki has been asked to arrange the meetings.

Hartzenberg, whose CP and Afrikaner Volksfront boycotted the poll, has agreed to take part in the three-way talks.

Hartzenberg will hold talks with Omar at a time still to be determined to discuss the question of indemnity, and whether those whose crimes were committed after December 5 — including the 32 men allegedly responsible for the election bombings — should also be considered.

However, Democratic Party leader Tony Leon has come

▶ To Page 3

Right seeks amnesty

Mandela, Hartzenberg hold talks on indemnity

Star 31/5/94

Unions warned against Government involvement

Hani's killers could be set free

By Themba Molefe
Political Correspondent

Sowetan 11/6/94
■ AMNESTY Human rights and

reconciliation high on Mandela's list:

PRESIDENT Nelson Mandela's programme of granting amnesty to certain prisoners will give priority to children and rightwingers

This will emphasise the Government's desire, endorsed by Parliament last week, to place reconciliation and the development of a universally accepted culture of human rights high on its list (252)

There have also been hints of the possible release of Janus Walusz and Clive Derby-Lewis, sentenced to death for the murder of former South African Communist Party general secretary Mr Chris Han

In his state of the nation address Mandela said he "would empty our prisons of children" and put them in

alternative care

This came after it was revealed in Parliament that there are 823 children younger than 18 years presently in prison serving sentences. Four of them are under 15 years. There are presently 9 763 youths aged 18 to 21 in jail. Legislation dealing with the children will be drafted providing for all juveniles under the age of 18 years serving sentences in South Africa to be put in alternative care.

Meanwhile, negotiations between Mandela and rightwing leaders have begun on amnesty for several rightwing "political" prisoners.

A three-way forum between the African National Congress-led Government, Conservative Party and

Volkstaat Council was agreed to in discussions between Mandela and CP leader Dr Ferdi Hartzenberg on Monday.

However, the ANC's opposition to separate ethnic states is known, hence Mandela's statement that the Government will consider the *volkstaat* idea only if a sound argument is forwarded by the rightwing.

It is still doubtful if a meeting between Mandela and Afrikaner Weerstandsbeweging leader Mr Eugene Terre'Blanche will take place.

This was after Terre'Blanche refused to meet Mandela and demanded as a pre-condition the release of all rightwing prisoners.

● See Page 8.

SA will share its skills with NAM

Star 11/6/94

South Africa joined the Non-Aligned Movement yesterday, and Foreign Affairs Minister Alfred Nzo said SA would like to share its special human rights experience with other countries.

"We have suffered too much ourselves not to do so," he told the 11th conference of NAM foreign ministers in Cairo.

In a speech released in Johannesburg, he pledged to strengthen relations between South Africa and NAM members.

South Africa's problems were similar to those faced daily by the international community, he said, and with barriers removed it could offer something from its experiences.

"Although our democracy is still in its infancy, we have already made significant progress in overcoming the effects of ethnic and other differences, and in removing totalitarianism."

He thanked the NAM for its work to eradicate apartheid.

"Your efforts were not in vain, and today we can rejoice together at the successful establishment of a free and democratic South Africa."

Nzo said South Africa also wanted to share its economic, scientific and technical knowledge with other countries.

"Our goal is to establish SA as a responsible possessor of advanced technologies."

It would further like to act in concert with other members of the community of nations as a responsible world citizen, and was committed to supporting global efforts to deal with sustainable development and the environment.

South Africa's efforts to relieve poverty, which reflected international efforts to combat the north-south economic divide, would contribute towards stable and good government, he said.

There was a basis for close co-operation between South Africa and the NAM — Sapa.

(252)

Hani's killers unlikely to get amnesty

■ BY CHRIS WHITFIELD
POLITICAL CORRESPONDENT

Clive Derby-Lewis and Janusz Walus — sentenced to death for the assassination of SA Communist Party chief Chris Hani — are unlikely to qualify for amnesty in terms of new legislation being drafted

Justice Minister Dullah Omar told *The Star* yesterday "I don't think it should be assumed that the definition (of politically motivated crimes) will cover them."

Justice Ministry sources indicated that the new amnesty leg-

islation should be put before Parliament on June 20

In terms of the Interim Constitution, the cut-off date for legislation which will free those convicted of or being responsible for politically motivated crimes should be December 6 1993. It is understood midnight on December 5 has been pencilled into the legislation being prepared.

Although Hani was assassinated on April 10 last year, Omar's comments appear to confirm that Derby-Lewis and Walus will not qualify

There was no indication whether it will cover those involved in the killing of Amy Biehl or massacres before December 5 such as the Boipatong, Bisho and the St James's Church slaughters (252)

This week there were indications after talks between President Mandela and CP leader Dr Ferdi Hartzenberg that the right wing could benefit from amnesty for politically related crimes

It was not clear whether this would include the 32 men who allegedly carried out a spate of

pre-election bomb attacks as this would require a change to the Interim Constitution by extending the cut-off date

After meeting Hartzenberg on Monday, Mandela said the Government would apply the same criteria for amnesty to right-wingers who committed offences of a political nature between October 8 1990 — the cut-off date in existing legislation — and December 5 last year.

Deputy President de Klerk is reported to have seen the draft legislation and approved it

Goldstone calls for transparency

STEPS were needed to prevent police abuses of the past being continued under a new government, Judge Richard Goldstone said yesterday. 216 194

The full truth about the police and army's dirty war against black liberation groups had to be disclosed. (252)

"There's a question of analysing a system that allowed those things to happen," he told foreign correspondents at a lunch

"The system is changing, it hasn't yet changed. The same system is still in place. I don't believe one can replace a bad system with a good system if one doesn't know why the previous system was bad." This could not be analysed fully "if one doesn't have the truth coming out. If that happens, then one can really talk about having proper checks and balances with regard to the security forces"

Widespread indemnity from prosecution should be offered to persuade people

to testify to a truth commission about past abuses, he said. BIRDA

The ANC has proposed setting up a truth commission to investigate human rights abuses by security forces and ANC members alleged to have tortured their comrades in military camps in exile.

Goldstone said he would not be prepared to serve on such a commission as many people would see him as biased because of his third force probe.

He said there was little need for his own commission of inquiry into political violence to continue beyond the end of its three-year term in October. The commission was essentially a transitional institution and political violence had declined considerably since the election.

"One of the aspects I think was important was that the peace process wasn't limited to the leadership ... there were institutions that brought people together at grassroots level." — Sapa-Reuter.

Goldstone calls for transparency

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"One of the aspects I think was important was that the peace process wasn't limited to the leadership ... there were institutions that brought people together at grassroots level." — Sapa-Reuters.

Commonwealth status 'essentially symbolic'

CAPE TOWN — SA's membership of the Commonwealth and the Non-Aligned Movement was more symbolic than anything else, government and diplomatic sources said yesterday. **BRADAY 2/16/94**

A diplomat said it was "essentially part of the normalisation of SA's international position, and therefore desirable". It would not become a financial burden, he said.

A Foreign Affairs source said SA's membership of the two world bodies "has political importance, but not a lot of economic gain".

Another diplomat said SA's readmittance to the Commonwealth after 33 years' absence and its admission to the Non-Aligned Movement was "symbolic — but nothing more. It is significant only in that it confirms SA's full readmittance to the international community".

While the Commonwealth was really nothing more than a club, membership of the Non-Aligned Movement did not mean much in the post-Cold War era, he said.

SA's obligatory contribution to the Commonwealth Secretariat budget — estimated at about R30m a year — would be R1,8m annually. "The financial costs are really only peanuts," political affairs head at the Secretariat office in London, Max Gaylard, said yesterday.

However, he said SA would eventually be expected to "voluntarily" contribute between R10m and R15m a year to Commonwealth assistance programmes.

Britain contributed about half of the annual Commonwealth budget, while Can-

DAVID GREYBE

ada, Australia and New Zealand made up the bulk of the other half, a diplomat said.

Gaylard insisted SA would get "much more" out of the Commonwealth than it put in. For instance, R2,5m of Commonwealth funds were used during the recent elections to provide "electoral experts".

Commonwealth Secretary-General Emeka Anyaoku, announcing SA's readmittance this week, said it would lead to immediate involvement by other member nations in SA's reconstruction.

An international donor conference, to be hosted jointly by the UN and the Commonwealth, was scheduled to be held in SA in September, a diplomat said.

SA was expected to send a "compact team" of between 60 to 80 athletes to take part in the Commonwealth Games in Victoria, Canada, from August 18 to 28.

Our Durban correspondent reports that SA's new Commonwealth status does not entitle South Africans with British grandparents to automatic citizenship, as reported yesterday.

However, a spokesman for the British consulate in Johannesburg said Commonwealth status would allow South Africans with British grandparents to enter the UK for four years without a work permit. After four years they could apply for an extension of their temporary residence, and thereafter, citizenship through naturalisation after five years.

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Star 2/6/94
Cut-off date won't be extended beyond December 6 - Omar

'No amnesty for bombers'

(252)

**BY ESTHER WAUGH
and CHRIS WHITFIELD**

NEW Minister of Justice meets Conservative Party leader Ferdi Hartzenberg today

Justice Minister Dullah Omar has ruled out amnesty for those responsible for the spate of pre-election bombings.

Speaking on the eve of talks with Conservative Party leader Dr Ferdi Hartzenberg — which will include the amnesty issue — Omar was adamant that the final cut-off date for politically motivated crimes would not be extended beyond December 6 1993 — the date provided for in the Interim Constitution.

He also reiterated to the SABC's *Newsline* programme that it should not be assumed that the definition of politically motivated offences would be broad enough to free Clive Derby-Lewis and Janusz Walus, sentenced to death for the assassination of SACP leader Chris Hanu.

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Omar said the Government was "looking at the definition of political offences". He added that there was a "grey area" of people who were not members of the liberation movements or the apartheid State but claimed to be acting on behalf of "all kinds of organisations".

He revealed that a Commission of Truth and Reconciliation would be established for the public disclosure of offences — which would be a precondition for the granting of amnesty — and possible compensation for victims and relatives.

Asked about today's meeting with Hartzenberg, Omar said the Government was prepared to talk to the right wing and listen to its proposals, "but at the same time we have fixed the (December 6) cut-off date".

That date was a "very generous extension" and "the peo-

ple of South Africa must understand there will be no extension".

The court trials of right-wingers who committed offences after that date would continue, he stressed.

It was clear from Omar's comments that those responsible for the bombings before the April 27 election would not qualify for amnesty.

The CP said earlier last night that it intended asking Omar to extend the cut-off date beyond December 6.

It would also insist that amnesty for politically motivated crimes be extended to Derby-Lewis and Walus.

Meanwhile, sources have indicated that the Cabinet decided at its weekly meeting yesterday to form various committees of Ministers to look at issues arising from the various departments.

It is expected that the amnesty question will come before such a committee.

CP justice spokesman Jurg Prinsloo said last night that his party disagreed with the Government's assessment of the cases of Derby-Lewis and Walus.



God bless Hillbrow... 80-gari Dlamini (18) prepares posters as part of the Johannesburg City Council's Programme for National Environment Week. Street children in Hillbrow worked to the theme "Our vision of a healthy Johannesburg". PICTURE GARY BERNARD

Prisons band to play for Mandela

BY CHARMEELA BHAGOWAT

A prisons band will honour President Mandela on Saturday by playing two special dedications to him at the first test between South Africa and England at Loftus Versveld.

Brigadier Chris Ockers, director of communications for the Department of Correctional Services, said the band would play both national anthems, *Die Stem* and *Mosoi Sikelet' Afrika*. The band also planned to play two evergreen favourites, *Mama Tembu's Wedding* and *Shanting Star*, Ockers said.

Bok 15 to wear SA's new flag

BY LESTER MILLS

The new South African flag will be worn on the shorts of the 15 rugby Springboks who take on England at Loftus Versveld on Saturday.

The old national flag was never displayed on the national team's kit. Team manager Jamie Engelbrecht confirmed yesterday that there had been a unanimous decision by players and officials that the flag be embroidered on to the right leg of the players' shorts.

Goldstone Commission nears end of the road

Star 216194

(252)

■ BY HELEN GRANGE

The Goldstone Commission, which became South Africa's most prominent mechanism in unearthing the causes of political violence, is on the road to extinction unless it is revived by the new Government in a different form.

Appointed in October 1991 after the signing of the historic National Peace Accord, to serve for a period of three years, it is now tying up a handful of outstanding inquiries before it officially disbands in five months' time.

The commission's secretary Glen Cuthbertson has already resigned, and other staffers are expected to follow in the winding-up process.

The additional policemen seconded to the commission in March for the election run-up at the request of the former Transitional Executive Council officially left on Friday, the commission's senior prosecutor Advocate J J du Toit said.

"We are now reduced to the core of members we started out with. The commission filled a gap during an era of widespread political violence, but that gap has closed with the new political order. As a result, the commission's role is becoming redundant," he said.

Du Toit said the Goldstone Commission's best contribution lay in tackling the causes of violence rather than probing specific incidents.

He noted that recom-

mendations in the report on attacks on police — namely that the township's self-defence units needed to be incorporated in the new police force — had been recently proposed by the ANC.

Du Toit said the Government needed to look into the need for a "truth commission" to replace the Goldstone Commission.

■ Judicial sources have speculated that Mr Justice Goldstone will be appointed to the Constitutional Court.

■ Aside from outstanding hearings on incidents of taxi violence in King William's Town and Venda, the Goldstone Commission has still to complete its inquiry into the March shootings in Johannesburg's city centre.

Govt rules out amnesty for 34

257

CT 3/6/94

By ANTHONY JOHNSON

THE government last night flatly ruled out amnesty for the 34 right-wingers accused of a pre-election bombings spree.

Justice Minister Mr Dullah Omar also announced after a meeting with Conservative Party leader Dr Ferdi Hartzenberg that "it should not be assumed" that the definition of politically motivated offences would be broad enough to free Mr Chris Ham's assassins.

However, death row prisoners Clive Derby-Lewis and Janusz Walus "will have the right to apply (for amnesty) like everyone else," the minister said.

Mr Omar — who was also confronted yesterday with an amnesty ultimatum from hundreds of prisoners "who fought the apartheid regime" — was adamant last

Cut-off date 'won't change'

night that the cut-off date for amnesty settled on by multi-party negotiators — December 6, 1993 — would not be extended.

Mr Omar's position yesterday contrasted with statements by Mr Nelson Mandela after talks with Dr Hartzenberg on Monday, in which the president said his government was keeping an open mind on amnesty for crimes committed after December 5.

A draft amnesty bill for political offences is expected to be tabled in Parliament soon but the government is consulting widely

before settling on the final formulation of the legislation.

Before yesterday's meeting between Mr Omar and Dr Hartzenberg, CP spokesman Mr Jurg Prinsloo said he was confident the CP could secure amnesty for over 50 right-wing prisoners.

Meanwhile, hundreds of prisoners claiming "political" status yesterday threatened hunger strikes and work stoppages in South African jails unless they were granted political amnesty and released.

A Ministry of Justice spokesman said the minister was prepared to meet all parties to discuss government policy and hear their views.

● Lawyers for Human Rights said yesterday granting amnesty to individuals who committed crimes with ideological motives based on racism would run counter to the constitution's spirit.

Underlining need for a truth commission

(252) Wm 3-9/6/94

Exposing the strategy of the PW Botha government, the security forces were found to be responsible for the murder of Matthew Goniwe and three other UDF activists.

Adrienne Carlisle looks at the relevance.

FOR the first time, a South African Supreme Court judge has found the security forces responsible for the murder of anti-apartheid activists

But more than this, Eastern Cape Judge President Mr Justice Neville Zietsman has placed the murders of Cradock activist Matthew Goniwe and three others firmly in the context of the security system and strategy created by the PW Botha government in the mid-1980s

In his judgment in the Goniwe inquest last weekend, Justice Zietsman detailed the workings of the National Security Management System put in place by the Botha government.

He found that the signal calling for the "permanent removal from society" of Matthew Goniwe, his brother Mbulelo and Fort Calata had moved within the channels of the National Security Management System from Eastern Province Command to the State Security Council

The signal, he said, was sent on the orders of former Military Intelligence Chief General Joffel van der Westhuizen and was intended to be a recommendation the three activists should be killed

What the judge failed to do was to finger individuals responsible for the murders "I am unable to identify the murderer or murderers," he said to a groan of disappointment from the packed public gallery

However the attorney for the Goniwe family, Clive Plasket of the Legal Resources Centre in Grahamstown, has hailed it as a watershed judgment "It is clear from the judgment that the murders occurred within the context of a system and a strategy. The strategy envisaged that activists

could be killed in certain circumstances but that the decision had to be taken at the highest level"

There was no suggestion in the judgment that the murders were committed by rogue elements within the security forces, he said

Particularly relevant, said Plasket, was that the death signal was sent to the State Security Council

"This finding must mean that high-ranking officers in the Security Forces and the National Security Management System believed that their murder recommendation would at least be considered by those higher up"

Also uncovered in the inquest was the Katzen plan, hatched by Van der Westhuizen and others to overthrow Lennox Sebe's government in the Ciskei

The judge found prima facie evidence that Van der Westhuizen was party to a plan that included, as a possibility, the killing of Sebe

He also found the Katzen plan had been partly implemented, including a violent attack on Sebe's home

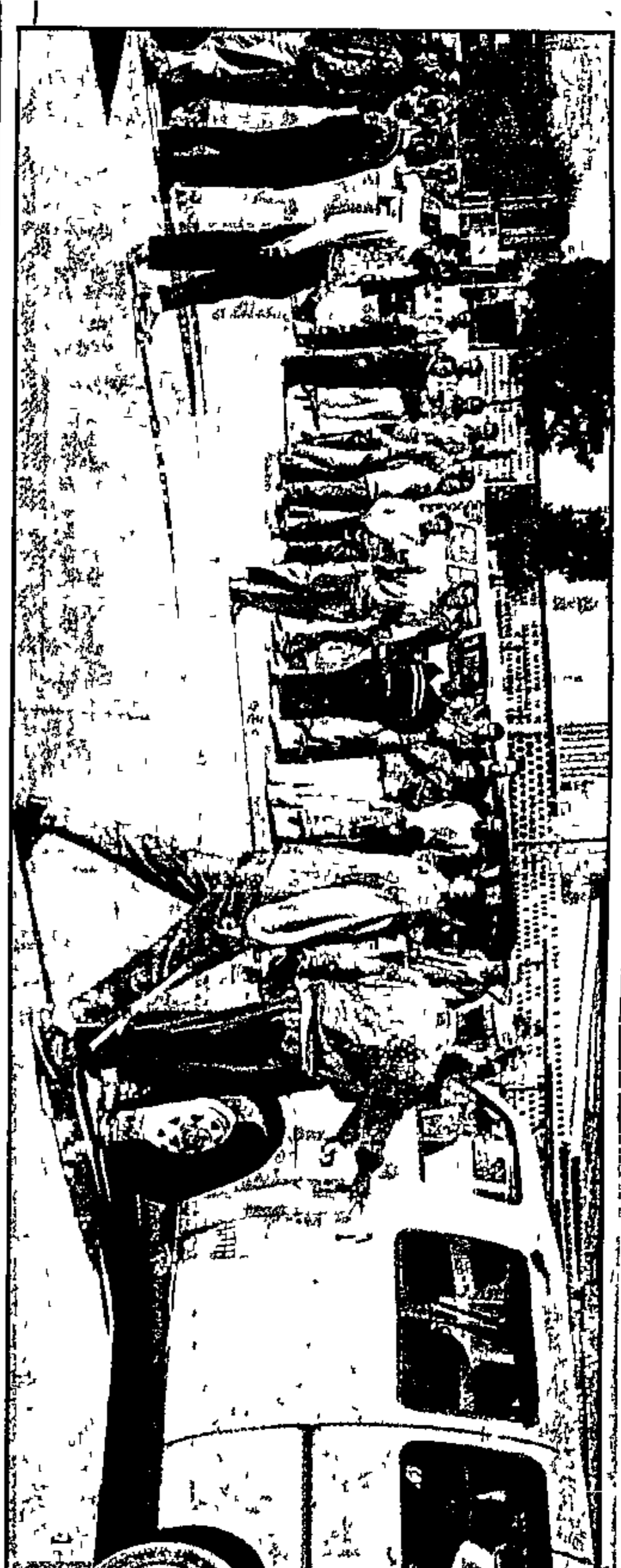
"This demonstrates the immense influence of the security forces in political matters and its ability and willingness to involve itself in political issues," said Plasket. It also demonstrated the SADF's willingness to use violence to achieve its aims

But perhaps one of the most powerful effects of the finding has been to underline the need for the establishment of a truth commission.

Goniwe's widow, Nyameka, is bitterly disappointed with the court's failure to find the individuals responsible for the murders, and feels a truth commission may be the way to do this "The crucial thing is to know who did what. We know the reasons, but we want to know who actually did it," she said

Justice Minister Dullah Omar has already indicated that the watershed judgment is a beginning rather than an end. He said it was likely that the four murders could form part of the truth commission being considered by government.

Justice Zietsman's finding has been referred to the attorney general, who will consider whether or not criminal charges should be brought against those implicated — Ecna



About six people were injured when fighting between members of the Nancefield-Dube West Street Taxi Association and Zola-Orlando-Johannesburg Association broke out in several areas of Soweto yesterday. Police later intervened and a meeting was held at Ipelegeng Community Centre. PICS MBUZENI ZILU

Amnesty dilemma

for Omar

By Themba Molefe
Political Correspondent

HUNDREDS of prisoners claiming political status yesterday threatened hunger strikes and work stoppages in South African jails unless they were granted political amnesty and released.

The ultimatum from the South African Prisoners' Organisation for Human Rights came ahead of a meeting later yesterday between white rightwing leaders and Justice Minister Mr. Dullah Omar on amnesty for jailed and accused rightwingers.

Addressing a Press conference in Johannesburg, Sapiro leader Mr Golden Miles Bhudu said the organisation was angered by Omar's meeting with Conservative Party leader Dr Ferdi Hartzenberg to discuss a call for indemnity and amnesty for rightwingers.

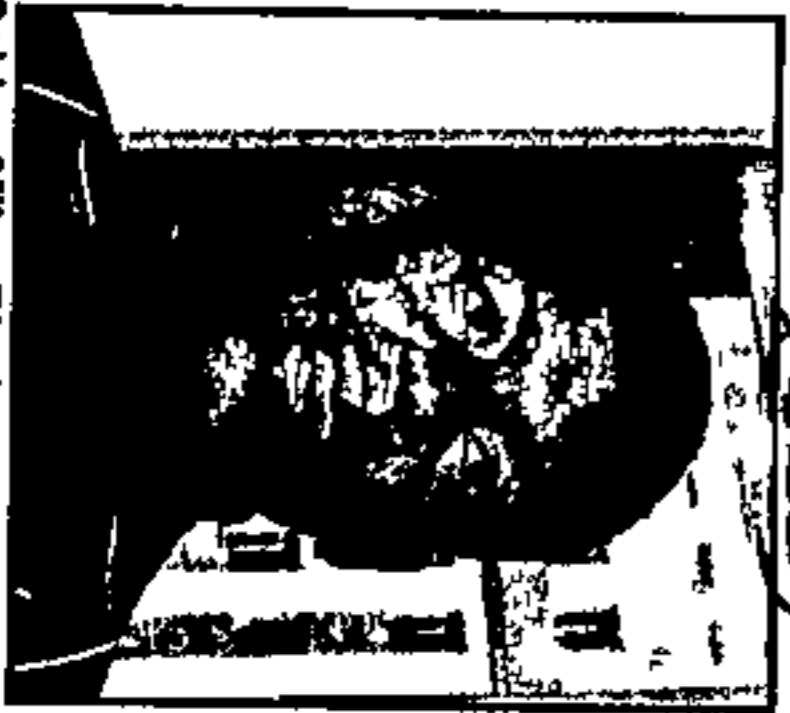
The rightwingers include 34 accused of involvement in a series of bombings that coincided with South Africa's April elections. Sapiro's formal request of May 30 for a meeting

had not been heeded, the organisation said. Omar said last night he would make an announcement soon on amnesty. The Government was presently dealing with applications for amnesty made before the new Government of National Unity came into power.

A source close to the Ministry said a meeting between Omar and Sapiro could be held as early as Monday.

In further statements last night Omar said the question of Mr Chris Hanu's murderers was not about amnesty but about whether they fell within the definition of 'political prisoner'.

Omar was referring to Clive Derby-Lewis and Janus Walusz, who were the subject of the meeting between him and Dr Ferdi Hartzenberg on indemnity for rightwing prisoners.



Golden Miles Bhudu

The Minister declined to comment on the outcome of that meeting. In a formal Press statement, Omar emphasised that the cut-off date for amnesty would not be extended beyond December 6 1993, as was provided for in the Interim Constitution.

»» SATIN LEAF ««

SATIN LEAF
GOLDEN LEAF

SATIN LEAF
Satin Leaf
Satin Leaf

TRUTH COMMISSION: Those who confess will get indemnity — but what is the payback for society?

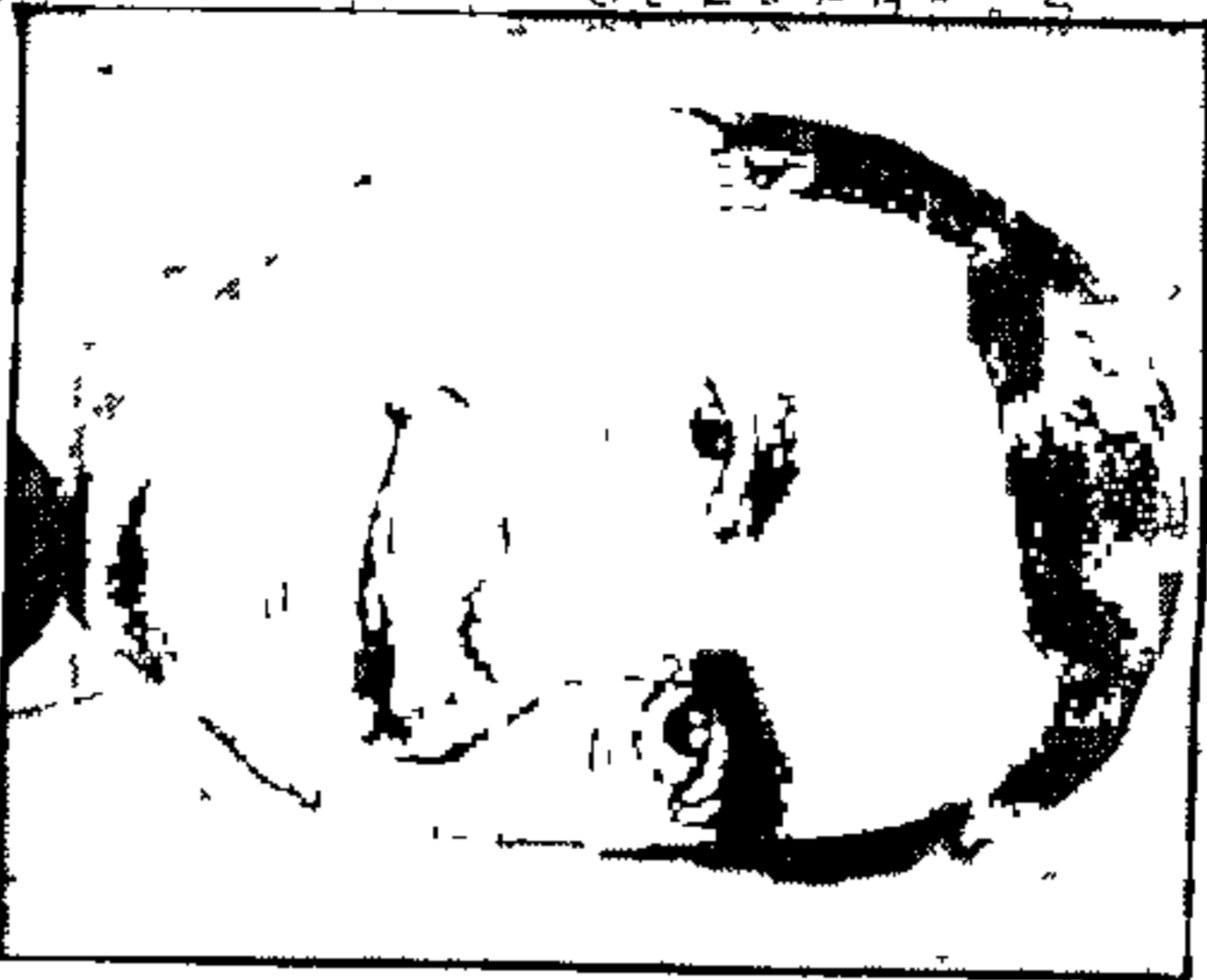
Catharsis for a nation

Star 4/16/94

252

'We can't base our lives on revenge'

JUSTICE Minister Dullah Omar (left) seeks, through a truth commission, amnesty and indemnity "to create a process which will make it possible for all South Africans to come to terms with our painful past — with dignity and in a spirit of forgiveness". Chief Reporter JOHN PERLMAN looks at both sides of the story.



JUST more than four years ago, Justice Minister Dullah Omar forced himself to swallow the medicine he is now prescribing for the country. James Edward Gordon (24) had admitted that he had been hired to kill Omar — then head of the United Democratic Front in the western Cape and a prominent human rights lawyer — either by shooting him or switching his heart pills for tablets that would induce a coronary thrombosis.

This evidence had come out a month earlier before the Harms Commission, called to probe the shadowy Civil Cooperation Bureau, a division of the SADF allegedly involved in dirty tricks and political assassination. And then Gordon asked if he could meet Omar.

"At first I was upset and did not want to meet him," Omar said. "But his basic humanity, which made him tell us and the world what he was dragged into, made me happy to see him. My wish is for Edward to settle down and

Matome Bopape's son Stanza, a Pretoria youth leader, disappeared from police custody in June 1988. Bopape expressed his deep sense of loss and frustration when he met Adrian Vlok, then Law and Order Minister. "I said, 'Why don't you just tell me, even if you have killed him, and then I will be happy,'" he recalls. "Now I am in the middle. I won't say Stanza is dead and I won't say he is alive. But if he is dead they must bring me the bones so that I can bury him myself."

Maggie Friedman, girlfriend of Whis academic Dr David Webster, saw Webster gunned down outside their home in May 1989. When an inquest into his death was called more than three years later, she tried to convey just how painful not knowing had been. "I welcome anything that will get to the bottom of this. Until it is resolved it leaves me hanging. There will always be the possibility of something coming to light, and I would have to live forever with that," she said.



No relief for 400 on death row

Own Correspondent

LONG WAIT New Constitutional Court will decide their fate:

The fate of nearly 400 condemned prisoners on death row could ultimately be decided by the new Constitutional Court.

The appeal of the appeal case was adjourned pending a decision by the Constitutional Court on whether the confirmation of death sentences is constitutional.



Musa Zondis' ROOTS

The great inspiration

ON Sunday June 5 take a moment off and think of the world.

The day marks World Environment Day and is internationally celebrated. Think just for a moment about the area around you: does it give you hope in life, is it clean, can you make a difference?

Essentially, what you should do is to ponder the meaning of life, how you fit into the whole jigsaw puzzle and what contribution you as an individual can make to the betterment of the environment.

The slogan last year was "Think globally, act locally". That is the way to go. The little contribution that you make will go a long way to addressing the environmental concerns and make the world a better place.

World Environment Day can be traced to the Stockholm Conference in 1972, June 5 to 16. The conference was called after the alarming deterioration of the environment. Despite great strides in the technical and sci-

entific fields, things looked dim on the survival of the world and the people.

June 5, the first day of the conference, was then set aside as the day. But even then, the environment is not just a one-day event — it is a lifetime struggle for a better life for all living things.

The theme chosen in South Africa this year is "Art and the environment". Since nature can be such an inspiration to man's creative abilities, this theme fits perfectly.

In art we express our innermost feelings — of pain and joy — and mirror life and our environment.

The Department of Environment Affairs has designed a poster sponsored by Absa Foundation which captures the theme.

It is obtainable free of charge from the department at (012) 310-3823. But the struggle does not end on Sunday. It goes on forever.



Mr Justice Weyers has instead decided to sentence criminals found guilty of serious crimes to life imprisonment.

But in what is believed to be the first such action by the Appeal Court, a judge has declined to conclude the appeal hearing and referred the matter to the Constitutional Court.

The issue was raised by Mr Justice Kumbleben last week in the case of Pieter John van der Merwe (23) that the three death sentences he received for going on a killing spree were properly imposed and ought to be confirmed.

But as there was doubt as to whether the death sentence is permitted in terms of the constitution on the facts of this case or not at all, Mr Justice Kumbleben found it was inappropriate to conclude

the appeal. The case was adjourned pending a decision by the Constitutional Court on whether the confirmation of death sentences is constitutional.

2523

Van der Merwe was given a triple death sentence in 1991 for murders he committed while a national serviceman in January 1990. He was found to have borrowed a fellow soldier's rifle and travelled from his base in Potchefstroom to Klerksdorp. After a few drinks with an acquaintance, Van der Merwe picked up a hitchhiker whom he killed by shooting him in the head at close range. Later that day he approached a minibus taxi and killed the driver and his girlfriend in the same manner. He also robbed and raped the girlfriend.

The Supreme Court found in 1991 that Van der Merwe's crimes were not impulsive but calculated, although there was no motive. Van der Merwe was found by two psychologists to be a psychopath who showed no remorse. The adverse conditions of Van der Merwe's upbringing and his youth at the time of the crime were taken into consideration.

Brigadier Chris Olickers, spokesman for the Department of Correctional Services, said there were 380 death row prisoners including two women held at the Johannesburg Prison.

Olickers said the last death row prisoner was executed on November 14 1989. Nofomela, who won a last-minute stay of execution in 1991, was sentenced to death for the murder of British farmer Mr JH Lourens.

The last person to be sentenced to death in the Pretoria Supreme Court was 32-year-old Sealo Hlela, who was found guilty on January 23 this year on five counts of murder, seven of attempted murder and one of unlawful possession of an automatic firearm and ammunition. Hlela was sentenced to death by Mr Justice H Daniels for the murder of five people who died when the Denneboom taxi rank in Mamelodi was sprayed with gunfire in an indiscriminate attack in October last year. A spokesman for the Department of Justice said the constitution already provided for the establishment of a Constitutional Court and more legislation was in the pipeline to confirm its role. He said the main task left before its institution was finding and appointing members of the Constitutional Court, a task being carried out by the Judicial Service Commission. He could not give any indication who the president of the court might be. The Constitutional Court will sit in the Braampark Building in Braamfontein.

FREEMAN

Changing of date again would be disastrous for South Africa says Umel

Amnesty won't be extended

ANLS 7/6/94

(252)

MICHAEL MORRIS Political Correspondent

JUSTICE Minister Dullah Omar has ruled out any further extension of the cut-off date for political amnesty beyond December 5 1993, warning that this would be "disastrous" for South Africa and send out the wrong signal.

The cut-off date had already been moved from October 8 1990.

"Any further extension would create the impression in the minds of South Africans and the world that the cut-off date is not serious. It would send the wrong signal, and to my mind the cut-off date cannot be changed."

Mr Omar said he was not in any "discussion or negotiation" on the possible granting of amnesty to the right-wingers accused of the bombing campaign in which 21 people died before the election, adding "This date (December 5 1993) is final."

He would not be drawn on the chances of slam SACP leader Chris Hani's killers benefiting from the amnesty, but noted that while "all people" would be free to apply if they felt they fell within the defined categories, "it must be clear that there will be people who committed heinous crimes who will not qualify for indemnity".

Mr Omar also announced that

- the government envisaged a broadly representative commission of "eminent, respected South Africans" which would "investigate and establish the truth about human rights violations". It would be guided by "fair procedure" and adherence to international law on human rights,

- legislation on amnesty was likely only during the August sitting of parliament,

- the public — individuals and organisations — was invited to submit comments on the proposals by June 30, and

- no further applications in terms of the existing Further Indemnity Act would be accepted and an advisory committee headed by human rights lawyer Brian Curran would "scrutinise" all the 200 outstanding applications as soon as possible. Successful applicants would be released immediately, while the remainder would be given the chance to apply again under the new amnesty deal.

Mr Omar said the key to the commission and the new amnesty would be the government's desire to "build a culture of human rights in South Africa"

Definitions and categories of crimes and applicants had still to be defined. This would be one of the commission's first tasks.

He said reconciliation was "not simply a question of indemnity/amnesty and letting bygones be bygones"

"If the wounds of the past are to be healed, if a multiplicity of legal actions are to be avoided, if future human rights violations are to be avoided and indeed if we are successfully to initiate the building of a human rights culture, disclosure of the truth and its acknowledgement are essential."

"The fundamental issue for all South Africans is to come to terms with our past on the only moral basis possible, namely that the truth be told and that the truth be acknowledged," he said

The commission would identify victims and perpetrators of crimes, though it was not yet clear whether all details would be revealed publicly.

He said "events need to be officially recognised"

Omar backing for a 'truth commission'

JUSTICE Minister Dullah Omar has come out in support of a "truth commission" to expose the full range of "dirty tricks" perpetrated by the security forces during the apartheid era.

But the man who was once himself the target of an assassination plot hatched by the shadowy Civil Co-operation Bureau has given the assurance that disclosure of past sins and covert operations would not form the basis of a witch-hunt.

In an interview to be screened on *CCV's Newstime* tonight, Mr Omar emphasises the importance of creating a platform for victims and relatives of state-sanctioned crimes to tell their stories. Acknowledgment of culpability, reparation and possible compensation would form part of the commission's brief, said Mr Omar.

"Amnesty is necessary to ensure we close the book on the past, which is necessary for reconciliation. But there must be a mor-

By MARLENE BURGER and EDYTH BULBRING

al basis for reconciliation, and the element of justice is important. We are not looking at reconciliation at all costs," he said.

The proposed truth commission is likely to be set up in terms of new legislation on amnesty, due to be tabled in Parliament when it convenes on June 20.

A government announcement on amnesty, indemnity and the constitutional court is expected on Tuesday when Mr Omar addresses a media conference in Cape Town.

Justice Department sources said the legislation would include a clause that would effectively preclude amnesty being granted to criminals, such as the murderers of SACP boss Chris Hani.

They said the government was aware that the indemnification of Janus Walusz and Clive Derby-Lewis and the killers in the St James Church massacre would be unacceptable to large sectors of the population.

However, they could not be prevented from applying for indemnity or amnesty. To get around this problem, the legislation will instruct the board that considers applications to take into account the impact the granting of indemnity or amnesty will have on the stability and security of the country.

The sources were adamant that the right-wing bombers who committed violence during election week would not be indemnified under this or any future legislation.

The cut-off date was to be set at December 5 1993, which would exclude all those who committed crimes after this.

Since October 1 1990 the Department of Justice has processed 13 793 applications for indemnity. Of these, 375 have been turned down because they did not fall within the parameters of the guidelines of the Pretoria Minute and the later Groote Schuur Minute, and 195 have not yet been completed.

By far the majority of applica-

tions have been in respect of returned anti-apartheid exiles, Umkhonto we Sizwe members and convicted criminals.

A spokesman for the Department of Justice said it was not possible to single out serving or former members of the security forces who had sought indemnity for their role in state-sanctioned assassinations.

However, among those who could qualify for indemnity is Butana Almond Nofamela. On the eve of his execution in 1989 he confessed to having been a member of an SAP hit squad operating out of Vlakteplaas which murdered Durban lawyer Griffiths Mxenge.

Sentenced to hang for the murder of a Hartebeespoort farmer during an armed robbery, Nofamela has been on Death Row for eight years. His revelations about the Vlakteplaas squads were corroborated by former SAP captain Dirk Coetzee, who returned to South Africa last year and now works for the ANC's security department.

Van Schalkwyk was sentenced to death in March 1992 for the parcel-bomb murder of Durban computer consultant Nick Cruse. He was also found guilty of being involved in the August 1990 bombing of a Pretoria taxi rank, which injured two people.

Martin and Maritz, facing the same charges, jumped bail in September 1991 after a 56-day hunger strike while in custody and fled to England. Maritz was arrested at Jan Smuts airport last week after being deported following an alleged assault on his British-born wife, Karen.

Also possibly in line for amnesty are right-wingers Corrie Lottering, 34, and Fanie Goosen, 29. Lottering is serving a 24-year sentence for the August 1989 murder of taxi driver Pooko Makgamele, who he stabbed twice and shot in the head and back "to see if he could commit a politically motivated assassination without getting cold feet", he said.

Goosen was sentenced to 16 years for his part in the murder.

Coetzee would also be in line for indemnity, as might his successor as commander of Vlakteplaas, Lieutenant-Colonel Eugène de Kock.

Colonel de Kock is now in custody after being named earlier this year by the Goldstone commission as the commander of the alleged "third force". Along with eight other policemen or ex-policemen, he is facing murder charges relating to the killing of four ANC members and an IFP member in an attack on a minibus near Nelspruit in March 1992.

The attack falls outside the existing cut-off date of October 8 1990 for political offences qualifying for indemnity, but would fall within the proposed extended period to December 5 last year.

MK member Hein Grosskopf, alleged to have been involved in three car bombings on the Reef in 1987 and 1988, would also qualify for indemnity.

Among those on the opposite side of the political spectrum who might qualify are right-wingers Lóod van Schalkwyk, 58, Henry Martin, 52, and Adriaan Maritz, 46.

By Tyrone August
Political Reporter

FORMER State President FW de Klerk signed indemnities for Civil Co-operation Bureau members and commuted the death sentences of rightwing killers just days before he stepped down from office. But, according to his spokesman Mr David Steward, De Klerk did not implement his decisions at the request of the Transitional Executive Council.

"The former President was obliged to consider the requests under the Amnesty Act," said Steward. "After having given them consideration, he was obliged to sign them."

However, as the TEC was monitoring all Government legislation during this period, De Klerk also consulted it on the indemnities.

"At the request of the TEC, the former President did not proceed with the matter, and neither decision was implemented," said Steward.

Came close

As a result, De Klerk did not publish his decisions in the Government Gazette (252).

Those who came close to getting amnesty include Major-General Eddie Webb, the former chairman of the CCB underground military structure.

Among those on death row whose sentences were commuted were three AWB members convicted of killing seven people in an ambush on a bus near the Durban township of KwaMashu in 1990. They are Dawid Botha, Eugene Marais and Adriaan Smuts.

He said he did not think that, as President at the



FW de Klerk ... was monitored.

time, De Klerk was obliged to consult the TEC before signing the indemnities in the first place.

The head of the communications department in President Nelson Mandela's office, Mr Joel Netshitenzhe, said yesterday "The details are being dealt with by the Justice ministry."

He said the ministry may have submitted a report to Mandela on the matter. But the President was not involved in the matter at this stage.

Minister of Justice Mr Dullah Omar was at a meeting yesterday afternoon and could not be contacted for comment.

The latest news follows hard on the heels of information about the controversial KwaZulu land deal, which De Klerk authorised during his last days in office.

This transferred 1,2 million hectares of traditional land in the province to the trusteeship of King Goodwill Zwelithini a few days before the April 27 election.

**Furious fight
among right for
hegemony in
negotiations on
volkstaat**

PAGE 6

**Outcome of strike
ballot at Argus
Newspapers to be
made known
today**

PAGE 3

FW in indemnity row
Sowetan
Libby

Cabinet to review clemency deal, says Justice Ministry

Star 7/16/94

Cape Town — Three rightwingers reprieved from the gallows by former president F W de Klerk will stay on Death Row while President Mandela's Cabinet reviews the clemency deal, officials said yesterday.

Justice Minister Dullah Omar would discuss with the Cabinet the case of the three rightwingers and of 70 other people reprieved from the gallows before deciding whether to endorse De Klerk's clemency decision, Justice Ministry spokesman David

Porogo said

"The minister will not do anything or say anything about this case until it has been before the Cabinet," he said, adding that De Klerk's order had been suspended (252)

Richard Carter, a spokesman for De Klerk, said the reprieves and a decision on indemnity from prosecution for 14 agents of the former government had been put on hold (244)

He said the men facing execution remained on Death Row

Major-General Eddie Webb, former commander of the army's covert Civil Co-operation Bureau, was among the men granted immunity from prosecution

Carter said De Klerk had signed the orders during his final days in office because it was his duty as president to do so "All these decisions were referred to the Transitional Executive Council, who asked that they be put on hold until they could be assessed by the Government of National Unity," he said *

(25)
APR 7/6/94
**Magistrates
set to get
new powers**

Political Correspondent

MAGISTRATES' courts will be able to deal with the violation of fundamental human rights entrenched in the constitution if parliament approves cabinet proposals.

Justice Minister Dullah Omar said today that the cabinet would ask parliament "as soon as possible" to amend the constitution to

- Allow magistrates' courts to deal with human rights violations.

- Give the Supreme Court in former TBVC countries — Transkei, Bophuthatswana, Venda and Ciskei — the same jurisdiction on constitutional matters as the local and provincial divisions of the South African Supreme Court.

- Allow the Appellate Division to hear appeals from TBVC supreme courts.

No more held without trial

CT 7/6/94
Political Staff

FOR the first time since 1963, there are no people being held in detention without trial in SA or the former homelands

This was revealed yesterday by the Human Rights Committee when it released its summary of human rights violations last month (252)

The HRC said, however, that 270 people had been detained without trial this year. (323)

Detention without trial for interrogation purposes was first introduced in 1963 when the so-called 90-Days Act was introduced, with the opposition of only one MP, Mrs Helen Suzman

Court

BINAY

8/16/94

From Page 1

obliged" to designate two advocates

Omar said he hoped the problem would be resolved soon, so that Corbett could convene the commission's first meeting

The commission will make recommendations on judges' appointments, terms of office and tenure, and advise central and provincial governments on judicial matters. It will also play an important role in rationalising the legal system (252)

Except for the four nominees in dispute, Omar announced the other members of the commission. They are Corbett, Chaskalson, Judge JA Howard (nominated by the Judge President), Omar or his nominee, Prof Etienne Muremik (designated by law faculty deans), Senators Isabella Direko, Ernest Mchunu, Bulelani Ngcuka and Ray

Radue, as well as David Gordon, George Bizos, Kgomotso Moroka and trade unionist J Ernstzen who were designated by Mandela

ADRIAN HADLAND reports that Association of Law Societies president Willem Venter welcomed Chaskalson's appointment, saying it heralded the "dawn of a new era in SA's legal dispensation". Chaskalson was a jurist with an impeccable track record whose authority on constitutional matters was widely respected

A Constitutional Court was a radical break with the past as South Africans were used to the idea that Parliament was the supreme legislative body

● See Page 10

Court president appointed

BINAY

DAVID GREYBE

CAPE TOWN — Human rights lawyer and ANC constitutional adviser Arthur Chaskalson was yesterday appointed Constitutional Court president (8/16/94)

But Justice Minister Dullah Omar said wrangling between lawyers over nominees to the Judicial Service Commission had delayed the court's first sitting (252)

The 17-member commission is to recommend the appointment of six Supreme Court judges to the 11-member court. President Nelson Mandela, in consultation with the Cabinet and Chief Justice Michael Corbett, will appoint another four judges

Omar said Corbett — whose term of office was due to expire in September — had accepted an invitation from Mandela to remain in office until December 1996

The Minister also announced that, if Parliament approved Cabinet's proposals, magistrates' courts would be able to deal with violations of fundamental human rights entrenched in the constitution

Other constitutional amendments envisaged "as soon as possible" included

- Giving the former TBVC states' supreme courts the same jurisdiction on constitutional matters as the SA Supreme Court's local and provincial divisions,
- Allowing the Appellate Division to hear appeals from TBVC supreme courts, and
- Giving the Justice Minister power to make acting appointments to the Bench

The dispute about the Judicial Service Commission is between the Association of Law Societies and the General Council of the Bar on the one hand, and the Black Lawyers' Association and the National Association of Democratic Lawyers (Nadel) on the other. The advocates' and attorneys' professions each have to nominate two practising lawyers to the commission.

The General Council said yesterday the impasse had been caused by Nadel's insistence on nominating one of the two advocates. The General Council said it was the only legitimate mouthpiece of the advocates' profession, so was "entitled and

□ To Page 2

Truth commission to be established

8/16/94
DAVID GREYBE

CAPE TOWN — A commission of truth and reconciliation would be set up to help SA come to terms with its past, Justice Minister Dullah Omar said yesterday.

Legislation setting up the commission would go to Parliament in August at the earliest after widespread consultation.

"The fundamental issue for all South Africans is to come to terms with our past on the only moral basis possible, namely that the truth be told and that the truth be acknowledged," he said. 8/16/94

He ruled out extending the cut-off date for political amnesty beyond December 5 last year, indicating that he was not prepared to discuss amnesty for the pre-election bombings with right-wingers.

"This date is final. Any further extension would create the impression that the cut-off date is not serious," Omar said. It had already been moved from October 8 1990.

He said government envisaged a broadly representative commission "of eminent, respected South Africans", whose terms of reference would include "investigating and establishing the truth about human rights violations and their acknowledgement." But the commission's adherence to international law relating to human rights "must be assured". (252)

Details of the commission, and eligibility for amnesty still had to be worked out.

He would not be drawn on the chances of slain SACP leader Chris Han's killers benefiting from an amnesty. While he noted everybody would be free to apply if they believed they fell within the defined categories, "it must be clear that there will be people who committed heinous crimes who will not qualify for indemnity".

□ To Page 2

Truth commission

Omar said all comments and proposals should be submitted by June 30. 8/16/94

"Reconciliation is not simply a question of amnesty and letting bygones be bygones." The truth needed to be known if the wounds of the past were to be healed, if a multiplicity of legal actions were to be avoided, if future human rights violations were to be prevented, and "if we are to successfully initiate the building of a human rights culture". (252)

Omar said no further applications would be accepted in terms of the Further Indemnity Act and an advisory committee headed by Lawyers for Human Rights national director Brian Currin would scrutinise the 200 outstanding applications urgently.

Successful applicants would be released immediately, while the rest would be allowed to apply under the amnesty deal.

The right wing immediately criticised Omar's announcement.

A senior CP member said "This commission is on a par with the Nuremberg trials. Previous decision-makers such as FW de Klerk must be feeling very uneasy."

It was "most tragic" that the December 5 cut-off date appeared to be cast in stone.

The AWB said government, by rejecting its offer of a ceasefire pending talks on a volkstaat, had created "a huge powder keg which begs to be ignited by all opposing government's authoritarian and anti-white method of government." The AWB vowed to intensify "the struggle for a volkstaat no matter what the cost".

The Freedom Front urged government to make requirements for amnesty or indemnity reasonable and just. "We wish to warn that peace and calm cannot prevail if rightists are openly discriminated against."

8/16/94
□ From Page 1

focus on AMNESTY

Sowetan 8/6/94

THE PAST IS STILL throwing a long shadow over South Africa. This was illustrated by yesterday's announcement by Justice Minister Mr Dullah Omar that a truth commission would be established

The announcement comes in the wake of a growing row over who should qualify for political amnesty and indemnity

On the one side, there is the view of the Conservative Party and the Volksfront that rightwing prisoners who carried out violent acts should also be given amnesty

On the other side, there are those who feel that only those who carried out violent acts in the fight against apartheid should get amnesty. But, in between, there is a big grey area

This is why there is still so much ongoing controversy about the release of people like former Wit Wolf Mr Barend Strydom and Umkhonto weSizwe member Mr Robert McBride

"The constitution is quite clear," says Mr Brian Currin, national director of Lawyers for Human Rights

"Amnesty needs to be considered in the spirit of reconciliation

"But the difficult question is Where do you draw the line?"

"Do you include the Afrikaner Weerstandsbeweging members who shot up a bus in Durban in 1990? It is a really problematic question," he says

These are the issues Currin will have to grapple with as convener of an advisory committee which will scrutinise outstanding amnesty applications and make recommendations to the president.

The LHR believes amnesty should be limited to those who were involved in the conflict between the anti-apartheid movement and the security forces

"The conflict was between those fighting for a new dispensation, and those fighting against it," says Currin, who feels those falling outside this conflict should not get amnesty

"A bunch of fanatical rightwingers shooting black people in a bus is not a political objective," says Currin "It is a symptom of a sick society. It is a symptom of a sick mind"

In terms of this distinction, he also excludes the killers of American student Amy Biehl from qualifying for amnesty or indemnity.

Racial hatred

"What was their war against Amy Biehl?" he asks "It was just a personal war of racial hatred"

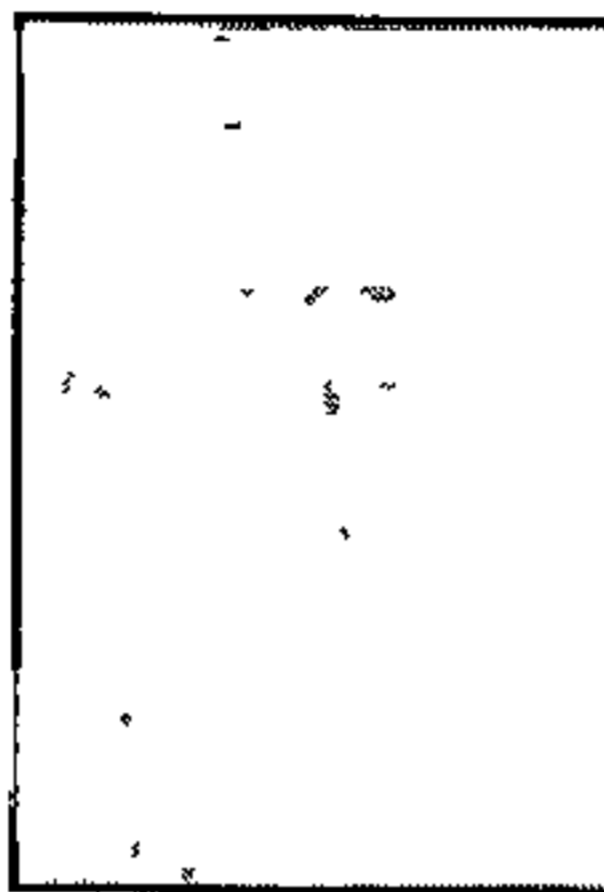
Mr Patrick Kelly, national director of the Human Rights Commission, also feels those who participated in acts not formally sanctioned by the old Government should not get amnesty

"They were not part of formal resistance, and a transition was in process since February 1990," he says

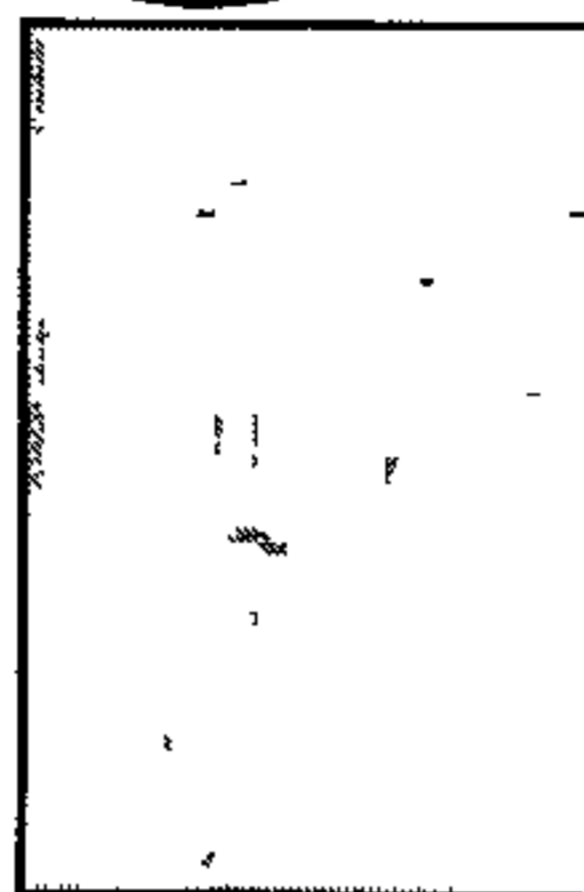
Kelly adds that a distinction should also be made between those who were prisoners, and

Although apartheid was a great evil, it will be extremely difficult to make distinctions around human rights abuses. Political Reporter **Tyrone August** looks at this contentious question:

252



Barend Strydom



Robert McBride

whose crimes were known, and those who did not go through any judicial process

"That is the crucial distinction, and not whether people were involved in the struggle against apartheid, or whether they were part of maintaining apartheid," he said

"Justice must be applied in an even-handed manner. If a member of a self-defence unit gets amnesty for committing a racist act, so should the right-wing"

Mr Lloyd Vogelmann, director of the Centre for the Study of Violence and Reconciliation, agrees

Great evil

"Although apartheid was clearly a great evil, it is going to be extremely difficult to make distinctions around human rights abuses," he said

"The question is whether a government sees human rights as a principle

"If it does see it as a principle, then all those who abuse human rights should be treated equally and prosecuted

"But, given the political nature of South Africa at this point, prosecutions will not occur — although, in an ideal world, it should"

Instead, Vogelmann argues for the identity of perpetrators of violence to be made known, and believes a truth commission can serve this purpose

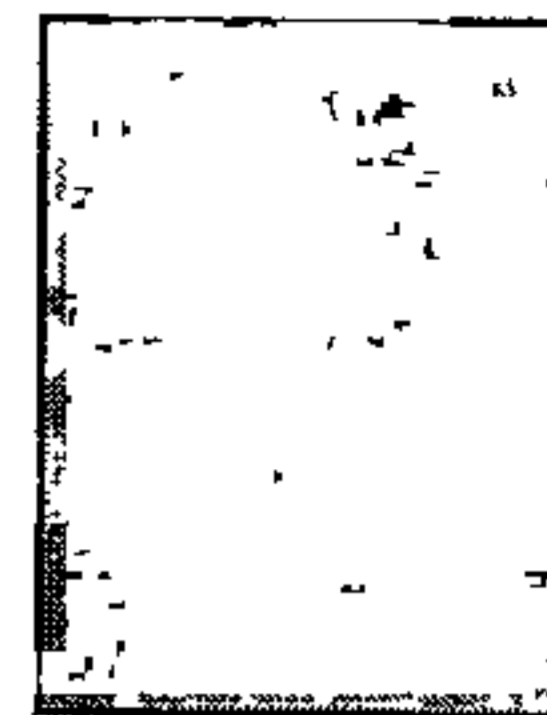
"A truth commission needs to expose the abuses that have occurred"

"We need to know our history before we can integrate the past into our psyche and move on

"There is nothing worse for a victim than not to know the identity of a perpetrator

"It makes the victim even more powerless," he says

He also suggests material compensation for



victims'

"It won't bring back those who are not alive, but it is important to make life easier for their relatives

"Compensation also communicates a message to the victim. It says society cares"

Kelly, on the other hand, feels the views of the victims were not the only consideration

"The views of the perpetrators are not looked at seriously enough"

He says they should be given incentives to encourage them to come forward, provided indemnity from prosecution is not enough, said Kelly

Security of employment

Kelly says security of employment — whether inside the security services or outside — was equally important

"If not, that can put a spoke in the wheel," he adds

And, he believes, the truth must come out: "It has an important role in the healing process.

"It is going to be difficult if people are still walking around with high levels of distrust."

He adds that if a culture of accountability was not developed, security forces may be tempted in future to succumb to abusing their power if past abuses were never exposed

Mr Krish Govender, publicity secretary of the National Association of Democratic Lawyers, says the appointment of a truth commission is long overdue

But, in Nadel's view, such a commission should only look at "the acts and omissions of those involved in suppressing the democratic will of the people during the dark days of apartheid"

And, unlike Kelly and Vogelmann, he does not believe all political prisoners should be given amnesty. He regards acts carried out to maintain apartheid as a crime against humanity

"Their actions must be regarded as distinct and different from the actions of those struggling for liberation and any resultant excesses that may have been committed," says Govender

"Indemnity should apply as a right to the latter cases"

These diverging views indicate that coming to terms with the past is not going to be easy. It is going to be complex and painful, but it is a process which cannot be avoided

There are still too many open scars

Constitutional Court delayed

CT 8/16/94

(252)

By ANTHONY JOHNSON and BARRY STREEK

THE introduction of South Africa's all-powerful Constitutional Court has been delayed because of in-fighting between lawyers' bodies.

The delay stems from the failure of lawyers to reach agreement on who their four representatives should be on the Judicial Services Commission (JSC) which has to recommend six of the members of the Constitutional Court

The other four members of the court, all Supreme Court judges, will be appointed by President Nelson Mandela in consultation with the cabinet and the Chief Justice

The JSC is also responsible for the appointment of new judges, the removal of judges from office, terms of office and tenure of all judges, and advising national and provincial government on all matters relating to the judiciary and the administration of justice.

However, Justice Minister Mr Dullah Omar yesterday named Mr Arthur Chaskalson, SC, former executive director of the Legal Resources Centre, as the first president of the Constitutional Court.

He also announced the term of office of the Chief Justice, Mr Justice Michael Corbett, had been extended to December 31, 1996

Apart from the names of two practising advocates and two practising attorneys — delayed by squabbles between the General Council of the Bar and the Association of Law Societies on the other hand and the Black Lawyers Association and the National Association of Democratic Lawyers on the other — the

Squabble over appointments



RIGHTS UPHELD . . . Mr Dullah Omar after his announcement yesterday. Picture ANNE LAING

minister released the names of the other members of the JSC

They are Mr Justice Corbett, Mr Chaskalson, Mr Justice JA Howard, who was designated by the Judges-President, Mr Omar himself, Professor Etienne Mureinik on behalf of South African law deans, Senators I E Direko, E S Mchunu, Bulelani Ngcuka (all of the ANC) and Ray Radue (NP), and Mr David Gordon SC, Mr George Bizos SC, Mr Kgomo Moroka and trade unionist Mr Johny Erntszen, who were designated by the President in consultation with the cabinet

Mr Omar said it was hoped the dispute among the advocates and

attorneys over their four nominations would be resolved soon to enable the Chief Justice to convene a meeting of the JSC.

The General Council of the Bar said it was "with regret" that the members of the JSC had been announced without its nominees

"The impasse has been caused by the insistence on the part of the Nadel to nominate one of the two nominees which have to be designated by the advocates' profession in terms of the constitution"

However, the General Council was the advocates only legitimate mouthpiece

"The GCB is the democratically elected representative of all advocates in private practise. It is accordingly legally entitled and obliged to designate the two advocates concerned

"Nadel on the other hand is an organization open to lawyers generally. Its membership includes only a small number of advocates but those advocates are also affiliated to the GCB

Nadel's membership moreover comprises mainly attorneys and other lawyers"

The GCB said it had made various attempts to solve the issue and it regretted that the JSC could not function as a result

• The Democratic Party yesterday welcomed Mr Chaskalson's appointment and said he was highly regarded by members of the legal profession

"The Constitutional Court is even more important than Parliament because the constitution is now supreme. Great responsibility rests upon the court to nurture and safeguard the constitution," the DP said in a statement by its justice spokesman, Mr Douglas Gibson

CT 8/16/94

SA's dark past to be dug up

Sowetan

8/16/94

UNIVERSITY OF CAPE TOWN
SALDRU LIBRARY

By Themba Molefe
Political Correspondent

A "TRUTH COMMISSION" consisting of eminent South Africans is to be established to rid the country of apartheid's sordid past

Minister of Justice Mr Dullah Omar announced in Cape Town yesterday that, subject to wide consultation, draft legislation to establish a truth and reconciliation commission would be tabled in Parliament in August. The commission would complete its work within a specified time frame — either 18 months or two years.

President Nelson Mandela would thereafter "report to the nation" and make known his decision after receiving the final report to mark the end of the operation.

Omar said "I reiterate that reconciliation is not simply a question of indemnity or amnesty and

letting bygones be bygones. If the wounds of the past are to be healed, if a multiplicity of legal actions are to be avoided, if future human rights violations are to be avoided — and indeed — if we are to successfully initiate the building of a human rights culture, disclosure of the truth and its acknowledgement are essential (252)

"We cannot forgive on behalf of victims their voices need to be heard," he said.

The commission would hear applications for amnesty and indemnity from political offenders and make recommendations to Mandela whose decision would be final.

Omar reiterated that the cut-off date of December 5 1993 for indemnity and amnesty was final. No additional applications would be permitted under the existing Further Indemnity Act. It is

expected that new amnesty legislation would be submitted to Parliament when it sits from June 22.

The Minister said about 13 000 people had been granted indemnity or amnesty since 1990.

The proposed commission, which would investigate gross violations of human rights, would adopt fair procedures and adhere to international law and human rights standards, said Omar.

Those who qualified would be released immediately while those who did not qualify would be able to apply for amnesty through the new mechanism.

The commission would also investigate the possibility of reparations and/or compensation to the families of victims of human rights abuses. An example would be educational bursaries for the children of a breadwinner.



Mr Patrick Sibeko, one of the hundreds of squatters whose shacks were destroyed by Johannesburg City Council officials on Monday night, takes a bath in the open veld near the suburb of Mulbarton, south of Johannesburg, yesterday.
See story on Page 3.

PIC: LEN KUMALO

Lower courts to uphold people's rights

By BARRY STREEK
Political Staff

ORDINARY people are to get access to the courts at all levels to enforce their rights under the far-reaching Charter of Fundamental Rights, Minister of Justice Mr Dulah Omar announced yesterday.

The cabinet had agreed in principle to amend the constitution "to confer jurisdiction on the magistrates' courts to deal with violations of fundamental rights entrenched in Chapter 3 of the constitution".

This means people will be able to go to magistrates' courts to enforce their rights. It had been feared that the often exorbitant costs of hiring attorneys and advocates to enforce fundamental rights would make them beyond the reach of most people.

Clearly, if appeals are lodged in higher courts, particularly the Constitutional Court, these could result in substantial costs, but the amendment announced yesterday will enable ordinary people to use the cheapest courts to enforce their rights.

Mr Omar said the cabinet had approved in principle to:

- Give the Supreme Court of the former TBVC territories the same jurisdiction in respect of constitutional matters as local and provincial divisions of the Supreme Court.
- Provide for appeals from the Supreme Courts of these territories to the Appellate Division.
- Give the Minister of Justice the power to effect acting appointments to the Supreme Court benches. These constitutional amendments would be put before Parliament as soon as possible, he said.

Mandela seeks to allay truth commission fears

□ Political criminals should seek indemnity

The Argus Correspondent

JOHANNESBURG. — President Mandela has called on people who have committed political crimes to seek indemnity.

He said "Many people are worried because we have established the truth commission. They believe it will lead to a Nuremberg trial where we will put people who have committed crimes on trial.

"The correct application is that of a truth commission and reconciliation. We have combined these because we want to remove fears that we want retribution."

Mr Mandela was speaking at the National Peace Secretariat and Education Africa's Golden Doves of Peace awards in Sandton, which went to people he called the "unsung heroes" of the peace process.

Awards went to Michael Ngidi and Sipho Mahlobo from the Wits-Vaal region, Peter Brandmuller and Pastor Cliff Nhlápo from the Eastern Transvaal, Grace Sekhu from

the far Northern Transvaal, Ted Pauw from Northern Transvaal, the late Isaac Shandu from KwaZulu-Natal, Father Lodewyk Ballink from the Free State, the Rev Johan Wolmarans from the Western Transvaal, David Mkhize on behalf of the people of Crossroads and Professor Jaap du Randt from the University of the Western Cape, and Jackson Patel from Border/Ciskei.

Special awards went to the president himself, Miss South Africa Jacqui Mofokeng and National Peace Secretariat chairman Anthome Gildenhuys.

"Each of these winners was nominated by their local community as a tireless builder of peace," said Dr Gildenhuys.

There were recorded messages of support from United Nations Secretary-General Boutros Boutros-Ghali and British Prime Minister John Major.

Mr Major applauded the contribution to peace by the NPS and Education Africa.

"They have provided a na-

tional and international forum for ending violence and spreading education. We admire their efforts to foster a culture of peaceful co-existence and to give young people the chance to contribute their skills in South Africa's regeneration."

Dr Boutros-Ghali said South Africa had charted a new course to ensure its place in the family of nations.

The evening also saw the launch of a marketing strategy, enabling the sale of a million "doves of peace" between now and September.

The doves are dress pins which have been electroplated in 24 carat gold and are in the shape of the National Peace Secretariat doves.

They are available at Pick 'n Pay, Family Circle pharmacies, Foschini, Sterns and American Swiss.

If a million were sold, R3 million would be raised for peace and education initiatives, said Education Africa chairman Aggrey Klaaste, who is also editor of the Sowetan.

ARG 8/6/94

(252)

LAWYERS and politicians are virtually at one in welcoming Arthur Chaskalson's long-deserved ascendance

Long-deserved appointment — tinged with irony

They see in him a clever, compassionate man, an astute lawyer and a courageous South African inspired by conscience. His performance in the courts, as much as in the hostile political environment of the past few decades, has earned awe and respect.

Little wonder, then, that Arthur Chaskalson's appointment to lead the highest court in the land has been received so warmly.

But his "judicial inexperience" has been singled out as a disadvantage.

A learned admirer noted "This is certainly a legitimate concern.

"One would have liked to have seen somebody (appointed to head the Constitutional Court) with a track record in relation to delivering judgments, rather than just presenting arguments in response to issues."

It is a matter of irony that

this doubt expressed by those who know him and, indeed, admire him, stems not from any personal or professional flaw, but, indirectly, from the very courage and tenacity that have earned him national and international acclaim.

For there is no doubt that his unrelenting campaign against apartheid's oppressive and repressive laws led to his being systematically overlooked by the National Party government.

The apprehension that has been expressed in some quarters at Mr Chaskalson's lack of experience in weighing arguments for the purpose of delivering judgments would have been dispelled had he been given the opportunity to exercise his talents at the highest level.

Born in Johannesburg in November 1931, Mr Chaskalson graduated cum laude from the University of the Witwaters

rand in 1954. Admitted to the bar in 1956, he took silk in 1971.

A turning point came in 1978 when he helped found the Legal Resources Centre.

Over the next decade, he fought and won many of the most important legal challenges to apartheid laws, continuing the work he began at the Bar.

A former chairman of the Johannesburg Bar Council and vice-chairman of the General Council of the Bar of South Africa, he became, in 1985, the second South African to be elected as an honorary member of the Association of the Bar of the City of New York — the first was Jan Smuts.

He became a constitutional consultant to the African National Congress in 1990 and played a key role in the technical committee on the constitution at the Kempton Park talks.

PEOPLE IN THE NEWS
Arthur Chaskalson

Almost universal acclamation has greeted the appointment of Arthur Chaskalson, SC to the presidency of South Africa's Constitutional Court, the most powerful arbiter of rights the country has ever had. But some wonder whether his lack of experience as a judge, rather than as an advocate, will count against him. Political Correspondent MICHAEL MORRIS reports

His first experience of national constitution-making was as a consultant to the Namibian Constituent Assembly.

Colleagues portray Mr Chaskalson as a particularly diligent and hard-working lawyer.

Hugh Cordeir, professor of public law at the University of Cape Town, observed "This is wonderful news because I think he has the kind of professional and personal qualities to lead the Constitutional Court in

— and he stuck to it"

The Association of Law Societies of South Africa has welcomed Mr Chaskalson's appointment.

Willem Venter, president of the association, said Mr Chaskalson was a jurist with an impeccable track record who was widely respected locally and internationally.

The appointment of Mr Chaskalson was a radical break with the past because South Africans had got used to the idea of parliament being the supreme legislative body whose laws had been seen as unchallengeable.

"His appointment is important because of the prominent role he will play in our fast-changing legal system," he said.

Another associate said of the new head of the Constitutional Court: "I always found him a very balanced person, with an open mind even on issues on

which he felt very strongly."

He added "One is going to expect that this court will have a political colour — not to expect it would be unrealistic — and against that background, the majority of lawyers regard this as a good appointment."

If, in the eyes of some, Mr Chaskalson has yet to demonstrate his skill as a judge, there are others who question his political neutrality.

Democratic Party justice spokesman Douglas Gibson noted his "close links" with the ANC, adding "We are sure that he will take steps to make clear that he and his administration conduct independent politics."

There can be no doubt that as a key contributor to the shaping of the constitution, Arthur Chaskalson has no illusions about the critical role he has been called on, with such acclamation, to play

Omar says no to bombing amnesty

Star 8/16/94

BY KAIZER NYATSUMBA
CHRIS WHITFIELD
and ESTHER WAUGH

Justice Minister Dullah Omar announced the establishment of a Commission of Truth and Reconciliation yesterday to deal with amnesty or indemnity for political offences committed before December 5 last year.

But he ruled out amnesty for rightwingers arrested in connection with pre-election bombings.

Addressing a press conference in Cape Town, Omar said the establishment of the commission was important to allow the country to "come to terms with its past".

However, he insisted that only those who had committed political offences before December 5 1993 could apply for indemnity.

This would exclude those responsible for the spate of pre-election bombings in April.

"The idea of a fixed cut-off
date
is
not
an
option
at
all."
Omar
said.

Amnesty body is bid to bury the past

Star 8/16/94

From Page 1

date is to send a clear signal to all the people in the country that violence of all kinds will not be tolerated. People must face the consequences (of their actions) and will be dealt with accordingly."

He declined to comment on the indemnification of former Civil Co-operation Bureau agents — including former bureau head Major-General Eddie Webb — by former president F W de Klerk, but said he did not and would never equate those who committed offences in the struggle against apartheid with those who had done so in its defence.

"I do not believe the two sides have the same moral claim. But this does not preclude an even-handed approach towards amnesty and indemnity in terms of an accepted definition of a political offence," Omar said.

The Truth Commission, to consist of eminent South Africans, would complete its work within a specified period — either 18 months or two years.

It would submit a final report to the State President, who would then "report to the nation and thereby close this chapter on South Africa's past".

A cut-off date for applications is still to be set.

Elaborating on the commis-

sion, Omar said it would establish a framework to deal with claims for reparation or compensation by victims or their relatives. Compensation could include bursaries for dependants.

He invited the public to submit comments and proposals on the issue before June 30.

Turning to indemnity applications made to the previous government in terms of existing legislation, Omar agreed that these should be dealt with expeditiously. An advisory committee, chaired by Lawyers for Human Rights chairman Brian Curran, would scrutinise the applications and make recommendations to President Mandela.

Amnesty 'out' for tavern accused

CT 8/6/94

252

By ANTHONY JOHNSON and BARRY STREEK

THE indemnity application by the five PAC members accused of murder in last year's Heidelberg Tavern massacre will fail after the government ruled yesterday that the December 5, 1993, deadline for indemnity was "final".

The Minister of Justice, Mr Dullah Omar, told a press conference that the cut-off date could not be changed and was not subject to negotiation.

Right-wingers implicated in a pre-election bombing spree will also not be given indemnity and will also face multiple murder and attempted murder charges.

If convicted, the only chance that these groups of left- and right-wing activists have of escaping lengthy prison terms will be for President Nelson Mandela to by-pass the formal indemnity procedures by commuting their sentences or pardoning them.

However, Mr Omar declined to comment on moves by former president Mr F.W. de Klerk to indemnify former Civil Co-operation Bureau agents and about 70 right-wingers in the dying days of his administration.

The five Heidelberg Tavern accused said on May 20 that they were applying for indemnity, and their trial on murder and attempted murder charges was postponed until October pending the outcome of their applications.

Processed

Announcing plans for legislation to establish a "commission of truth and reconciliation" — the first government-initiated project of this nature in the world — Mr Omar said it would be "a disaster for South Africa" if the December 5, 1993, deadline were to be shifted again.

Although more than 13,000 indemnity applications had been processed since 1990, the government would not consider any further applications in terms of the controversial Further Indemnity Act and all new cases would be assessed by the proposed Truth Commission, which would advise President Mandela on future cases.

● The National Association of Democratic Lawyers yesterday called for the immediate release of Dr Hendrik Verwoerd's assassin, Demitrio Tsafendas, on humanitarian and compassionate grounds.

● The SA Prisoners' Organisation for Human Rights yesterday welcomed the announcement about the proposed Truth Commission and the decision that all political prisoners qualifying for indemnity in terms of last year's record of understanding between the ANC and the government are to be released immediately.

● The Black Sash welcomed the proposed Truth Commission, saying the body would "go far to lay to rest the sense of injustice and powerlessness suffered under the past government".

● Freedom Front leader General Constand Viljoen yesterday questioned the establishment of a Truth Commission. He said he did not believe the commission would help with reconciliation.

Chaskalson appointed

Star 8/6/94

■ BY ESTHER WAUGH
POLITICAL CORRESPONDENT

Veteran human rights advocate Arthur Chaskalson has been appointed as the president of the Constitutional Court which will play a critical role in interpreting the constitution

Justice Minister Dullah Omar also announced some of the appointments to the Judicial Services Commission (JSC) yesterday

Commenting on his new role, Chaskalson said: "It will be our task to protect the fundamental rights of all our people, and to give life and meaning to our new constitution. In doing this, we will have to be sensitive to the needs and aspirations of all South Africans. Fortunately, there will be 11 of us

"We will share the responsibility for the decisions that have to be made, we will also be able to draw upon the judgments, writings and arguments of the South African judiciary, legal profession and scholars, as well as those of judges and scholars around the world. That will

make our task easier"

The names of the other 10 Constitutional Court judges will be announced later

The composition of JSC will include Omar, Chaskalson and Chief Justice Mr Justice Corbett, who has agreed to delay his retirement for two years (252)

Among the JSC's tasks will be the appointment of judges, recommending their removal and appointing six of the Constitutional Court judges

Members of the JSC announced yesterday are Mr Justice Howard, law professor Etienne Mureink, and senators I W Drenko, E S Mchunu, B T Nquka and Ray Radue

Four people designated to the JSC by the president in consultation with the Cabinet will be advocates David Gordon, George Bizos, Kgomoiso Moroka and trade unionist J Ernstzen

The names of four practising advocates and attorneys have still to be announced and have been delayed by a dispute between the Association of Law Societies and the General Council of the Bar (GCB) on the one

hand and the Black Lawyers' Association and the National Association of Democratic Lawyers (Nadel) on the other

The GCB said yesterday the impasse had been caused by Nadel's insistence on nominating one of the two advocates

The GCB believed that it was the only legitimate mouthpiece of the advocates' profession and as such was legally entitled to nominate the two advocates

"The GCB is the democratically elected representative of all advocates in private practice. It is accordingly legally entitled and obliged to designate the two advocates concerned. Nadel, on the other hand, is an organisation open to lawyers generally. Its membership includes only a small number of advocates but those advocates are also affiliated to the GCB," the GCB said

Omar also said the Cabinet had approved changes to the Constitution, giving magistrate's courts jurisdiction over violations of fundamental rights

► New legal era - Page 8

Lawyers' row hot up

By ANTHONY JOHNSON
Political Correspondent

THE row between lawyers' bodies about who should represent them on the influential Judicial Services Commission (JSC) intensified yesterday

A statement issued by advocates of the Cape Bar, who are also members of the National Association of Democratic Lawyers (Nadel) and the Black Lawyers' Association (BLA), said they were "appalled at the arrogance" of

the General Council of the Bar (GCB) which was "seeking to arrogate to itself the sole right to decide which advocates should serve on the JSC"

The GCB said on Tuesday it was the only legitimate mouthpiece of advocates. Yesterday the Nadel and BLA members hit back. "The JSC is intended to initiate a new phase in the democratisation of our judicial structures. In adopting its present attitude, the General Council seeks to subvert this process."

(252) CF 9/6/94

Bid to extend prisoner amnesty

Sowetan 9/16/94

By Tyrone August
Political Reporter

■ SAPOHR ACTION Amnesty is

sought for common-law criminals:

HUNDREDS of members of the South African Prisoners' Organisation for Human Rights will go on hunger strikes and work stoppages from today to back demands for amnesty.

The organisation has also called for an urgent meeting with President Nelson Mandela.

Sapohr's announcement comes in the wake of the organisation's meeting in Cape Town on Monday with Justice Minister Mr Dullah Omar to discuss indemnity for common-law prisoners

Really disgusted

"We felt really disgusted with the response," said Sapohr leader Mr Golden Miles Bhudu yesterday. "We felt down and out."

The organisation was informed that the release of prisoners who fell out-

side the scope of the existing indemnity legislation was not within Omar's area of responsibility. (SAP) (252)

Bhudu said Sapohr was told it was the responsibility of the Minister of Correctional Services, Mr Sipho Mzimela. But yesterday Sapohr said it received a fax that Mzimela was "committed" at the moment

Mzimela's spokesman, Captain Bert Slabbert, confirmed Sapohr's request for a meeting but said this was not

possible "in the near future"

"But we took cognisance of the request," he said

Slabbert said Sapohr's actions could jeopardise the whole process and called on all prisoners to remain calm and patient. Yesterday Omar told *Sowetan* in a statement: "(Those) found guilty of ordinary criminal offences — no matter in what socio-economic circumstances — do not qualify for amnesty as political prisoners."



Lawyers' race dispute blocks the new court

252 WM 10-16/6/94

The appointment of representatives to the Judicial Services Commission has created a dispute along racial lines. **Mark Gevisser reports**

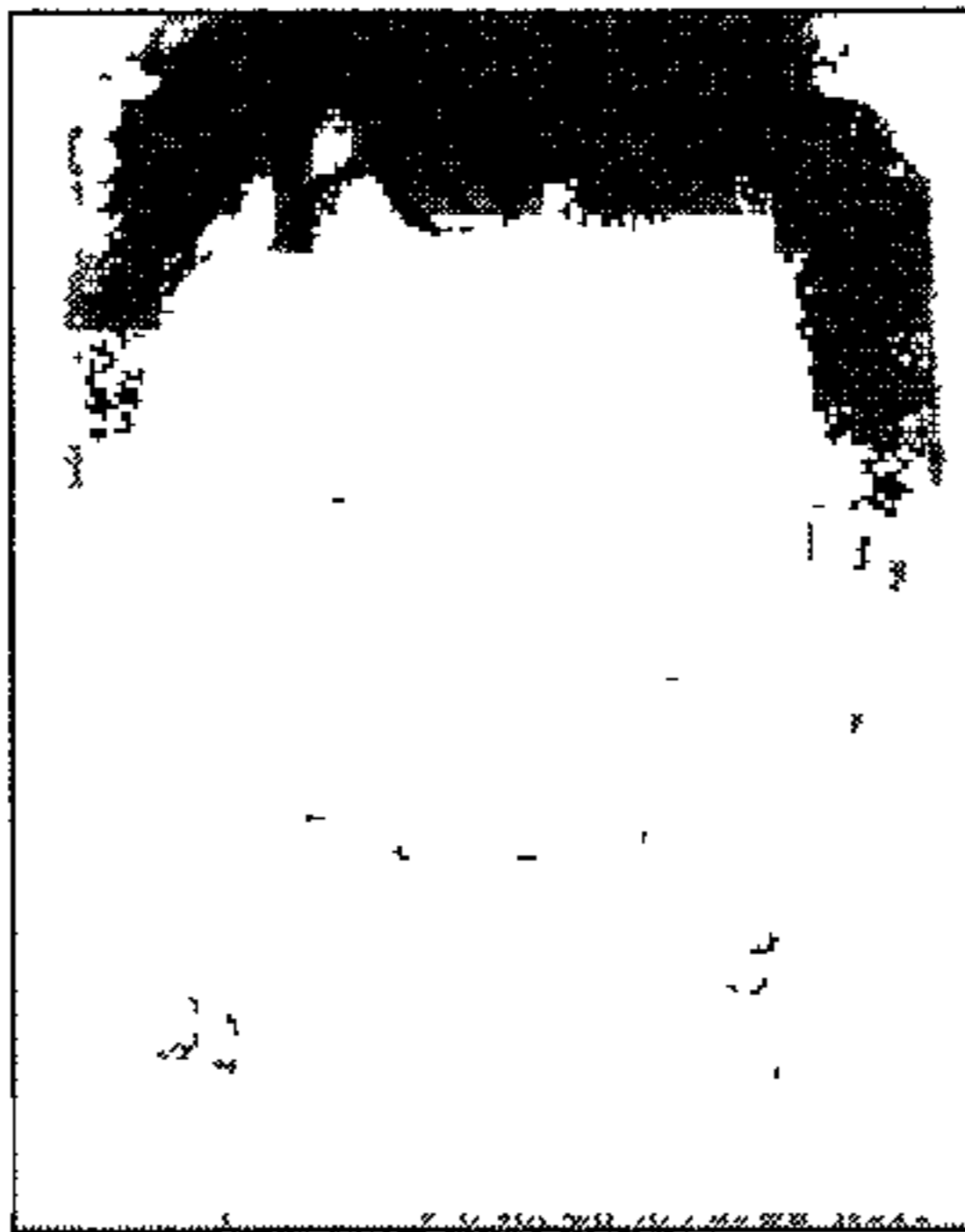
A GROWING dispute between professional legal associations over the selection process of the new constitutional court threatens to delay indefinitely the appointment of other constitutional judges

The dispute is between the General Council of the Bar (GCB) and the Association of Law Societies (ALS) on the one hand, and the National Association of Democratic Lawyers (Nadel) and the Black Lawyers' Association (BLA) on the other. It centres on which of these bodies will appoint representatives to the Judicial Services Commission, which is responsible for providing a list of 10 constitutional court nominees to President Nelson Mandela. Mandela will then choose six of these 10 names — the other four coming from the judiciary.

The dispute cuts to the heart of deep-rooted inequities — and historical racism — within the legal fraternity. According to the constitution, advocates and attorneys must appoint two commission members from their respective professions. While the constitution does not stipulate how this is to be done, both the GCB and the ALS — the two constitutive membership organisations of the professions — met two weeks ago and put forward nominations.

But claiming that they had not been consulted, Nadel and the BLA then put forward their own names for the positions.

When Minister of Justice Dullah Omar announced the members of the commission — which is to be convened under Chief Justice Michael Corbett — on Tuesday, he was forced to leave out four of the 17 appointments. "I am very concerned about the delay this will cause," said Omar, "because the commission cannot begin its work until all the members have been appointed. Unfortunately, the constitution offers no provision as to how to resolve the deadlock, which has its roots in fissures that came about during the apartheid years and are part of the legacy of the apartheid."



Dennis Davis. 'Their claims should be taken seriously'

are black.

Nadel and BLA have suggested a compromise that the GCB and ALS appoint one each, and that Nadel and the BLA appoint the other two. This would mean that the two advocates would be Trengrove and Durban Senior Counsel Marumo Moerane, and the two attorneys would be Trkamejee and BLA president Phneas Mujapilo.

But the GCB and ALS have rejected this. Trengrove, the current chairman of the GCB (as well as a member of Nadel), takes a strong line. "Only the GCB can claim to be the democratic representative of all advocates."

Nadel does not represent advocates alone, but also attorneys and academics. They therefore do not have the right to appoint the two advocates to the commission. Certainly they should be consulted, as should all interested parties. But only the GCB can nominate advocates on behalf of the profession.

In a strongly-worded statement, Nadel countered that "the brand of

democracy to which the GCB and ALS can lay claim to is a distorted one, based as it is on abnormal factors ... the whole advocates' profession consists of a variety of life experiences who should benefit the whole community. Nadel and BLA represents those practitioners whose orientation, attitudes and personalities may have been shaped by factors other than those which presently hold sway in the GCB and ALS."

One senior advocate who is a long-standing member of Nadel believes that "an element of racism has crept into the Nadel/BLA stance. These are important lobby organisations, and they have done much to advance the causes and issues of black lawyers, but they are not representative of the professions."

Wits law professor Dennis Davis counters, however, that Nadel and the BLA are "serious stakeholders and not just lobby groups. They have always been ignored by the establishment, and this latest dispute represents a typical arrogance on the part of the establishment. Their claims should be taken seriously if we are to have a court that is perceived to belong to the people."

Omar, himself a vice-president of Nadel, is willing to act as mediator. But he believes that he "cannot intervene directly, as the constitution is very clear that it is up to the professions themselves to appoint their representatives." A Nadel spokesman said the parties would meet soon, but that if this failed to produce a satisfactory result, the matter might well have to go to court. "The matter has to be resolved to the satisfaction of all parties," said Omar. "We cannot afford to have a constitutional court that is shadowed by complaints of irregularity right from the start."

A Nadel spokesman explained that "even though the GCB and the ALS do represent all practising advocates and attorneys, they have historically served the interests of white lawyers and the apartheid system. Nadel and BLA came about expressly to counter this." Of 12 000 legal practitioners, only 1 000 are black. "Those few black lawyers get swamped in organisations like the GCB," Nadel said. "This is why we believe that special measures are needed to increase black lawyers' representation on the commission."

Both candidates put forward by the GCB — Wim Trengrove and Malcolm Wallis — are white, and the names put forward by the ALS include one white attorney, Louis van Zyl, and one Indian attorney, Ashwin Trkamejee. In contrast, all four of Nadel/BLA's candidates

Judges 'must face public scrutiny'

Star 10/18/94

■ BY PATRICK LAURENCE

The public was entitled to know the general attitude of judges on abortion, capital punishment and industrial relations, Dennis Davis, director of the Centre for Applied Studies, said yesterday.

Davis was speaking in Johannesburg at a news conference organised by the Freedom of Expression Institute as part of its campaign for open hearings in the selection of judges for the Constitutional Court.

With South Africa's main political parties serving in Nelson Mandela's Government of National Unity, the Constitutional Court — whose task is to interpret the constitution and adjudicate in constitutional disputes — would be a "site of major opposition" to "excessive government power," Davis said.

For that reason it was

imperative that the selection of candidates by the Judicial Services Commission (JSC) for service on the Constitutional Court be made at open hearings, Davis argued.

But, he added, by the same token the public had the right to know whether the judges were pro-life, anti-capital punishment, and for or against trade unions.

The Constitutional Court, which is in the process of being formed, will consist of 11 members. Six of the judges are chosen from a panel of 10 nominees selected by the Judicial Services Commission (25).

Cosatu's Neil Coleman said the court could serve as a counter-weight to the new Government and Parliament, and hence become a site of "resistance to democratisation" if it were dominated by conservatives.

Nothing but praise for Chaskalson

252

WM 10-16/6/94

Mark Gevisser

THE appointment this week of Arthur Chaskalson as president of the constitutional court has been enthusiastically acclaimed — despite some surprise that Judge Ismail Mahomed was passed over for the position. There was considerably more surprise at the concurrent announcement that Judge Michael Corbett will remain Chief Justice for a further two years.

Association of Law Societies president Willem Venter praised Chaskalson as "a jurist with an impeccable track record whose authority on constitutional matters is widely respected in South Africa and internationally." And Wim Trengrove, chairman of the General Council of the Bar, said he was "delighted. I can't think of a better person, not only because of his advocacy, but because of his compassion and integrity."

Minister of Justice Dullah Omar believes that Chaskalson is "the best possible choice, as he is undoubtedly one of South Africa's most outstanding lawyers and a great champion of human rights. He is well aware of the kind of constitutional system into which South Africa is moving, and well placed to play the role set out for him by the constitution."

While Mahomed is almost guaranteed a position on the constitutional court, one legal academic said he considered it strange that Mandela had not chosen to appoint him to either president of the constitutional court or as Chief Justice. "Here, after all, is a black man who is eminently qualified for either job. It wouldn't have been an affirmative action appointment."

An ANC lawyer believes that the choice between Chaskalson and Mahomed came down to an assessment of their respective "people-management" skills. Chaskalson is believed to have been favoured by both the ANC and the National Party, which has an aversion to Judge Mahomed for what was perceived as an abrasive — and even biased — personality in his chairmanship of Codesa and the SABC

board hearings.

"Mahomed's style is not one of nation-building," commented a senior NP source. "So the NP cabinet ministers were happy with Mandela's choice of Chaskalson." Ironically, Mahomed — unlike Chaskalson — has never worked directly for the ANC.

Some reports claimed that Chaskalson was chosen from a short list that included Mahomed, Judge Johan Kriegler and ANC lawyer Albie Sachs. But a source close to Mandela countered that "there was no choice. After consultation with the Chief Justice, the president went to the cabinet with only one name: Arthur Chaskalson."

Despite some raised eyebrows, few disputed the choice. "Faced with a decision between Mahomed and Chaskalson," said one constitutional lawyer, "Mandela could not have gone wrong. It's an embarrassment of riches."

The decision to keep Judge Corbett as Chief Justice, however, has caused more consternation. Wits University Professor Dennis Davis, while acknowledging that Corbett has been a good Chief Justice, felt that it was "setting the wrong precedent to have him in this country's senior judicial position until as late as 1996. Judges are meant to retire at the age of 70, but Corbett was kept on to see us through the transition."

"With so many competent younger judges available, why not have a new Chief Justice, particularly as Corbett was meant to have been retiring anyway?"

The source close to Mandela noted that "Corbett is a respected jurist, a lawyer's lawyer. He has been one of the best chief justices South Africa has had. So why rock the boat? Continuity is always a better option."

Contenders for the position of Chief Justice included Johann Kriegler and Richard Goldstone. One theory is that Mandela wants an African chief justice — Dikgang Moseneke, perhaps — who will be appointed to the bench and groomed to take over from Corbett in the next two years.

Amnesty is not for all 'political crimes'

(252)

LWM/8-16/6/94

In terms of the constitution, fanatics who waged personal wars of ideological and racial hatred should not be granted amnesty, argues **Brian Currin**



NOT long ago, there were no "political prisoners" in South Africa. At least, that is what we were told by PW Botha and his departments of Law and Order, Correctional Services and Justice.

Can this be the same country? Not long ago, the Afrikaner Nationalist government reacted vehemently to the mere suggestion of a political offence or a political prisoner. Nelson Mandela, Oliver Tambo and their cohorts were a bunch of criminals and terrorists and that was that. Today, the conservative remnants of that very same government are pleading with President Nelson Mandela — what an irony — to grant amnesty to men who were inter alia responsible for a cowardly and ruthless pre-election bombing spree which left scores of people dead and maimed. They argue that these acts were committed with a political objective — in other words, that the perpetrators be classified as political prisoners and be released in a spirit of national unity and reconciliation.

How do we, as South Africans poised to build a new nation, feel about that? If these callous racially motivated deeds qualify for amnesty then so too must similar deeds perpetrated by the extreme left. That would mean amnesty for the perpetrators of the St. James Church massacre, amnesty for the Heidelberg Tavern killers and amnesty for those young "heroes" who brutally killed a young American woman simply because she was white.

Was that the intention of our political leaders who negotiated and drafted our new constitution, the founding document which reflects the will of the people? South Africa is now a constitutional state and that is ultimately where we, the people,

and our leaders should look for the answers to the difficult questions which our destiny will pose for us.

Contrary to the view I held a few months ago, I believe it is fortunate that our constitution is not silent on the question of amnesty. Many of us lobbied strongly against a constitutional directive obliging the government of national unity to grant amnesty across the board which, by its very nature, would include amnesty for the apartheid criminals. How quickly my mind changed after recent meetings between Mandela and Ferdi Hartzenberg. It is a relief to know that when the government sets out to adopt amnesty laws determining the cut-off date, providing for mechanisms, criteria and procedures, it will be bound by the constitution. Constitutions do not only extend rights and entitlements, they also set parameters and limitations.

What directives are given to the government in relation to pending amnesty laws? The constitution provides that in order to advance reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. A truth commission or appropriate tribunal which is mandated to consider applications for amnesty, will have to decide what constitutes political objectives and what is meant by conflicts of the past. Can a rape, for example, be committed with a legitimate political objective? If a white farmer motivated by a legacy of racial hatred killed his black labourer because he accidentally rode over his dog, is that a conflict of the past? The government, through the Ministry of Justice, is going to have to provide definitions — or at least



guidelines — for those who are called upon to adjudicate the plethora of amnesty applications which will flood into the Truth and Reconciliation Commission rapists, robbers, fraudsters, murderers and racists.

While drafting definitions and guidelines, the government will be obliged to comply with both the spirit and the word of the constitution. The amnesty clause refers to founding a future on the recognition of human rights, democracy and peaceful co-existence, irrespective of colour, race, sex or belief — and that

in essence is the spirit of the whole of Chapter 3 — our Interim Bill of Rights. That being the case I cannot imagine that the drafters of our constitution intended the amnesty provisions to be applicable to fanatical individuals or marginalised small groups who, against the groundswell of all-inclusive democracy-making, persisted in waging personal wars of ideological and racial hatred. I would argue therefore the term "political objectives" in the constitution be restricted to the objectives of the liberation movements who sought to free South Africa from apartheid, oppression and exploitation and the objectives of the security forces who sought to maintain law and order in the face of what they believed to be a terrorist onslaught. Those would indeed be legitimate political objectives as envisaged by the constitution.

Going beyond that the government may well find itself in the Constitutional Court.

■ Brian Currin is the national director for Lawyers for Human Rights

TRUTH COMMISSION

Hunting them down nicely

Fun 10/16/94

252

At face value, government's decision to create a "commission of truth and reconciliation" seems commendable. Those responsible for politically motivated offences before December 5 will be able to ask forgiveness and their victims will be compensated. In the process, says Justice Minister Dullah Omar, SA will be able to "make a clean break with the past" and heal itself.

But it is also possible that the commission will become a Pandora's box, reviving bitterness, retarding national reconciliation and exacerbating political violence. It could easily develop into a witch-hunt. Offenders who do not apply for indemnity before a cut-off date that has still to be set will be liable for prosecution.

This could mean that people named in proceedings, but who had not applied for indemnity, could be prosecuted. It could also turn SA into a nation of snitches. There may be temptation anonymously to tip off the police about an alleged human rights offender, simply to settle an old score.

But even those who do apply and whose cases are heard by the commission will not automatically be indemnified. Omar says findings and recommendations will be sent to President Nelson Mandela for a final decision. Knowing that, how many people would come forward?

Whether or not the commission will sit in public is also undecided in spite of government's commitment to transparency. This prompts another question: is there really any point in hearing confessions and indemnifying people if the broader society that is meant to benefit from the process is not told what offences were committed and by whom? Secrecy and suspicion will certainly not foster national unity or the healing process.

Details of the legislation under which the commission will operate are still open to debate and Omar has invited public comment. However, the commission will consist of "eminent, respected" South Africans broadly representative of society. Its task will include investigating and establishing the truth about human rights violations.

A procedure for paying compensation from State coffers to victims and their families is being created. Omar believes the commission should be given a period within which to complete its work. He suggested 18 months to two years. The Minister says the December 5 cut-off date for offences that may qualify for indemnity is final. This seems to rule out indemnity for the rightwingers now awaiting trial on allegations of a pre-election bombing campaign.

But it is not clear what type of pre-December 5 political offences qualify for indemnity,

or even what a political offence is. Omar says the category of people being targeted are those whose actions would have made them culpable in terms of the law. However, it will not include actions such as forced removals under apartheid — even though they were regarded as human rights abuses. Such actions are political rather than criminal and will be dealt with at another level, he says.

Nevertheless, the commission's net seems to stretch fairly widely and will undoubtedly include violent actions by agents and allies of the former apartheid government inside and outside SA.



But what about violent actions by members of the liberation movements? It could be argued that killing and maiming civilians in a Wimpy Bar bombing is as much of a human rights abuse as sending someone a parcel bomb.

This seems to tally with Omar's definition of who should apply to the commission, but does it? In a revealing comment at a press briefing in Cape Town this week, he said he did not and would not equate those who fought to uphold apartheid with those who struggled to destroy it. Nonetheless, this did not rule out an "even-handed" approach to the commission question.

A further complication could be inter-party violence, particularly in KwaZulu. Though it is not clear if this type of offence will be included in the commission's brief, disclosing details of attacks by members of one party on supporters of another and paying compensation to victims could simply escalate the bloodshed rather than heal old wounds.

Precisely how deep the commission's probe should go is another detail that remains open. For example, is it in the interests of national unity and reconciliation to know that a Nationalist serving in Mandela's Cabinet may have ordered covert security force actions that resulted in civilian deaths or human rights abuses?

By the same token an ANC Cabinet Min-

ister may be revealed as the person who gave instructions for the bombing of a civilian target during the liberation struggle. There is a school of thought that believes such people should be exposed and barred from ever again serving in positions of authority. But where will the line be drawn between legitimate action against an enemy and human rights abuses?

Though government seems to be firmly set on establishing the commission and is simply working out the details, the initial debate should surely centre on whether or not we really need a truth commission.

The development of a spirit of national reconciliation since the election on April 27 has been little short of a miracle. But even with the best will on all sides, the honeymoon will not last forever. Dragging up the past will only speed its demise and reopen old wounds.

Judge Richard Goldstone has warned of serious problems if the truth about SA's

past is simply swept under the carpet — but he is against naming offenders in public. The University of Cape Town's Herman Giliomee, writing in the *Cape Times* last week, said truth commissions following civil conflict elsewhere in the world had tended to fail in their objectives. The exception was Chile, where the commission succeeded mainly due to its balance between the Left and Right.

Quoting US political guru Samuel Huntington, Giliomee said where democracy was established through a process of negotiation as in SA, it would be foolish to put officials of the former regime in the dock — except for normal prosecutions for common crimes in ordinary courts. Huntington believes the political costs of any other action outweigh any moral gains.

Said Giliomee. "It is only where the previous regime had been decisively defeated and replaced by victorious democratic forces, as in Greece in the Seventies and Argentina in the early Eighties, that scope exists for prosecution of political crimes and full public disclosure."

He said SA's commission would have to be set up in such a way that it could command respect across political divisions. If not, it would have little chance of establishing the truth, let alone fostering reconciliation.

There is also the victims' point of view. They and their families may want to know

CURRENT AFFAIRS

Eni 10/16/94
not only who perpetrated the crimes against them, but also who gave the orders. It is a justified and understandable need. They may also be entitled to some form of compensation. In some cases breadwinners were killed or maimed. But is a truth commission the best way of dealing with the issue? It surely smacks too much of revenge. (252)

About 13 000 people were indemnified against prosecution in terms of the previous government's indemnity laws between 1990 and 1993. Most were members of liberation movements. In the vast majority of cases their names and alleged offences were not disclosed. ■

CONSTITUTIONAL COURT
10/6/94
Kingmaker Arthur

A dispute between associations in the legal profession is delaying establishment of the Constitutional Court. This means that a range of criminal and civil cases needing its adjudication must be postponed.

Justice Minister Dullah Omar announced this week that Arthur Chaskalson SC, prominent civil rights lawyer and former national director of the Legal Resources Centre, will be president of the Court.

However, the full 11-member Court can be fully constituted only once the Judicial Services Commission (JSC) is established. The JSC must submit the names of six judges to President Nelson Mandela for appointment to the Court.

But there is a dispute between the Association of Law Societies and the General Council of the Bar on the one hand, and the Black Lawyers' Association and National Association of Democratic Lawyers on the other. They are arguing over who should appoint the two practising attorneys and two practising advocates to the JSC, as stipulated in the constitution. Omar says it is hoped that the problem will soon be resolved.

The names of the other members of the JSC were announced this week. They are Chief Justice Michael Corbett, Chaskalson, Omar, Natal Judge President Allan Howard, Wits University legal academic Etienne Murenik, Senators Isabella Direko, Ernest Mchunu, Bulelani Nqucuka and Ray Radue, and four Presidential nominees: advocates David Gordon SC and George Bizos SC, Kgomotso Moroka and trade unionist Johnny Ernstzen (252).

For the new constitution to be valid, the Court must certify that it complies with the 34 constitutional principles enshrined in the interim constitution.

Chaskalson (62) was appointed by Mandela in consultation with the Cabinet and the Chief Justice. Members of the Court are appointed for nonrenewable terms of seven years. If, during proceedings of the Constitutional Assembly, a dispute arises over whether a proposal complies with any one of the 34 principles, it can be referred to the Court if the chairman of the Assembly is petitioned.

44 • FINANCIAL MAIL • JUNE • 10 • 1994

10/6/94
to do so by at least 98 members (20%)
The JSC will make recommendations regarding the appointment and terms of office of judges, including those on the Constitutional Court, and will advise the national and provincial governments on all matters relating to the judiciary and the administration of justice (252)

800 outstanding indemnity pleas

PRETORIA — The advisory committee set up by Justice Minister Mr Dulah Omar to process indemnity applications met, for the first time here yesterday.

Chairperson Mr Brian Currin said the committee had identified 800 outstanding indemnity applications, 600 from sentenced prisoners and 200 from people not yet sentenced (252).

The sentenced would be dealt with first.

No new indemnity applications would be handled by the committee.

● Deputy President F W de Klerk said yesterday he was convinced the government would be able to reach consensus on amnesty and indemnity for past political crimes. Sapa

Mbeki, FW in public clash (252)

DEPUTY President Thabo Mbeki publicly took his colleague Deputy President F W de Klerk to task for suggesting a truth commission could undermine the goodwill and sense of national unity which had begun to take root since President Nelson Mandela's inauguration

Addressing the World Economic Forum summit in the city, Mr De Klerk told international business leaders that South Africa would be foolish if it "precipitately tore out the stitches from wounds which are only now beginning to heal"

But Mr Mbeki, speaking from the same platform, said his sister-in-law was still looking for her unionist husband who had disappeared without trace in Durban about seven years ago

"We are trying to find him and we are hoping somewhere in

Truth commission 'foolish'?

South Africa there is somebody who knows what happened, who will come and say I am sorry because of the particular times in which we were, we took him and because of who he was and what he was doing, unfortunately we got rid of him That's why you can't find him

"Because then his wife and two children can at last say he is dead and do whatever custom and tradition demand they do in the circumstances It's that kind of truth, (Deputy) President De Klerk, that we are looking for"

Earlier, Mr de Klerk said South

CT. 11/6/94
Africa had to be careful how it approached sensitive questions relating to the past, particularly with regard to amnesty, indemnity and the truth commission

"We agree that processes have to be developed to put the political crimes of the past behind us once and for all, that the wounds of the past must be healed But such a process cannot be allowed to develop into a tug-of-war or even a running sore which might continue to suppurate for years"

Mr De Klerk also said he had no problem with affirmative action, but the country should be careful about the way it implemented such a programme, and dared not throw merit out of the window

Other issues that would have to be handled with sensitivity were land ownership, financial discipline, the size of the civil service and the funding of the reconstruction and development programme — Sapa

Cracks in unity as FW, Mbeki clash

(252)
ARC 11/6/94
MICHAEL MORRIS
Political Correspondent

MOUNTING political tension in the cabinet over controversial and far-reaching proposals for a truth commission broke through the surface of national unity at a major international conference in Cape Town.

An indication of strains in the cabinet on this critical issue emerged in speeches by President Mandela's two deputies — Thabo Mbeki and F W de Klerk — during the closing session of the World Economic Forum last night.

Mr Mbeki gave an emotional account of the disappearance of a cousin who the family feared may have fallen victim to a politically-inspired death squad.

A truth commission would, hopefully, get to the bottom of this, he said.

Earlier, Mr De Klerk disclosed at a briefing that he had not been "consulted" on Justice Minister Dullah Omar's ground-breaking proposals for political amnesty linked to a truth commission, and said the plan could not be considered "agreed" government policy.

In his speech to the forum, he warned that "sensitive questions" relating to amnesty and the truth commission "has a great potential to undermine the goodwill and the new sense of national unity" in the country.

Processes to deal with political crimes of the past could not be "one-sided based on the premise that the killing and maiming of children

■ To page 2

Mbeki hits at FW over truth commission

(252) ARC 11/6/94
■ From page 1

and innocent civilians was somehow nobler if the perpetrators supported a particular cause"

"We would be foolish if we precipitately tore out the stitches from wounds which only now are beginning to heal," Mr De Klerk said

But, when Mr Mbeki's turn came to speak, the high-powered audience of national and international business and political leaders hushed as he departed from his notes to deliver a dramatic account of a trade unionist cousin, Pindile Mfeti, who had "disappeared" in the late 1980s after visiting a supermarket in Durban

"We are trying to find him and are hoping that somewhere out there in South African society is someone who knows what happened to him, who will come and say 'I'm sorry, because of the particular times we lived in, we took him, and be-

cause of who he was and what he was doing, given those times, unfortunately we got rid of him'

"We are hoping someone will come and say that, because then his wife and two children can at last say 'He is dead' And do whatever custom and tradition determines they do"

He added, directly addressing Mr De Klerk "It's that kind of truth, Deputy President De Klerk, that we are looking for"

There was no desire for retribution There had been a situation of conflict in the country and "terrible things were caused by us, and our opponents"

But it was truth which would enable his sister-in-law to "become part of national reconciliation"

IT WAS apt that the founder and long-time director of the Legal Resources Centre, Mr Arthur Chaskalson SC, should be the country's first Constitutional Court president

One of the most important tasks of the new democracy must be to restore public confidence in the legal system, so long used as an instrument to reinforce and administer injustice

With the announcement that Mr Chaskalson will head the Constitutional Court, the government has tackled head-on this challenge to win back public respect for the law

Over the past 15 years the cases fought by the LRC around the country, often against tremendous odds, helped to undermine the legal props of apartheid and oppression. The lives of many thousands of ordinary people were made a little more bearable by the decisions in watershed cases brought by the LRC and argued by Mr Chaskalson or his colleagues in the organisation

Those same people will now be looking to the Constitutional Court to protect their rights. With Mr Chaskalson as its president, their confidence that the court will do so must surely grow

However, Mr Chaskalson's experience has come not only through cases based on human-rights issues. Because the previous government systematically overlooked him for top honours, he has had a longer than usual practice as an advocate. In that time he has been involved in many important civil matters, and is a leading authority on insurance law

Despite his high profile as a human-rights activist, and even his links with the African National Congress, however, lawyers representing clients across the political spectrum have always held him in the highest esteem for what many members of the profession describe as his scrupulous fairness

They are also unanimous in describing him as one of the greatest lawyers this country has produced. His thoroughness, patience, politeness and hard work are legendary. So is the modesty which made him decline all requests for interviews after the announcement of his appointment

ALONG with another South African legend, Judge Ismail Mahomed, Mr Chaskalson was strongly tipped from the start for this position. However, a heart attack and major heart surgery this month effectively knocked Judge Mahomed out

CARMEL RICKARD reports that Constitutional Court president Arthur Chaskalson faces an immediate challenge: to get the court off the ground

The man who must win back public respect for the **LAW**

ing six places will go to candidates who help the court better to reflect the composition of society — in other words, probably no more white men

Mr Chaskalson's appointment could impact on the composition in a second way. His well-known pro-ANC views could strengthen a claim by more conservative politicians and lawyers that for the sake of balance the court should include at least one judge who shares their views

Despite the general satisfaction at Mr Chaskalson's appointment, however, some critical voices have been raised

One concerns the old-style secret process of his appointment. The constitution says the president of the court must be chosen by the president (of South Africa) with the cabinet after consultation

Cruise O'Brien, for being driven off the campuses of UCT and Wits by left-wing goon squads — on the grounds that he had recklessly and provocatively tried to exercise the right to free speech"

In the wake of Mr Chaskalson's appointment, two other criticisms have been voiced. One concerns his lack of judicial experience, the other the fact that he served on the technical committee which drafted the interim constitution

Lawyers are still smarting from their experience of arguing security cases before former Chief Justice Pierre Rabie, the architect of the same security laws being challenged in the court. Some question whether it is appropriate for a person so close to the constitution to be its chief interpreter



TOP MAN . . . Arthur Chaskalson — a popular choice with most people

Picture: JODI BIEBER

of contention. The Constitutional Court is so crucial that the court president would have to be in robust health and able to begin work immediately.

The appointment of Mr Chaskalson rather than Judge Mahomed will have an impact on the composition of the 11-person court. It must raise the question of whether Judge Mahomed, who is already an Appeal Court judge, Chief Justice of Namibia and a judge in Botswana, Swaziland and Lesotho, will accept a position as a member of the court.

Four members of the Constitutional Court must come from the existing judiciary. If Judge Mahomed does not accept a seat, all four judges are likely to be white men.

Mr Chaskalson brings that category to five, leaving only six other places on the court. For the sake of legitimacy, most if not all of the remain-

with the Chief Justice. Why should the court president (or, for that matter, the Chief Justice) not be chosen, like every other judge from now on, with the input of the Judicial Service Commission?

If the other Constitutional Court candidates are selected after public hearings, why should the constitution not be changed so that the court president is also interviewed in public?

Last year Sunday Times editor Ken Owen voiced disquiet about the influential role of the new court president on the committee that drafted the new Constitution.

Referring to other members of the committee he said: "Intellectually they are putty in the hands of the awesome left-winger Arthur Chaskalson, co-author of the nauseating report which tried, a few years ago, to blame the Irish liberal, Conor

A VALID criticism, but the situation was almost unavoidable. The Codesa talks were regarded as so important that many skilled people were drawn in. If they were all to be excluded, few would be left to choose from.

The president of the general council of the Bar, Mr Wim Trengove SC, said the other criticism — that Mr Chaskalson lacked judicial experience — was invalid.

"It must rather be a plus that he has not been involved in the apartheid judiciary," he said. Mr Trengove added that in any case this criticism was not accurate. So highly is Mr Chaskalson regarded by his peers that they have often asked him to sit as arbitrator in complex legal disputes, a task very similar to that of a judge.

Given this experience as arbitrator, Mr Chaskalson could be just the man to help resolve the legal dispute which has now become a matter of grave national importance. The inability of the attorneys and advocates to agree on who should represent them on the JSC.

This is a permanent body which must suggest suitable candidates for the Constitutional Court, the Appeal Court, the Supreme Court and even for the position of Chief Justice.

The dispute is now so intractable that there is even talk of court action to resolve the wrangle.

Mr Chaskalson has been appointed to preside over the country's toughest constitutional fights. The current dispute falls squarely into that category. Perhaps he should be approached by the two sides and asked to arbitrate.

Omar's moment of truth

By EDYTH BULBRING and NORMAN WEST

JUSTICE Minister Dullah Omar this week announced the establishment of a "truth commission" in advance of a cabinet agreement, to pre-empt opposition from the National Party and some ANC members.

Having sent a signal that there would be no going back on the idea, Mr Omar will now have to straddle demands from those within the government of national unity who want the amnesty process to be conducted in secret, and human rights organisations which want a public examination of the past.

Deputy President FW de Klerk said on Friday that the proposed "truth commission" was not agreed-upon policy. He had not been consulted about the announcement.

Mr de Klerk said Mr Omar's announcement should be seen as "part of growing pains", but it should be remembered that Mr Omar had said he was putting on the table a basic approach.

He added that SA would be foolish if it "precipitately tore out the stitches from wounds which are only now beginning to heal".

He was taken to task by his counterpart, Deputy President Thabo Mbeki, who said that his sister-in-law was still looking for her husband who had disappeared in Durban seven years ago.



NO GOING BACK... Dullah Omar

"It is that kind of truth that we are looking for," Mr Mbeki said.

Those opposed to a public examination of human rights abuses include not only Mr de Klerk and members of the old government, but ANC members who fear that a transparent amnesty process would undermine the government of national unity.

Some ANC members are opposed to a "truth commission" that will publicly expose human rights abuses within the organisation.

To avoid a clash within the government of national unity, and dissension within the ANC, the government might have to settle for a softer approach. But it faces strong demands from human rights organisations who want a thorough public investigation

into the past.

The three key questions that the government will have to decide are

- The definition of a political offence,
- The terms of reference of the "truth commission", and
- How public these proceedings will be

Mr Omar said the definition of a political offence, and whether the amnesty proceedings could be publicly scrutinised, had not been decided.

His personal view was that the process should be transparent, but this view might not prevail in the cabinet. He declined to comment on his announcing the establishment of the "truth commission" ahead of a cabinet decision.

Human rights lawyers this week were united in demanding that those seeking amnesty should fully disclose their crimes and motivations for the abuses they committed.

They said proceedings of the "truth commission" should be held in public, unless there were special circumstances. The report of the commission should be made public and should contain the identities, the crimes and the structures responsible for human rights abuses.

However, not all agreed on the criteria for amnesty or the terms of reference of the "truth commission".

Lawyers for Human Rights national director Brian Curran said he would

like to see the criteria for amnesty limited to members of liberation movements who fought apartheid, and members of security forces who defended apartheid.

This would exclude people who had committed ideological or racial crimes. The commission should also investigate abuses abroad, including abuses in ANC camps.

Wits University law professor John Dugard was adamant that a full and detailed report should be published, but warned that the consequences for a government of national unity could be disastrous.

"I would not mind seeing people party to political crimes being politically destroyed. I would welcome it. But I hope the government can handle the consequences," he said.

He wants the definition of political crimes to be based on internationally accepted extradition criteria. He said the commission should be limited to investigating crimes committed in pursuit of maintaining apartheid.

Director for the Centre for Applied Legal Studies Dennis Davis said the names and precise crimes of those seeking amnesty had to be public.

"The fact that a handful of people on a board would know would be inappropriate," he said.

The legislation will be introduced in Parliament in August. Interested parties should submit comments and proposals before June 30.

Lawyers to define human rights

SUSAN RUSSELL

31 Day
13/6/94
THE legal profession had a special responsibility to defend human rights in a constitutional democracy where the need to balance conflicting needs and interests would be one of the biggest challenges of all, US ambassador Princeton Lyman said on Friday.

Speaking at the Circle Conference of the Transvaal Law Society, Lyman said a constitution was only the beginning in upholding human rights.

"There are always going to be conflicts between national security and free speech and assembly, between the right of overcoming the badges and deprivations of apartheid and the principle of non-racialism," Lyman said.

"All governments are tempted to limit freedoms that threaten their policies or power, indeed to cloak those temptations in the purest of intentions or gravest of national interests."

Lyman said changes in technology also created new challenges to human rights with computer records, cellular phones, medical testing, new genetic discoveries and techniques.

The definition and protection of human rights gave the legal profession a special responsibility.

Lyman said although government had often advanced the cause of human rights in the US, it had more often been law organisations which had been the watchdog of human rights, bringing legal actions which challenged government actions or legislation. These bodies had taken on the cause of individuals or organisations which could not defend themselves.

252
These legal groups, Lyman said, had defined the US concept of human rights and given life to their constitution.

"That will be one of the most important challenges that your profession must undertake," he said.

"Precedents will be set almost immediately in the new SA. It is important that they be set in the right direction. Clashes of interests will surely take place very soon, indeed we see it now in the land invasions of squatters."

Lyman said political leaders bore a major responsibility to address these issues.

"But the future of the constitution, of the right to govern effectively and of human rights are also being tested in these cases," he said.

Omar criticises the jailing of debtors

By BARRY STREEK
Political Staff

THE jailing of debtors, who could not pay their debts — a widespread practice in the Western Cape — was sharply criticised yesterday by the Minister of Justice, Mr Dullah Omar.

His criticisms could indi-

cate that the controversial system of sending debtors to prison is on the way out.

The South African Law Commission recommended some time ago that the practice be abolished, but after protests by attorneys' bodies, the recommendation was not accepted.

In areas such as the Overberg region of the Western Cape, the practice has been to jail people one day for every rand of unpaid debt. These people are still civilly liable for the debt, plus interest.

Mr Omar told an SA Law Commission workshop on debt collection yesterday that he was opposed to prison terms for debtors. He delivered the opening address at the workshop which was part of a SALC investigation into simplifying debt collection.

Mr Omar said the South African system of jailing debtors was at odds with international human rights jurisprudence. "I am a proponent of the abolition of civil imprisonment," he said. "If we look at civil imprisonment in the context of human rights jurisprudence in the world today, then there is no way that one can justify its continued existence."

Proposals on Muslim law needed

Staff Reporter

THE interim constitution allowed for the recognition of Muslim personal law, but it was up to the community to put forward proposals about how this should be done, Justice Minister Mr Dullah Omar said last night.

Speaking at the Sunday forum of the Masjidul-Quds Mosque in Gatesville, Mr Omar said the constitution contained flaws but also "good things" (252)

These included a guarantee of equality of all religions and also allowed for Muslim personal law to be officially recognised.

Muslims whose parents had been married only under Muslim law had been illegitimate in the eyes of the law.

It was necessary for the community to present proposals "so that legislation can be passed". ET 16/5/94

Mr Omar said this would also have far-reaching legal implications, such as the recognition of Muslim law in third-party and workmen's compensation claims.

Amnesty is not for all 'political crimes'

In terms of the constitution, fanatics who waged personal wars of ideological and racial hatred should not be granted amnesty, argues **Brian Curnin**



NOt long ago, there were no "political prisoners" in South Africa. At least, that is what we were told by FW de Klerk and his departments of Law and Order, Correctional Services and Justice.

Can this be the same country? Not long ago, the Afrikaner Nationalist government reacted vehemently to the mere suggestion of a political offence or a political prisoner. Nelson Mandela, Oliver Tambo and their cohorts were a bunch of criminals and terrorists and that was that. Today, the conservative remnants of that very same government are pleading with President Nelson Mandela — what an irony — to grant amnesty to men who were inter alia responsible for a cowardly and ruthless pre-election bombing spree which left scores of people dead and maimed. They argue that these acts were committed with a political objective — in other words, that the perpetrators be classified as political prisoners and be released in a spirit of national unity and reconciliation.

How do we, as South Africans poised to build a new nation, feel about that? If these callous racially motivated deeds qualify for amnesty then so too must similar deeds perpetrated by the extreme left. That would mean amnesty for the perpetrators of the St James Church massacre, amnesty for the Heidelberg Tavern killers and amnesty for those young "heroes" who brutally killed a young American woman simply because she was white.

Was that the intention of our political leaders who negotiated and drafted our new constitution, the founding document which reflects the will of the people? South Africa is now a constitutional state and that is ultimately where we, the people,

and our leaders should look for the answers to the difficult questions which our destiny will pose for us.

Contrary to the view I held a few months ago, I believe it is fortunate that our constitution is not silent on the question of amnesty. Many of us lobbied strongly against a constitutional directive obliging the government of national unity to grant amnesty across the board. Amnesty which, by its very nature, would include amnesty for the apartheid criminals. How quickly my mind changed after recent meetings between Mandela and Ferdinand Harzenberg. It is a relief to know that when the government sets out to adopt amnesty laws determining the cut-off date, providing for mechanisms, criteria and procedures, it will be bound by the constitution. Constitutions do not only extend rights and entitlements, they also set parameters and limitations.

What directives are given to the government in relation to pending amnesty laws? The constitution provides that in order to advance reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. A truth commission or appropriate tribunal which is mandated to consider applications for amnesty, will have to decide what constitutes political objectives and what is meant by conflicts of the past. Can a rape for example, be committed with a legitimate political objective? If a white farmer motivated by a legacy of racial hatred killed his black labourer because he accidentally rode over his dog, is that a conflict of the past? The government, through the Ministry of Justice, is going to have to provide definitions — or at least



guidelines — for those who are called upon to adjudicate the plethora of amnesty applications which will flood into the Truth and Reconciliation Commission, rapists, robbers, fraudsters, murderers and racists.

While drafting definitions and guidelines, the government will be obliged to comply with both the spirit and the word of the constitution. The amnesty clause refers to founding a future on the recognition of human rights, democracy and peaceful co-existence, irrespective of colour, race, sex or belief — and that

in essence is the spirit of the whole of Chapter 3 — our Interim Bill of Rights. That being the case I cannot imagine that the drafters of our constitution intended the amnesty provisions to be applicable to fanatical individuals or marginalised small groups who, against the grainswell of all-inclusive democracy-making, persisted in waging personal wars of ideological and racial hatred. I would argue therefore the term "political objectives" in the constitution be restricted to the objectives of the liberation movements who sought to

free South Africa from apartheid, oppression and exploitation and the objectives of the security forces who sought to maintain law and order in the face of what they believed to be a terrorist onslaught. Those would indeed be legitimate political objectives as envisaged by the constitution.

Going beyond that the government may well find itself in the Constitutional Court.

Brian Curnin is the national director for Lawyers for Human Rights

Omar to meet legal bodies over dispute

Star 16/6/94
 ■ BY HELEN GRANGE

Justice Minister Dullah Omar will meet associations in the legal profession in Cape Town on Monday to try to resolve the dispute over the constitution of the Judicial Services Council (JSC) — which is delaying the establishment of the Constitutional Court

The dispute — between the Association of Law Societies (ALS) and the General Council of the Bar on the one hand, and the Black Lawyers' Association and National Association of Democratic Lawyers on the other — is over who should appoint two practising attorneys and two practising advocates to the JSC. (252)

Omar recently announced that Arthur Chaskalson, SC, former national director of the Legal Resources Centre, would be pre-

sident of the Constitutional Court. The 10 other members can be determined only once the JSC is in place. Thirteen members of the 17-member JSC have already been appointed.

ALS president Willem Venter said yesterday that he hoped a "suitable arrangement" would emerge from Omar's meeting with the four associations

However, sources said there was another potential delay in view of necessary amendments to the Constitutional Court legislation, which will determine the court's rules of procedure

"The legislation is not ready to be tabled in Parliament. There is a lot more work to be done on it," said one source.

Democratic Party justice spokesman Douglas Gibson said the DP was pushing for the procedural rules to provide easy access to the Constitutional Court

CONSTITUTIONAL COURT
17/6/94
Nominee wrangles

Passions in the legal profession cooled somewhat this week as officials of four feuding representative bodies agreed to try to resolve a dispute holding up the appointment of the Constitutional Court

They are due to meet Justice Minister Dullah Omar and Chief Justice Michael Corbett in Cape Town on Monday

The wrangle centres on four members of the Judicial Services Commission (JSC) who must, according to the constitution, be nominated by the legal profession — two by advocates and two by attorneys. The JSC, in turn, nominates six of the 11 members of the court

By statute, advocates are represented by bar councils and attorneys by law societies. The General Council of the Bar (GCB) and Association of Law Societies (ALS) are the respective umbrella organisations, with a combined membership of about 12 000

However, during the apartheid years, two other organisations were formed to represent mainly black legal practitioners who believed their interests were not adequately catered for in the GCB and ALS: the National Association of Democratic Lawyers (Nadel), whose 1 500 members are advocates, attorneys and legal academics, and the Black Lawyers' Association (BLA), with about 400 members who are advocates and attorneys

Nadel and BLA want to nominate one advocate and one attorney to the JSC. The GCB and ALS disagree, saying they represent the profession — including practising lawyers affiliated to Nadel and BLA — and are democratically constituted

The GCB nominated chairman Wim Trengove and his deputy, Malcolm Wallis, and the ALS nominated Louis van Zyl and Ashwin Trikamjee to the JSC. But Nadel and BLA objected to Chief Justice Michael Corbett, who sent word back that the four groups had to resolve the dispute among themselves. So far they have had little suc-

CURRENT AFFAIRS
17/6/94

cess

Nadel president Pius Langa is bitter about not being consulted before nominations were made. "We would have no quarrel had they offered to consult us, but they didn't. Their action was arrogant and not in the spirit of the constitution, which calls for negotiation"

He accepts that Nadel and the BLA represent minorities in the profession but argues that apartheid imbalances prevented more blacks from qualifying. He contends further that Nadel is an important minority that cannot be ignored. Many of its members played key roles in the negotiations for the interim constitution

He says the first meeting with the GCB ended in deadlock. A series of media reports followed in which the groups blamed one another for the impasse. But, at a meeting this week, progress was apparently made towards a compromise

Representatives agreed to report back to their constituencies and meet again this Friday to seek a way forward. Monday's meeting with Omar was arranged later

Trengove says resolution of the dispute will not be easy but is possible. He concedes that black advocates are an important minority in the profession and must be taken seriously, but is adamant that the constitution stipulates nominations to the JSC must come from the organised profession, which the GCB and ALS legitimately represent

He says neither Nadel nor the BLA represent the majority of black legal practitioners. Trengove accepts the need to move forward in a spirit of national reconciliation and is talking to Nadel and the BLA in that spirit

BLA secretary Abraham Makume agrees that the issue can be resolved. "Our view is that while the BLA and Nadel are not statutory bodies, we represent an important minority that cannot be ignored"

ALS president Willem Venter is also confident that the matter will be sorted out once the four groups talk around a table

The intervention of Omar and the Chief Justice indicates the urgency of resolving the dispute in the face of a growing list of test cases awaiting consideration by the court ■

week by Justice Minister Dullah Omar (*Current Affairs* June 10) indicates a lack of clarity over what it is intended to achieve

In developments over the past few days it has emerged that *Fm 17/6/94*

□ Omar was essentially flying a kite with his announcement, which has not been discussed by the Cabinet, *(252)*

□ President Nelson Mandela has made it clear that murderers and those who planned murders will not qualify for indemnity in terms of the proposed commission's procedures, and

□ Second Deputy President F W de Klerk fears that the commission could undermine goodwill and feels it needs to be approached with extreme caution

At a press conference in Cape Town De Klerk said he had not been consulted about the commission and it was not agreed policy. He would have preferred Omar not to have made the announcement before there was wider consultation, but accepted that the action was "part of the growing pains" of the new government

In reply to questions at the World Economic Forum conference in Cape Town last week, Mandela said the commission's terms of reference would exclude people who "sat down and plotted murder". They would be dealt with in a different way

He added that the commission was intended to cater for people who committed political acts in support of apartheid in the course of their duties

In an indication that the ANC does not see the commission's brief as ranging much wider than apartheid crimes, Mandela said opponents of apartheid had already gone through an indemnity process at the insistence of the previous government

To be even-handed the new government now had to grant indemnity to people who committed politically related offences in support of apartheid, but the same condition must apply: full disclosure of the action for which indemnity is sought. The President said the commission would not be an instrument of retribution or a Nuremberg-type trial.

By excluding murderers and people who plotted murder from the indemnity process, government will remove from the commission's jurisdiction the worst human rights abuses committed during the apartheid years by agents of the State and members of the liberation groups

This could mean that many of SA's murders and disappearances will remain unsolved unless it is intended to set up a special police unit to track down the killers and their handlers

It would also allow government to exclude

TRUTH COMMISSION

Fm 17/6/94 **Tearing the stitches** *(252)*

Government's proposed truth commission could end up being so limited in its scope that the exercise could become pointless

The range of views on the commission's brief since it was officially announced last

CURRENT AFFAIRS

Fm 17/6/94
people such as Chris Hani's killers from early release from jail and avert the possibility of a damaging political backlash

The main dilemma facing government, and an issue on which the Cabinet is unlikely to agree, is which acts were worse: those by agents of apartheid or crimes by the liberation forces *(252)*

De Klerk says the process must be balanced. It cannot be based on the premise that killing and maiming of children and innocent civilians was somehow nobler if the perpetrators supported a particular cause

"The reality is that during the conflict of the past unacceptable crimes were committed by the followers of all sides and factions. We have just completed four years of hard negotiation aimed at resolving that conflict. We would be foolish if we precipitately tore out the stitches from the wounds which are only now beginning to heal"

Supreme Court considers if the rod should be spared

(252)

18/6/94

JOSEPH ARANES
Weekend Argus Staff

A FULL Bench of the Supreme Court has reserved judgment in a case reviewing the constitutionality of corporal punishment as a sentence for juvenile offenders.

The matter arose after Vredenburg magistrate A P Dippenaar said he was not sure if he could, in terms of the new constitution, order a youthful offender to be given cuts.

Lee Bozalek, appearing *Amicus Curiae* — friend of the court — argued that in terms of the country's Bill of Rights and new constitution, corporal punishment infringed on the protected rights of the individual.

He initially asked the court to rule on the matter but, after arguing the provisions and powers of the Supreme Court in terms of the new constitution, asked the court to refer the mat-

ter to the Constitutional Court

Counsel for the State Koos Slabbert put it to the presiding judges that his interpretation of the provisions in the new constitution gave the court sufficient power to make a ruling in the case.

Mr Slabbert argued that by sending the matter to the Constitutional Court, which was not set up yet, the matter would be delayed for a long time and he was sure the Supreme Court could dispose of it.

He also argued that corporal punishment did not offend the clause in the constitution, but later conceded that it might.

The judges were unsure of what their exact powers were in terms of the new constitution.

"It will mean we are assuming the powers of the Constitutional Court," said Mr Justice Farlam.

Clash over truth probe

CJ 20/6/94
252

Omar, police chief at odds

Political Staff

THE Commissioner of Police, General Johan van der Merwe, has strongly objected to the proposed Truth and Reconciliation Commission, crossing swords with the Minister of Justice, Mr Dullah Omar.

Mr Omar insisted yesterday that the commission would go ahead while General Van der Merwe dubbed it 'an exercise in futility' that would embarrass leading members of the ANC cabinet, including Deputy President Thabo Mbeki.

General Van der Merwe's comment followed the publication in Rapport of a SAPS submission on the proposed commission which warned that several ministers could be embarrassed if the commission went ahead in its current form.

The SAPS report, furnished in response to a call for comment on the proposed legislation, pointed out that several senior ANC officials could be required to appear before the commission.

General Van der Merwe said this would be necessary because many ANC members currently held temporary immunity from prosecution but were not formally indemnified.

Rapport said the document, submitted to Safety and Security Minister Mr Sidney Mufamadi last week, named several ministers including Mr Mbeki, Housing Minister Mr Joe Slovo, Defence Minister Mr Joe Modise, PWV Premier Mr Tokyo Sexwale as among those who could be affected.

General Van der Merwe said he was not against the creation of something

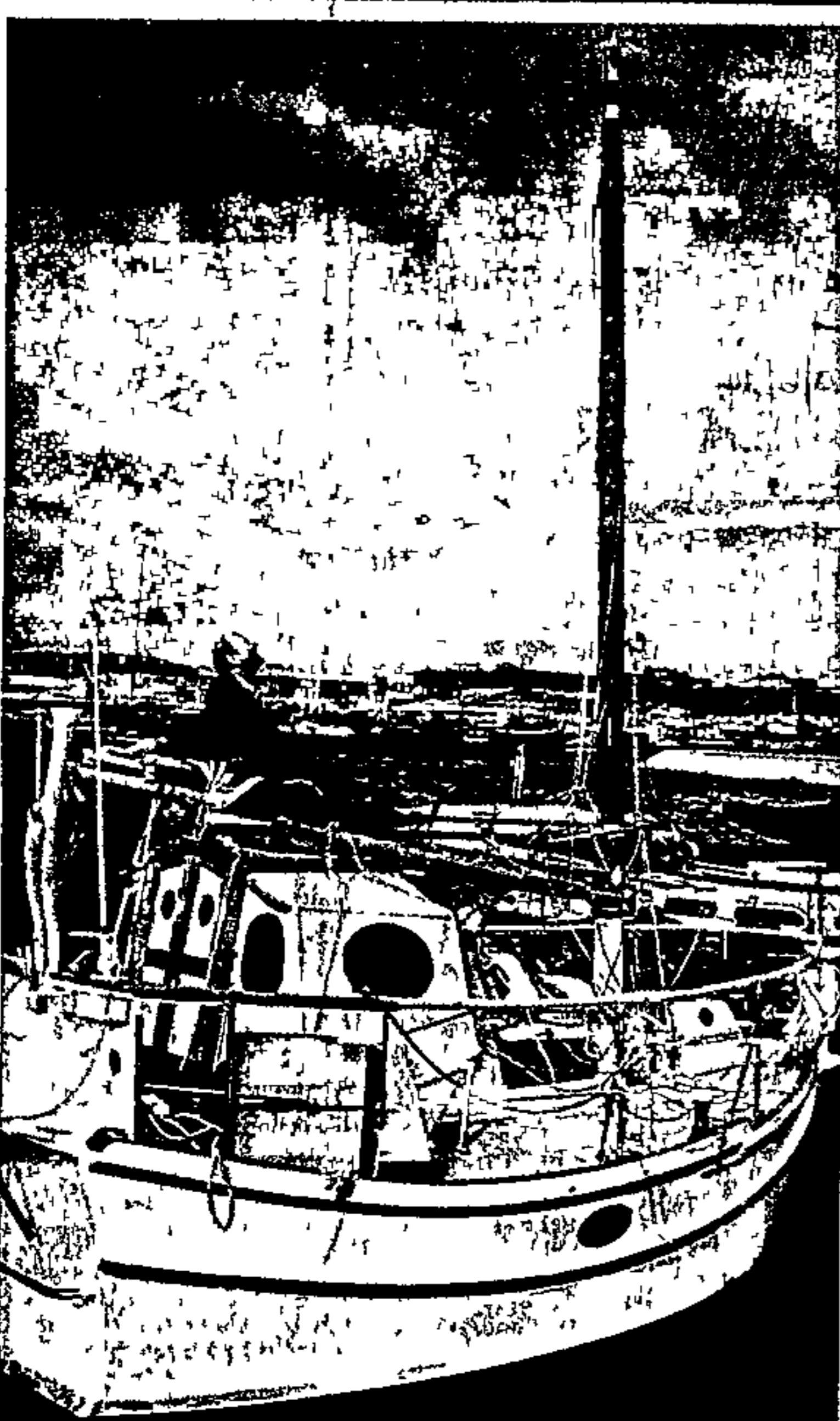
akin to the proposed Truth and Reconciliation Commission, but he expressed reservations about the commission in its current form.

Mr Omar said the government would be evaluating several responses to the proposed legislation.

The idea of a Commission of Truth and Reconciliation, which has been discussed elsewhere, had proved a useful exercise which had assisted in the creation of a human rights culture.

"I just can't see how you can build up a human rights culture by the suppression of the truth," he said.

Mr Omar said he and the ANC accepted that ANC members might have to appear before the commission.



Sailor in mini-yacht pitched to seabed

By MELANIE GOSLING
A GORDON'S BAY sailor has had a miraculous escape from death off the West Coast after his mini-yacht, pitched by a giant wave, plunged about 35 metres to the seabed.

Mr Ray Cruickshank, lone skipper of the tiny, four-metre yacht Ahoy, survived with just a few bruises and a cut on his head.

He said he was about seven nautical miles off Doringbaai near St Helena on Thursday night when disaster struck.

"There were very big seas and I had the engine on. Suddenly a wave picked the yacht up, pitched her and took her 90ft to the bottom so that the mast stuck into the sand and broke off," he said.

"I made my way to the engine and found that it was in a bubble of air. I wanted to switch it off so that it would not use up any of the air."

"Instead I accidentally pulled the throttle open which luckily sent the yacht to the surface where she righted herself."

Cold and shocked, with his nose bleeding from the deep sea pressure, Mr Cruickshank took 12 hours to reach Saldanha Bay, pumping the seawater out en route.

Four-metre yacht Ahoy, with a broken mast after she was pitched by a giant wave off the West Coast, looks forlorn at Saldanha Bay

Picture STEWART COLMAN

The mild c
that sat



Omar firm on truth commission

Star 20/6/94

■ BY JOHN SODERLUND

Justice Minister Dullah Omar is standing firm on his proposal of a Truth and Reconciliation Commission despite suggestions by Police Commissioner General Johan van der Merwe that ANC members could be highly embarrassed in the process

In response to Omar's proposed establishment of the commission, Van der Merwe submitted a document to Safety and Security Minister Sydney Mufamadi last week which was reported on in Rapport yesterday

Van der Merwe claims there is evidence pointing

to the involvement of senior ANC government figures in acts of terrorism

It names Defence Minister Joe Modise, Deputy President Thabo Mbeki, PWV Premier Tokyo Sexwale, Housing Minister Joe Slovo, Transport Minister Mac Maharaj, Jacob Zuma and Ronnie Kasrils (252)

Speaking to The Star yesterday, Omar said he would have to seriously consider the views of a man of such a high position in the police force but that he would never be convinced that the suppression of the truth would be in the interests of the country.

"I am actually surprised that he should be bothered

about the ANC people who might be implicated. It is not important whether it involves ANC or other people," said Omar.

He said "overwhelmingly positive responses" had come from the public.

In his submission Van der Merwe had pointed to the Skweyiya commission of inquiry of 1992 which suggested anyone found guilty of human rights abuses should not be allowed to take up a position of power.

Omar said he was studying the format and powers of similar commissions elsewhere. He is receiving submissions until June 30, after which the matter will be discussed by the Cabinet.

Truth commission will go ahead

Omar rejects police chief's opposition

BIDAY 2016/194

TIM COHEN

CAPE TOWN — Justice Minister Dulah Omar confirmed yesterday that plans for a Truth and Reconciliation Commission would go ahead, despite a strongly worded submission by Police Commissioner Johann van der Merwe opposing it.

Van der Merwe said yesterday the commission would be "an exercise in futility" which would embarrass ANC Cabinet Ministers.

Omar said yesterday government was not worried about this possibility, which was no reason to suppress the truth.

Van der Merwe's comment follows the publication in Rapport of an SA Police Service submission on the proposed commission which warned that several Ministers could be embarrassed if the commission went ahead in its current form.

The SAPS report, furnished in response to a call for comment on the proposed legislation, said several senior ANC officials might have to appear before the commission. Van der Merwe said this would be necessary because many ANC members held temporary immunity from prosecution but were not formally indemnified.

Rapport said the document, submitted to Safety and Security Minister Sydney Mufamadi last week, named several Ministers, including Deputy President Thabo Mbeki, Housing Minister Joe Slovo, Defence Minister Joe Modise, PWV Premier Tokyo Sexwale as among those who could be affected. It also said that between 1976 and 1990 at least 623 incidents of sabotage, terrorism, or murder in which 153 people died could be linked to the ANC.

Van der Merwe said it was unfortunate

that the report had been published. He expressed reservations about whether "digging up the past" would assist reconciliation.

He said that since police would be involved in the collection of evidence for the commission, they would end up being the target for criticism from one side or the other.

The Goldstone Commission had created the problem that even if accusations were found to be invalid it was impossible to reverse the negative effects of the publicity involved.

Van der Merwe said he was not against the creation of something akin to the proposed Truth and Reconciliation Commission, but he expressed reservations about the commission in its current form.

Omar said government would be evaluating the several responses to the proposed legislation, but insisted that the commission would be implemented.

The concept of a Commission of Truth and Reconciliation was well known, and in countries like Chile it had proved a useful exercise which had assisted in the creation of a human rights culture.

"I just can't see how you can build up a human rights culture by the suppression of the truth," Omar said.

In addition, the many victims of human rights violations would never be satisfied unless the nation was made aware of the wrongs that had been committed.

Omar said he and the ANC accepted that ANC members might have to appear before the commission.

We want truth on ANC, say generals

252
1995/6/14

Political correspondent
FORMER police and defence force generals say the African National Congress alliance should not be excused from probing by the Commission for Truth and Reconciliation.

Nine generals, including Freedom Front leader Constand Viljoen, said today that Justice Minister Dullah Omar should stick to certain principles if he was sincere in wanting to expose the truth for the sake of reconciliation.

All parties and people guilty of unlawful acts during the political struggle should be dealt with in the same way, they said.

The ANC and organisations which supported it cannot be excused on the grounds they were conducting a so-called freedom struggle.

The generals said the character of fundamental human rights should be properly upheld.

An ordinary judicial commission could not satisfy this requirement, and the right of appeal to the appeal court should not be excluded.

Members of the ANC national executive committee especially those in government, must set an example, said the generals.

They should say what role they played in planning, approving and carrying out deeds of terror and the death and mutilation of defenceless persons, including women and children.

This should include plots hatched after the beginning of the reform process in 1990, including Operation Vula, an undercover sabotage operation devised after the ANC and other organisations were unbanned.

The generals said organisations that undermined law and order and funded terrorism with money collected for welfare should be investigated.

The police, defence force and national intelligence service must disclose all available information they have in their possession in this regard.

Other factors to be considered were the cost and labour implications of the investigation, and whether it is going to contribute to reconciliation at all, or whether the consequences would be division, distrust, bitterness and the rejection of political leaders and security forces.

The statement was signed by generals J.P. Gous, Gideon Joubert, Gertjie Prinsloo, Mike Geldenhuys, Johan Coetzee, Henne de Witt, Constand Viljoen, Jannie Geldenhuys and Kai Liebenberg.

The ministry of justice has been asked to comment.

Govt did not approve indemnities — Omar

BiDay 27/10/94

JACQUIE GOLDING

JUSTICE Minister Dullah Omar yesterday distanced himself and President Nelson Mandela from the release of four men convicted of murdering 11 people in the 1988 Trust Feeds massacre.

"Neither I nor President Mandela had anything to do with it," Omar said yesterday, adding that the four convicted men were among 63 prisoners who were "legally entitled to release" in terms of the Further Indemnity Act

The first of the releases, which began on Friday, was announced by the Justice Department in the Government Gazette on Tuesday.

The four — all policemen — attacked and killed 11 people at a funeral vigil at Trust Feeds. During their trial, the men said they attacked people in the mistaken belief that they were ANC supporters.

Former police captain Brian Mitchell, convicted with them and sentenced to death, was not on the indemnity list.

The men were found guilty of 11 murders in April 1992 and were sentenced to an effective 15 years' imprisonment each.

Omar blamed previous Justice Minister Kobie Coetsee and Deputy President FW de Klerk for the releases.

"They signed the papers authorising the re-

lease just before leaving office," Omar said. Omar said the Cabinet reviewed the list about two weeks ago. However, this did not mean the Cabinet had approved the list.

Mandela had been attending an OAU conference in Tunis at the time the indemnities were discussed, he said. (252)

"We had to put it into effect," he said, adding that the matter was referred to law advisers who said the indemnities were legally binding.

"It was the principle of the matter," Omar said. The decision made by the former government could not be reversed.

Omar also said the advisory committee chaired by Lawyers for Human Rights director Brian Currin was reviewing about 800 indemnity applications made by people whose crimes were not public knowledge.

Correctional Services Department spokesman Brig Chris Olckers said the indemnities were sent directly from the Justice Department to the prisons where those who qualified for indemnity had been held.

Olckers said Correctional Services was responsible for drafting release warrants once prisoners had been informed. The "matter was the priority of the Justice Department."

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--DULLAH-OMAR

FM 24/6/94

The truth, the whole truth

(252)

President Nelson Mandela's appointment of lawyer-activist Dullah Omar to one of the principal offices of State — Justice — came as a surprise to many. But it was by no means an unpleasant one — at least not to those from liberation circles.

After all, since his admission as an attorney in 1960, Omar has chalked up a notable record as a human rights lawyer on behalf of just about all anti-apartheid organisations — starting with the entire PAC executive, who went to see him just before their arrest in 1960. Also among his clients was the world's most famous political prisoner — Mandela himself.

Not surprising, then, that whereas many of Omar's political colleagues have appeared in the dock at some stage in their careers, his role tend-

ed to be outside it — for the defence. The pattern broke in 1985, when Omar, by then a member of the Cape Bar, was detained three times under emergency regulations. His bid to secure his release failed in the Supreme Court and subsequently in the disappointing Appellate Division ruling on the rights of detainees — the case of *Omar v the State*.
President

It led, however, to the important dissenting judgment by Cape Judge President Gerald Friedman, which is regarded by civil rights lawyers as having kept alive the flame of justice during a dark period in SA law.

Cape Town-born Omar (60) joined the ANC comparatively late, when, about 10 years ago, the Unity Movement (a Trotskyist group of which he had been a leading light) rejected attempts to join up with the ANC-aligned United Democratic Front (Trevor Manuel, now Trade & Industry Minister, was a key figure in the UDF's Cape region).

Omar was in favour of fusing and now represents the most senior appointment to the Cabinet of an internal — as opposed to former exile — ANC man. It is generally assumed that his switch of allegiance was partly influenced by Mandela and others on Robben Island, where he used to call for legal consultation.

Opposed to the death penalty, the new Justice Minister aims to transform the judi-

cial system by making it more widely accessible and respectable. His priority is implementation of the new constitution, which includes the essential step of setting up the Constitutional Court. Omar is a member of the nonestablishment National Association

of Democratic Lawyers, which, together with the Black Lawyers' Association, opposes nominations to the Court being made solely by the official lawyer bodies — the General Council of the Bar and the Association of Law Societies (*Current Affairs*, June 17).

Recently, Omar has taken flak over his intention to set up a truth and reconciliation commission, aimed at making a "complete break" with apartheid's past. Sticking to his guns despite strong opposition, Omar says he will press even if it

may embarrass ANC members in the Cabinet. At least the Minister's commitment to openness cannot be faulted. ■



Omar breaking with apartheid's past

NEWS Jail protests spark inquiry

Sowetan 24/6/94

PWV bid for probe into prisons plight

By Tyrone August
Political Reporter

THE PWV provincial legislature yesterday recommended to the National Assembly that an urgent inquiry be made into South African prison conditions.

The recommendation, proposed at its meeting at Nasrec in Johannesburg by the MEC for Safety and Security Mrs Jessie Duarte, was prompted by the protests which broke out in various prisons on June 8.

The protests were directed mainly at securing amnesty for common law prisoners but also included complaints about liv-

ing conditions in prisons.

Duarte told the legislature that conditions in prisons were "appalling".

After the prison protests, Correctional Services Minister Dr Siphosiso Mzimela announced that a commission of inquiry into prison conditions would be appointed.

Duarte called on Mzimela to urgently table this commission's report "without delay".

In his support for the recommendation, the Democratic Party's Mr Peter Leon called on the Government to look at the plight of Dimitri Tsafendas, who has been in prison since 1966.



Call for immediate stop to granting of indemnities

(252) ARG 25/6/94
Weekend Argus Political Staff

HUMAN rights groups have demanded an immediate freeze on, and repeal of, the Further Indemnity Act, which was used in a last-ditch action by outgoing President De Klerk to release scores of killers from prison.

The intense secrecy of the Act and its vague criteria for indemnity and amnesty of political offenders are regarded as fundamentally at odds with the spirit of the proposed Truth Commission.

Only when prison doors began to open did it become clear what types of criminal had been freed. They were members of the Inkatha Freedom Party, Afrikanerweerstandsbewing, African National Congress and former security force operatives. Among them were quite a few mass murderers from the Natal killing fields, including four special constables jailed for the Trust Feeds massacre.

It is believed the Cabinet had little option — legally speaking — but to approve Mr De Klerk's late-April decision. But, the human rights lobby wants a clear assurance that this does

not mean the new government will use the Act to similar effect.

Legal Resources Centre national director Geoff Budlender said the Truth Commission would be undermined before its inception "if, while legislation being considered to set it up and principles for future amnesty and indemnity are being debated, people are being released hastily and according to criteria which we don't know or understand".

He added "If people are going to have confidence in the law and in the legal system, it is absolutely crucial that criteria for amnesty and indemnity are publicly known and publicly debated."

In similar vein, Black Sash president Jenny de Tolly called for "a halt on any further indemnity and releases until clear terms, objectives and procedures are set for granting pardons".

Brian Currin, national director of Lawyers for Human Rights and head of a committee appointed by Justice Minister Dullah Omar to frame new amnesty provisions, said he was outraged at the latest releases.

The truth WILL come out

- ANC

C. Press

By THEMBA KHUMALO

26/6/94

TEMPERS are running high among ANC Cabinet Ministers and MPs after this week's statement by nine former army and police generals that the proposed "Truth Commission" will not only expose clandestine activities of the past security forces, but those of the ANC as well (252)

It appeared that the more the generals opposed the commission, the more the ANC was resolved to go ahead with it.

The generals' statement on Friday backed a recent appeal by Police Commissioner General Johan van der Merwe to Justice Minister Dullah Omar that the "Truth Commission" be dropped because it would tarnish the ANC's image too.

The six former police generals are JP Gouws, Gideon Joubert, Gert Prinsloo, Mike Gildenhuys, Johann Coetsee (former Police Commissioner) and Hennie de Witt. Their army colleagues are Constand Viljoen (former army chief and current Freedom Front leader), Jannie Gildenhuys and Kat Liebenberg (also a former SADF chief).

They demanded that senior ANC National Executive Committee members, including those in senior government posts, disclose their role in "terror activities" which killed innocent women and children.

They demanded that all the parties involved in past unlawful political activities be charged and their cases be treated evenly. The ANC and those who supported it should not be excused on the grounds that they were involved in a liberation struggle, they said.

Defence Minister Joe Modise said ANC members had already given "our part of the story" to the Motsuenyane Commission which dealt with alleged ANC abuses in the African states.

Asked if he would appear before a "Truth Commission" and encourage other MK members to give evidence on their role, he said: "We've got nothing to hide."

Moosa to head justice panel

PARLIAMENT — Senator Mohseen Moosa (ANC) was elected chairman of the Senate Select Committee on Justice at its first meeting yesterday. (25) CT 28/6/94
Director of legislation in the Department of Justice Mr. Gerhard Nel told the committee nine more justice bills would be tabled in Parliament during the session in August — Sapa

Judge's gratuity a problem — Leon

PARLIAMENT — A Constitutional Court judge who retired at 40 and cashed out with a gratuity of over R1 million could pose problems with the public, Democratic Party justice spokesman Mr Tony Leon said yesterday

Such payment could also pose problems to the exchequer, he said in debate in the select standing committee on justice on the Judges' Remuneration Bill

Committee members were debating the pensions and gratuities payable to specialist Constitutional Court judges or judges from the Bench upon their retirement from the Constitutional Court

"I have a real problem with someone, 40 years old, who retires after seven years and cashes out with more than R1 million," Mr Leon said

Mr Willie Hofmeyr (ANC) said the reason specialised

Constitutional Court judges would get only a gratuity was to cater for those who retired young and would have pensions paid over a long time

He proposed that Constitutional Court specialists who retired young be paid a gratuity and only later get a pension

Mr Danie Schutte (NP) said Supreme Court judges were paid a gratuity of double their salary after 15 years Constitu-

tional judges received almost treble their salaries after seven years (252)

The committee heard that Appeal Court judges earned R244 500 a year. They were paid a R485 999 non-pensionable gratuity if they retired after 15 years of active service

Constitutional judges would earn the same salary, but be paid a taxable gratuity of R698 571 — Sapa

'Don't kill off life assurance'

CT 2/16/94
PARLIAMENT — Any attempt to introduce prescribed assets for the life assurance industry would kill off the industry, Life Offices' Association deputy chairman Mr Blignaut Gouws told the standing committee on finance yesterday.

Mr Gouws was being asked how the LOA intended helping the government's socio-economic uplift drive with the R280 billion in funds it controls (252).

Mr Gouws said his industry may have been "restrictive" in its approach to development, but had not lost value in savings — Sapa

Hani assassin 'not amnesty material'

CT 30/6/94 (252)

JOHANNESBURG — Justice Minister Mr Dullah Omar said yesterday the definition of a political offence did not include assassination

Mr Omar was reacting to a live telephone question, apparently from the brother of convicted right-wing assassin Clive Derby-Lewis, put to him on SATV's Agenda news programme

Mr Derby-Lewis said his brother had been convicted of murdering Communist Party leader Mr Chris Hani on circumstantial evidence, while ANC cadre Robert McBride, who "personally blew innocent civilians to pieces", was free

McBride, an uMkhonto weSizwe member, was convicted of killing three young women in the Magoo's Bar bombing in Durban in 1986. He was

later freed in terms of an amnesty grant for political prisoners

Mr Derby-Lewis asked whether there would be one justice for ANC offenders and another for non-ANC members "Or are you prepared to declare now my brother's application will be dealt with justly?"

Mr Omar replied "I believe in even-handedness. But I do not think the definition of a political offence will include the planned assassination of civilians"

Speaking on the same programme, AWB leader Eugene Terre'Blanche said stipulations linked to amnesty made a mockery of the concept. If war was to stop in South Africa, all political prisoners should be freed — Sapa

Bill guarantees rights for all — Omar

SENATE — The government's approach to human rights embraced all the people of South Africa and entailed the protection of the legitimate rights of every individual, Justice Minister Mr Dullah Omar said yesterday

Replying to debate on the second reading of the Human Rights Commission Bill, he said language, cultural and religious rights would be protect-

ed in terms of the Bill of Rights in the Constitution

While the Human Rights Commission Bill focused on individual rights, this did not mean that the rights of groups would be disregarded

The bill created the mechanism to ensure that all South Africans were able to claim and enforce their rights enshrined in the constitution

Senator James Selfe (DP) said the Human Rights Com-

mission was vested with extensive and intrusive investigative powers, some of which appeared to run counter to the very Bill of Rights which the commission was established to protect

(252) CT 29/6/74
"South Africa's history is littered with examples of good intentions which become subverted. We have received assurances that these powers will be exercised responsibly

and we will hold the government to these assurances"

Senator Ernest Mchunu (ANC) said for the first time in South Africa's history, an institution would have effective powers to protect the human rights of people

Senator Ray Radue (NP) said the National Party was concerned about the wide powers conferred on the commission — Sapa

Impasse on judicial nominees broken

Political Staff

THE impasse over nominations by the legal profession for the Judicial Services Commission has been resolved — paving the way for the establishment of the Constitutional Court

The nomination of two "progressive" lawyers — advocate Mr Marumo Moerane of Durban and attorney Mr Phineas Mojapelo of Nelspruit — is being interpreted as a victory for the black-dominated National

Association of Democratic Lawyers and the Black Lawyers' Association

Although the other 12 members of the JSC have been named, a squabble between "establishment" and "progressive" lawyers' bodies has delayed the establishment of the Constitutional Court

The JSC is to appoint all judges and six members of the 11-person Constitutional Court

The interim constitution requires that two of the four members must be advocates and two, attorneys (252)

Nadel and the BLA have been negotiating with the establishment General Council for the Bar and the Association of Law Societies, which have argued they are entitled to nominate the four.

ET 30/6/94
It has now been agreed that the GCB will nominate both ad-

vocates and that Mr Moerane will be Nadel's nominee. The other nominee is Johannesburg advocate Mr Wim Trengove

The other attorney nominee is Mr L S van Zyl of Cape Town. He and Mr Mojapelo are to be nominated jointly by the ALS and BLA

The National Party has expressed concern that nine of the 13 JSC members named are sympathetic to the ANC

Bill levels salaries for judges

PARLIAMENT. — ~~251~~ (252) CT 28/6/94
Constitutional Court judges are to be paid at least the same as Appeal Court judges, but their gratuity after a seven-year term will be discussed further today

This was the consensus of the National Assembly's Select Committee on Justice yesterday during consideration of the Judges' Remuneration and Conditions of Employment Amendment Bill, which deals with the Constitutional Court

Mr Tony Leon (DP) said a proposed gratuity of R1 million was "excessively generous"

Mr Willie Hofmeyr (ANC) said his rough calculation showed such a gratuity would equal the pension of other judges

Committee chairman Mr Johnny de Lange ruled that the issue be discussed again today when Members could present specific proposals

The other draft legislation un-

der review is the Judicial Service Commission Bill

Mr Koos van der Merwe (IFP) asked why provision had not been made for attorneys-general, who handled thousands of cases a day, to be represented on the commission

Mr De Lange said this would be "flagged" as an issue to be raised

Also to be discussed is the effect of the Senate and National Assembly committees considering the same legislation — Sapa

New bill to avoid dispute on judiciary

CT. 22/6/94
252
Political Staff

THE dispute between lawyers' groups that is holding up the establishment of the Judicial Services Commission could be avoided if Parliament approves a bill which was tabled yesterday.

All but four of the members of the proposed commission, which will have the power to nominate six members of the new Constitutional Court, have been named by the Minister of Justice, Mr Dullah Omar.

But a dispute between the Bar Association and the Attorneys' Association on the one hand, and the National Association of Democratic Lawyers and the Black Lawyers' Association on the other, has prevented the finalisation of the remaining four members

Representatives of the lawyers' groups met Mr Omar on Monday in an unsuccessful bid to resolve the matter.

However, the Judicial Service Commission Bill, which was tabled in Parliament yesterday, states that a vacancy in the commission "shall not affect the validity of the proceedings or decisions of the commission".

This will mean that the JSC will be able to function without waiting for the lawyers' dispute to be resolved.

HERE can be no blanket amnesty that extends to people who have committed crimes that have not been disclosed to the South African public, says Justice Minister Mr Dullah Omar

Speaking to *Sowetan* in an exclusive interview in Cape Town, Omar, a veteran of the anti-apartheid struggle and former detainee, says while the law provides for amnesty, this will be tied to confessions before the Truth and Reconciliation Commission

He says assassinations and other "planned targeting of civilians with bombs have nothing to do with the past war between the forces of liberation and the forces of apartheid"

He insists that those who committed crimes have to be forgiven, but stresses that "those who forgive must know who and what they are forgiving"

Omar says he is distressed by the fact that the debate on amnesty focuses solely on the perpetrators and not on the victims

"No one has asked the widow of Biko or Goniwe or Webster's friend how they feel. They are ignored. We cannot look at indemnity without looking at the victims and their feelings

"After all, amnesty and forgiveness cannot be legislated. People must feel that justice has been done and this has nothing to do with vengeance or witch-hunting, but simply with a need to know the truth," he says

There is a need to continue with the Truth Commission as it will help in documenting the past and facilitating a clean break

"This will also help future generations to know what happened and what needed to be done to protect our freedom

"Some form of compensation is needed for victims of apartheid crimes. Bursaries for the children and other forms of help for the families should be forthcoming from the State. We should look at special days to remember the victims," Omar says

He says his department is faced with the legacy of the former regime which granted amnesty to people who had committed "terrible crimes"

"There are cases that were approved by the former regime where I would never have granted amnesty. The president and I are now faced with these problems and are bound by the decisions taken before us," he adds

Turning to the workings of the department, Omar says a huge task faces him in bringing equality within the justice portfolio, where Afrikaners run almost all aspects with no black person in sight. In this task, the shortage of skilled and professional blacks is glaring

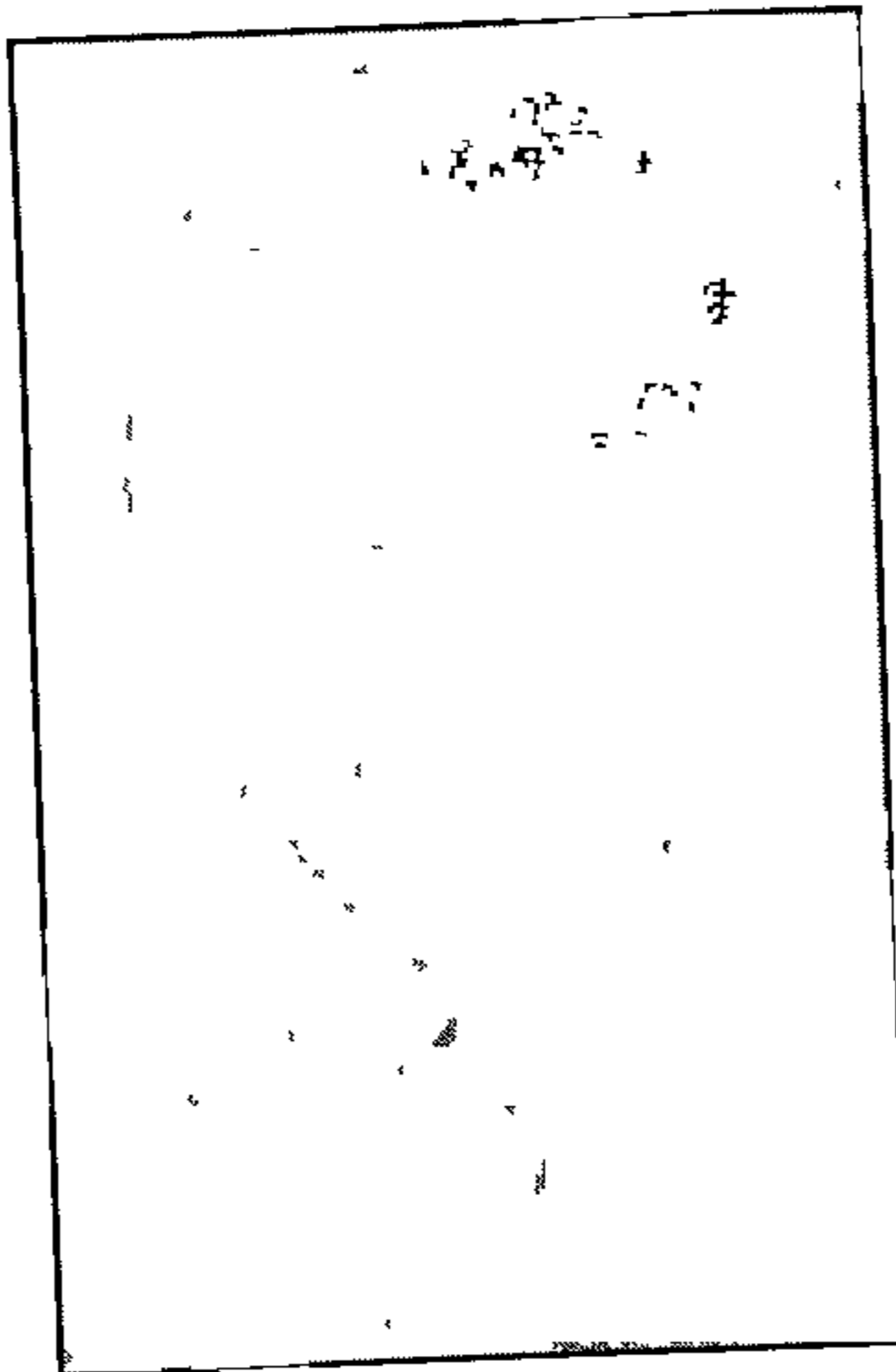
The law profession itself is 90 percent white, and even if it is to be run democratically, whites will still dominate. This has to change, he says, and his department is making bursaries available for blacks to enter the profession

Many black lawyers opted for private practice and this needs to be changed if the imbal-

In a wide-ranging interview with Political Editor **Mathata Tsedu**, Justice Minister Dullah Omar stands firm on the Truth Commission, while emphasising his determination to implement affirmative action in his department:

Sowetan

11/7/94



Justice Minister Dullah Omar ... no blanket amnesty. (252)

ances within his department in particular are to be overcome

Turning to the appointment of judges, Omar says there are sufficient black attorneys who have the skills and experience to become judges without lowering the standards of the judiciary

His department will use the appointment of acting judges to bring more blacks on to the bench, even if they are not senior counsel

This is because the stipulation that to become a judge one has to be a senior advocate is not a legal requirement. It was put into the rules of the Bar Councils of the various provinces by white advocates who wanted to control upward mobility. It is necessary to cut across that to effect black appointments

These appointments could be made as early as next week, he says. The discrepancies between the ANC's vision of justice and what prevails has to be eradicated

To this end, a summit involving all stakeholders will be convened to look at the

justice system in the country and what needs to be done

On the treatment of offenders in courts, Omar says more than 90 percent of people appear in magistrate's courts, where they experienced grave problems with the system

"The judiciary has been almost all white and we must make the courts representative of our society. This will take time, but it must be done. Attitudes of officials also have to change and everyone must be respected in line with the provisions of our constitution

"We demand that officials of the department respect our people. This costs nothing and the change must happen now. If anyone on my staff fails to treat anyone with respect, and if any member of the public becomes aware of this, I plead that they get in touch with me urgently as the changes can only come about if offenders of people's dignity are dealt with sternly," he says.

Omar says courts have to a large extent been vehicles for denigrating black people's dignity. "I make an earnest appeal to all our courts to make a clean break with the past and ensure that our people are treated with dignity," he adds

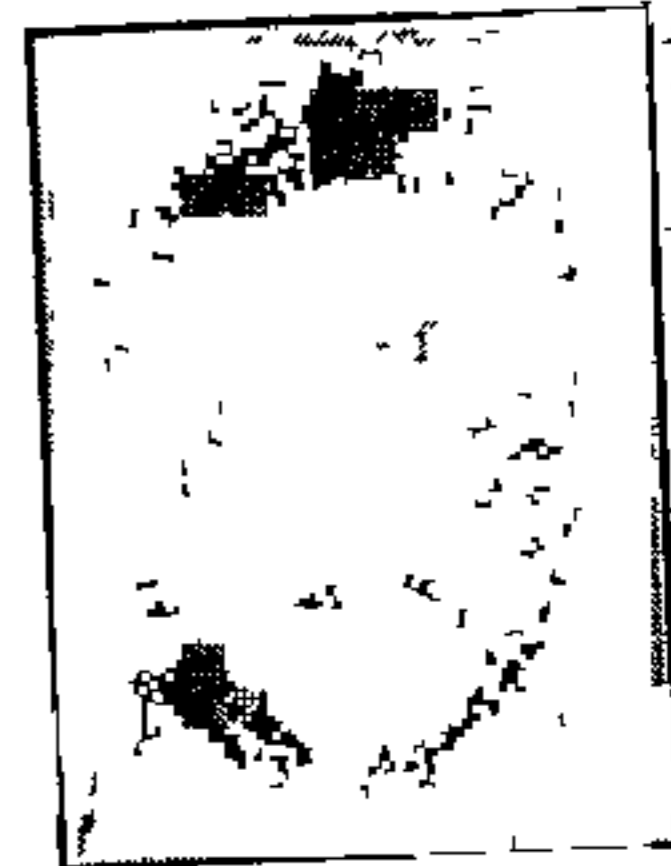
Omar says he met with magistrates from the Transvaal and the Western Cape recently and told them they could change and become a part of the new order

"I received tremendous support from them and I would like to see that attitudes change in practice, and our people to feel it in their everyday dealings with our courts," he says

Omar says he is bothered by the large number of unrepresented offenders who appear before the country's courts, and intends to strengthen the Legal Aid Board and Public Defender systems. This, however, has its own problems as black attorneys in particular are against this as it cuts across their major domain

"And I can understand their position. Black attorneys have mainly been working in political and criminal cases. They never got the big business work and the public defender system therefore affects them more. That is why the summit of all stakeholders is so important," he says

He wants to change the department and his ministry to include more black people. But the effects of Bantu Education, an attitude against the State and the low salaries earned by civil servants did not help



Omar appoints judicial body

JUSTICE MINISTER Mr Dullah Omar has announced the names of those who are to serve on the Judicial Service Commission. (252)

The 17-member commission is headed by the Chief Justice, Mr Justice Michael Corbett, and includes the president of the Constitutional Court, a law professor, and four Senators.

The commission, which will be based in Bloemfontein, is to hold its first meeting on July 20. — Sapa CT4/7/94

White judges predominate

CAPE TOWN — All but three of SA's 179 permanent and acting judges were white, Justice Minister Dullah Omar said on Monday.

In reply to a question by ANC MP Dave Dalting, he said there were two permanent black judges and one Indian as of May 31 1994.

Two out of 158 permanent and 21 acting judges were women.

There were 191 regional court magistrates, of whom 173 were white, 14 black, one coloured and three Indian. Of the 1 511 magistrates 987 were white, 474 black, 26 coloured and 24 Indian. Of 1 692 state prosecutors, 1 001 were white, 439 black, 109 coloured and 80 Indian.

The attorney-general had 293 employees with legal qualifications. Of these 19 were black, five coloured and six Indian.

The Justice Department employed 4 107 lawyers and advocates, of whom 2 722 were white, 1 096 black, 155 coloured and 120 Indian — Sapa (252)

Adjustments likely for Model C schools

THERE has so far been little indication from government on the future of Model C schools, but policy analysts believe that while the state-aided form of schooling will continue there will have to be some adjustments.

In response to questions on the issue, Education Minister Sibusiso Bengu said he did not want to "pontificate" about Model C schools at the moment.

Policies being drafted by top officials and strategic management teams would be widely circulated for consultation, and the outcome of these processes would be announced as soon as possible.

"Unfortunately, the range and scope of the processes are such that it is impossible to speculate when announcements would be made."

However, he hinted at changes in saying that as a uniform system was necessary, "we must definitely be making sure that the schools are open in a way that is satisfactory to all the communities in the country."

Urban Foundation education analysts, as well as sources in the ANC education department, said they believed that while the system of state-aided schools would continue, there would be more state control over admission criteria to ensure these

KATHRYN STRACHAN

were not racially applied.

Bengu said government was firm in its commitment to provide 10 years' free and compulsory education to all pupils, but he emphasised that in carrying out this policy it would also ensure that sufficiently high standards of education were maintained.

"Free education without acceptable standards of provision makes little economic sense," he said.

He added the pattern of education would be gradually changed to be a better reflection of the values of the public. "It is in this way that education will be meeting the needs of our people."

Bengu said the programme of providing free education — which included a pre-school year — was expected to be phased in from the beginning of next year. Improving rural schools would be placed high on the list of priorities, he said.

In the meantime, his department would be looking at free quality education and would work on legislation that would help introduce the programme.

The plan to introduce widescale adult basic education was also expected to get off the ground early next year depending on the availability of resources.

Education restructuring is 'relatively advanced'

CAPE TOWN — Although planning for rationalisation of the four main education departments was relatively advanced, a lot of work still had to be done on the former homelands, the Education Co-ordination Service said in its annual report, released yesterday.

The service is the government directorate set up to plan provincial, non-racial education departments.

It said that by the end of March this year 14 education departments were taking part in a single planning network, and 18 working groups had been set up to develop planning documents on issues such as financial and personnel administration, the school calendar, the timing of exams, and legal and communications services.

Three draft Bills which had been developed on school education, colleges of education and colleges for vocational education were ready for further debate.

They could be adopted unchanged in those provinces formerly controlled only by the tricameral parliamentary departments, but modifications would be required in provinces which now included former homelands.

Meanwhile, in its annual report, the Department of Education and Training said the defiance campaign conducted by teachers had a devastating effect on education.

In the campaign, school principals and teachers who did not agree with the protesters' disruptive tactics had been chased away from their schools, the report said.

Teachers had refused to perform their professional tasks and for several years there had been little chance of systematically working through the curriculum.

"On the whole, it is evident that since 1990 the teachers involved have in fact conducted a long, drawn-out strike. Coupled with the declared teachers' strikes, the defiance campaign has had a devastating effect on education in many schools" — Sapa

she had confused Sydney and Perth
last year after SABC stationers and Perth
board members of them

Local poll body set up

BIDay 5/7/94
Business Day Reporter

CABINET yesterday appointed a technical committee to investigate preparations for local government elections.

With the local elections scheduled tentatively for April, the committee would examine issues such as compiling voters' rolls as well as the logistic, administrative and cost implications of such elections.

The committee — provincial government commission chairman Thozamile Botha, Fanie van der Merwe of the Constitutional Development Department and Home Affairs Director-General Piet Colyn — is expected to report to Cabinet early in August.

The committee would consult all relevant authorities and role players before making recommendations to the Provincial Government and Home Affairs Departments as well as provincial cabinets.

Aluminium Can Recycling Association GM Dawie Krugel, left, Colin Ogle of the African Council for Hawkers and Informal Business and Get Ahead director Don MacRobert with the new recycling crusher bin for use by hawkers. Picture ROBERT BOTHA

Procedure slammed over change to constitution

BIDay 5/7/94

CAPE TOWN — Legislation amending the constitution was passed unanimously at a joint sitting of the National Assembly and Senate yesterday, but several MPs were critical of the procedure adopted.

This followed the withdrawal yesterday morning of a clause which provided for the appointment of parliamentary counsellors to the President or Vice-Presidents.

The clause was dropped after the ANC caucus decided on Sunday that it was not necessary. This was accepted by the party whips, without a meeting of the Standing Committee on Constitutional Affairs.

The way in which the clause was dropped prompted a sharp rebuke from veteran DP MP Colin Eglin.

"Heaven help SA if this is the way we are going to handle constitutional amendments," he said. "I thought I was in the new SA in which Parliament was going to say to the public 'You, too, could make an input' But this is not the case."

"If you want people to love, obey, and respect the constitution, then don't let them see Parliament turn it into patch-

Political Staff

work quilt legislation"

NP Senator Neels Ackerman said the ANC should decide who was running the country: the caucus, the ANC's national executive committee, or the Cabinet.

ANC MPs and senators were criticised by Senator Errol Moorcroft for hissing and booing when Inkatha Freedom Party hard-liner Walter Felgate spoke during the debate. He said it was "unacceptable" that a Member was booed and hissed even before he spoke — "it reduces us to something like a concert hall".

(252)
Introducing the Bill, Constitutional Development Minister Roelf Meyer said the amendments were practical ones of a technical nature. They dealt with the pension benefits of political functionaries at national and regional level, the appointment of the public protector, the courts, and the commission on gender equality.

With all parties supporting the Bill, 394 votes were cast — more than two-thirds of the total number of 490 MPs and senators.

NEWS

Almost all at the top are white

Legal system in line for revamp

Star 5/7/94

■ BY NORMAN CHANDLER and SAPA

Cape Town — All but three of South Africa's 179 permanent and acting judges were white, Justice Minister Dullah Omar said in Parliament yesterday

In a written reply to a question by MP Dave Dalling (ANC), he said there were two black and one Indian judge as at May 31 1994

Two out of 158 permanent and 21 acting judges were women.

There were 191 Regional Court magistrates, of whom 173 were white, 14 black, one coloured and three Indian. Of the 1 511 magistrates, 987 were white, 474 black, 26 coloured and 24 Indian. Of a total of 1 692 State prosecutors, 1 001 were white, 439 black, 109 coloured and 80 Indian.

The Attorney-General had 293 employees with legal qualifications. Of these, 19 were black, five coloured and six Indian.

The Department of Justice employed 4 107 lawyers and advocates of whom 2 722 were white, 1 095 black, 155 coloured and 120 Indian.

And in the attorneys' journal *De Rebus*, Omar said South Africa's justice system should break with the past.

He said plans were being for-

MINISTER Dullah Omar says judicial officers must try to make people in court understand what it is all about

mulated to make the legal system more accessible, sweeping changes to traditional South African legal procedures were in the offing, and legal terminology was to be simplified. "We must demystify the law," Omar said.

He added that there was also a perception — in many cases not quite accurate — that South African lawyers had acted in collusion with the apartheid system.

One of the far-reaching proposals is that attorneys should be granted rights of audience in the Supreme Court. At present, only advocates and counsel are permitted these rights.

"Often it is far more difficult to conduct trials in a Magistrate's Court than in a Supreme Court, and attorneys are at a very big disadvantage because they often see dockets for the first on the morning of the case," Omar said.

"They have to think on their feet (and) as a result of that,

I think attorneys have developed a skill which would be of great benefit to the Supreme Court as well."

The Government's Reconstruction and Development Programme had also taken cognisance of the legal system, and had recommended changes, particularly in regard to the work undertaken by legal advice offices and other para-legal organisations. Although para-legals are seen by Omar to be "quite capable of representing people", regulations governing the profession would have to be amended to avoid abuse of the system.

Omar said people complained they did not understand court procedure and "the first step is to make judicial officers aware of this problem, so that we consciously go out of our way to make people in court understand what it is all about and demystify the law and procedure for them."

Particular emphasis would be placed on "disempowered people and the poor", and an appreciation of the problem had to be shown. Ordinary people would be drawn into dispensation of justice, particularly at Magistrate's Court levels. The British system of lay magistrates had impressed him, Omar added.



Omar: Judges almost all white

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Biday 5/7/94

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In reply to a question by ANC MP Dave Dalling, he said there were two permanent black judges and one Indian as of May 31 1994. Two out of 158 permanent and 21 acting judges were women. *Biday*

There were 191 regional court magistrates, of whom 173 were white, 14 black, one coloured and three Indian. Of the 1 511 magistrates 987 were white, 474 black, 26 coloured and 24 Indian. Of 1 692 state prosecutors, 1 001 were white, 439 black, 109 coloured and 80 Indian. *5/7/94*

The attorney-general had 293 employees with legal qualifications. Of these 19 were black, five coloured and six Indian.

The Justice Department employed 4 107 lawyers and advocates, of whom 2 722 were white, 1 096 black, 155 coloured and 120 Indian. — Sapa *(252)*

POLITICS

Protests about procedure but constitution bill is passed

ESTHER WAUGH

Political Staff *RRG 5/7/94*

A BILL amending the interim constitution has been passed by parliament in spite of reservations about the procedure.

The legislation enables magistrates' courts to hear constitutional disputes and creates a pension fund for MPs.

The draft legislation had included a provision allowing parliamentarians to work in the offices of the president and deputy presidents but this provision was deleted yesterday.

The move followed a decision by the standing committees on constitutional affairs which agreed that such positions were necessary and should be filled by parliamentarians.

The decision was also endorsed by the ANC's caucus at the weekend.

In terms of parliament's rules, the draft legislation should have been referred back to the standing committees before being debated yesterday in parliament. This, however, would have meant parliament's sitting today.

National Party MP Hennie Smit

said his party supported the deletion of the clause but objected to the suspension of the rules. It was important, he said, that parliament stuck to the rules.

Colin Eglin (DP) expressed "extreme disappointment at the government's handling of the first amendment." Walter Felgate (IFP) said in future "let's do things in a different way."

is ● Expelled PAC 10's 'hit list'

Sowetan 6/7/94

Man sues over ~~sex~~ 'sex with corpse'

A PRETORIA taxi driver has lodged a civil claim in the Pretoria Supreme Court against the Minister of Law and Order, a policeman and two civilians who allegedly tried to force him to have sex with a corpse

Mr Frans Molongwana is claiming nearly R100 000 in damages from the Minister of Law and Order, Sergeant Marius Wolmarans, Mr Jacques Greyling and Mr Gideon Murray

In papers filed in court, Molongwana says Wolmarans, Greyling and Murray unlawfully assaulted him, called him a kaffir, arrested him and took him to a Government mortuary where they threw a corpse on top of him and ordered him to have sex with it

The three men have already appeared in the Pretoria Regional Court on charges of abduction, *crimen injuria*, assault and theft, to which they have pleaded not guilty.

The incident allegedly took place in June 1992. Molongwana said he had sustained bodily injuries, temporary disablement, loss of income, loss of earning capacity, medical expenses, psychological trauma and injury to his dignity, for which he claimed damages amounting to R96 440.

The Minister of Law and Order denied the allegations and opposed the claim. Mr Justice Botha yesterday granted Molongwana's application —
Sowetan Correspondent.

Protector's function to become law

CT 6/7/94

(252)

Political Staff

THE government tabled the Public Protector Bill yesterday, legislation which creates the office of Public Protector to replace the Ombudsman and Advocate-General.

In the 1993 constitution the role of the Public Protector is to investigate any alleged:

- Maladministration in connection with the affairs of government at any level.
- Abuse, or unjustifiable exercise of power, or unfair, capricious or discourteous, or other improper conduct, or undue delay by a person performing a public function.
- Improper or dishonest act, or omission or corruption, with respect to public money.
- Improper or unlawful enrichment, or receipt of any improper advantage or promise of enrichment or
- Act or omission by a person in government employ, or a person performing a public function, which results in unlawful or improper prejudice to any other person.

Originally, the Public Protector was to have been appointed within 60 days of the first sitting of the Senate, but a constitutional amendment passed at a joint sitting on Monday has extended this to 120 days.

Bill gives teeth to public protectors

CLIVE SAWYER

Political Correspondent **ARC 6/7/94**
FAR-reaching powers to search buildings, seize documents and summon witnesses are to be given to public protectors to root out corruption and maladministration.

The Public Protector Bill was tabled in parliament today.

The Bill gives effect to a chapter of the constitution which provides for a national public protector, deputy public protectors, and provincial counterparts.

The protector will be nominated by a joint committee of the houses of parliament.

The appointment will have to be approved by a 75 percent majority of a joint sitting of the national assembly and senate.

Appointees will have to be judges, advocates, or people with 10 years experience in public administration, public finance, or the administration of justice.

The protectors will be appointed for seven-year terms.

They will investigate maladministration at any level of government, as well as improper, dishonest or corrupt acts. They will be empowered to refer alleged offenders for prosecution.

Among their duties will be dispute-resolution by mediation or negotiation.

Protectors will be expected to be independent and impartial, and will not be allowed to have any other source of remuneration.

The protector will have to submit an annual report to parliament.

Pay will be at least the same as the salary of a Supreme Court judge.

The public protectors "shall not be liable in respect of anything done by them in good faith" in terms of the law.

During an investigation documents and evidence used by the protectors will be confidential.

Protectors will be able to call on public officials to assist them in investigations.

They will be entitled to enter and search buildings, seize documents and call on anyone to explain the contents of documents, with or without prior notice.

4 300 die in SA political violence

Rights abuse last year Widespread - Amnesty

Widespread human rights violations, including the death of at least 39 detainees in police custody in suspicious circumstances, and torture and ill-treatment of detainees and prisoners, occurred in South Africa last year, according to Amnesty International.

AI also singled out political organisations, including the African National Congress, for human rights abuses and said more than 4 300 people were killed in political violence in 1993.

The organisation said in its annual report that few of those responsible for human rights violations were brought to justice.

AI charged that security force members had continued to commit extra-judicial executions and other human rights violations, "despite some attempts by the authorities to make police more accountable to local communities."

AI also charged that police were implicated in targeted assassinations of political activists and members of the ANC's armed wing, Umkhonto we Sizwe, and in deaths in custody which appeared to be deliberate killings.

Internal Stability Unit members were repeatedly implicated in assaults, torture and extra-judicial executions of township residents, the report added.

Star 7/7/94

Police also detained scores of people under "permanent" security legislation, while hundreds of ANC supporters were detained without charge in terms of the Public Safety Act.

There was also widespread evidence of torture and ill-treatment of political detainees and criminal suspects by the security forces, AI said.

Some interrogation and torture occurred outside police stations, which according to AI may

have been police attempts to evade scrutiny by various organisations, including the Red Cross which was granted access to all police stations in 1992.

252

Turning to members of opposition organisations who were convicted of killings and other acts of violence, AI said it was not always clear if they had been acting on explicit orders of their organisations.

Labelling random drive-by

shootings as "a new form of terror for township residents", AI said the killings often coincided with key events in the negotiation process.

This suggested the perpetrators were a "third force" of professional killers.

AI had visited South Africa on five separate occasions in 1993 to investigate human rights violations and had called on the Government to institute independent inquiries into abuses.

Referring to the findings of the Motsuenyane Commission into human rights abuses by ANC officials in exile, AI said while the leadership had assumed collective responsibility for the violations, it had declined to discipline the perpetrators or remove them from positions of authority.

Instead the ANC had called for a truth commission to inquire into all human rights violations committed by all parties - Sapa

Years of intense debate over the death penalty, abortion and freedom of speech will soon be elevated to the powerful new Constitutional Court, the highest constitutional authority in the land. Helen Grange looks at some of its methods

No easy path for nation's new court

South Africa will soon require one of the finest institutions of democracy, a Constitutional Court. But its birth and infancy will be arduous and difficult.

For one thing, the concept of a Constitutional Court — now a time-worn establishment in the United States — is entirely unfamiliar to the South African judiciary, not to mention the citizens it is designed to protect.

The function of the Constitutional Court is to interpret the Human Rights Bill contained in the Interim Constitution and hammer out, through extended court battles, our particular brand of human rights legislation.

While the court is empowered to make use of foreign precedents concerning issues such as freedom of speech, discrimination, abortion and the death penalty, there can be no leapfrogging due legal process.

Thus, it will take many years to build a solid foundation of human rights law in South Africa.

Since the legal profession is largely unpractised in this terrain, a great deal of time and energy needs to be spent on educating the judiciary from magistrates upward — particularly on subjects such as gender and race discrimination.

Also, as the most powerful constitutional body in the country, able to overturn parliamentary legislation deemed unconstitutional, the Constitutional Court and its rules of procedure must come under close scrutiny to ensure its legitimacy and efficacy.

Presently, the Interim Constitution is being amended to enable magistrate's courts and superior courts to hear constitutional disputes to avoid a backlog of relatively minor legal debates handing up on the constitutional court roll. The categories of constitutional matters over which the lower courts will have jurisdiction have yet to be determined.

Already, the list of matters to be heard by the court — many of them commercial disputes — is growing daily and will have to be subjected to a prioritising procedure once the court is established.

In all probability, the first sitting of the court — in September at the earliest — will deal with the pressing matter of the death penalty, a sentence the supreme courts are continuing to pass pending conclusion by the Constitutional Court over its status.

There is also strong support for a change to the present Interim Constitution proposed that hearings must be attended by the full 11-member bench.

The Association of Law Societies president William Venter suggests five of the 11 judges be acceptable as a quorum. "It would otherwise take years to get through the cases, which are already piling up."

The Constitutional Court's rules of procedure, which will be streamlined through a process of trial and error once the court is in operation, allow not only for matters to be passed up to it from the lower courts, but for any member or members of the public to access the court directly.

An individual or interest group wishing to test the legitimacy of, say, euthanasia, is therefore entitled to a civil hearing in the Constitutional Court without having to die a respondent or go through the lower courts.

Democrat Party justice spokesman Douglas Gibson says the Constitutional Court's accessibility will significantly influence the extent of public knowledge about human rights, and in turn, this will help the court to be seen as a legitimate instrument of civil protection.

Ironically, however, the extensive litigation will probably mean most matters heard by the Constitutional Court will be criminal cases bounced up from the lower courts.

Because of the weighty and

Balancing the members in terms of race and gender will be the most difficult task of the JSC, as South Africa's top-sided judiciary has but one black judge and only two women judges.

The recently resolved dispute which arose over four appointments to the JSC itself, causing the current delay in the establishment of the Constitutional Court, is indicative of the sensitivity around these highly influential posts.

The Constitutional Court will be made up of four judges from the supreme court and appellate division, selected by President Nelson Mandela, and six judges selected by the cabinet from 10 nominations by the JSC.

Place of pass wrongs and rites of passage

Sowetans take their maintenance disputes to a building ironically called the place of beauty — a dull, grey building which used to be a pass office.

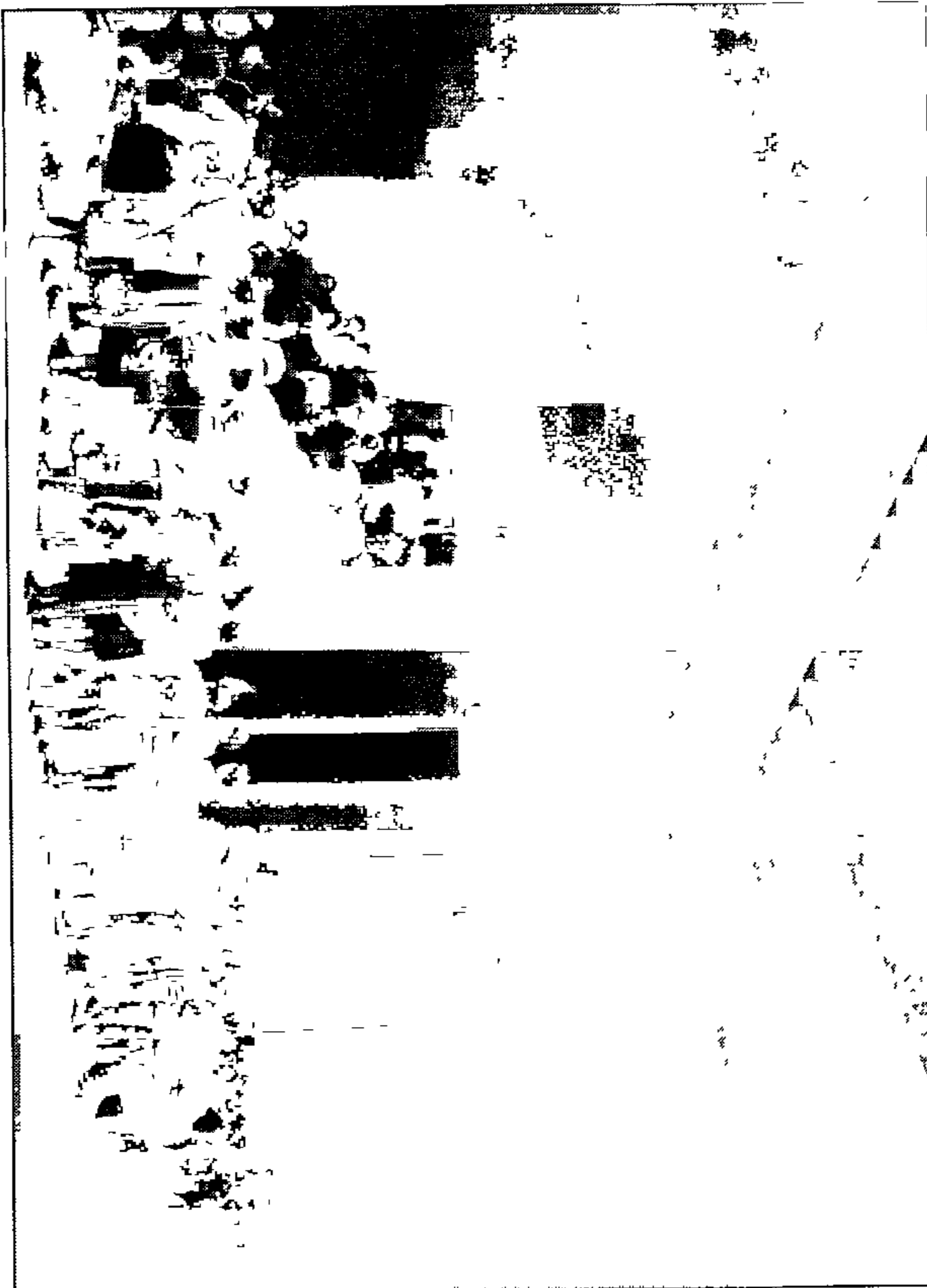
Mduduzi ka Harvey reports

KWAMUHLE (the place of beauty) is a stubborn hangover from the South Africa of the dompas. In the dull, grey building in downtown Johannesburg, once a pass office, droves of patient black men and women wait in long queues as officials stroll past at their leisure.

On the fourth floor stand lines of young and old women, some with crying babies on their backs or standing with relatives who have come to give moral support. This is Ndabazabantu (People's Affairs), where the people of Soweto come for justice in their disputes over maintenance.

Outside the court, in the corridors, men smoke endlessly as they wait for the magistrate to settle their fate, while others pace in nervous anticipation of their names being called.

The women stand in groups discussing their claims, while others sling abuse at their boyfriends. "I'm going to make him pay through his neck this time," says one. Another exclaims "The double-crossing bastard! He can go out drinking with younger women but he can hardly afford to buy his own flesh and blood



Twisted affair ... Couples queue for hours, but their cases are processed in minutes

PHOTOGRAPH GUY ADAMS

food and clothing". The men, for their part, complain of bias in the court's rulings. "Die vrouens wen altyd hulle sake hierso (The women always win their cases here)," one says.

At 10am the magistrate arrives, bringing to an end hours of waiting in cold corridors. As he enters the court and takes his seat, the small courtroom is immediately packed with about 80 people.

The magistrate is the only white person present. In a booming voice, he cross-questions the first defendant. "What do you do with your money if you can't afford R100 for your child?" "I don't work, I live on piece jobs."

"What's that?" "Small jobs in the township."

The cases are processed in double-quick time. By lunchtime, the corridors are empty and the court officials sit around the benches eating, smoking and chatting. "What do you expect?" asks Selo Masemola. "This place has always been a Bantu court. Black issues have always been treated as minor — even when the country is changing."

Two blocks from this hive of chaotic activity, on the first floor of the Johannesburg Magistrate's Court, other maintenance cases are heard in a very different setting. Here white and coloured people wait for their disputes to be heard.

The mood is calm, and couples talk in undertones. Queues are shorter — about 20 people sit in benches basking in the sun. Gone are the screams of babies and the mud-slinging between spouses.

The court starts punctually. Prosecutors and other court officials stride around in a businesslike fashion, but they are approachable and willing to help. Here men are called "sir" and women "ma'am". Everyone sits quietly as couples are called into the court.

P.T.O.

As the first complainant enters the silent courtroom, the orderly shows her where to stand. "Do you wish to speak in English or Afrikaans?" the magistrate, a woman, asks in a maternal voice.

The setting is intimate, with fewer people present and the prosecutor taking time to explain to the parties how their dispute can be resolved.

"If Mr Ferreira has to pay the money directly to you, make sure you give him a receipt. And if there are any problems between the two of you, don't hesitate to approach the court. Do you both understand?" the magistrate tells one couple.

"Sorry Miss, where do we go for the tissue and blood tests?" asks the complainant. The magistrate patiently tells her.

Each case is given the time it deserves. Both parties are given the opportunity to ask questions.

"The last time I gave her the money in her hands, she bought clothes for herself and nothing for my children," complains Ferreira.

"Okay sir, we'll have to ask her to provide you with proof that she spent the money on the children," the prosecutor responds.

Throughout the morning, the prosecutor continues to argue for increased maintenance, the issuing of warrants of arrest and the referral of cases to social workers.

By lunchtime, couples whose cases have not been heard wait for the court hearings to resume. For the officials, it's time for a quick snack and back to work.

For Koos Benson and his girlfriend Annie Marks, the magistrate has worked a small miracle. After three years of separation and problems over the maintenance of their two daughters, they have decided to get back together again.

Down at kwaMuhle, Mandla Sibeko feels his case has not been properly weighed.

"I don't know how I'm going to cope," he says, commenting on the increased maintenance he will now have to pay. "I might have to get a second job."

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Court rules against jail for debtors

CT 9/7/94
By DALE GRANGER

252

THE Supreme Court has ruled that it is unconstitutional in terms of the new constitution to jail debtors who fail to comply with court judgments ordering them to repay debts.

This week the court found that it was also unconstitutional to convict debtors unable to comply with repayment judgments for contempt of court, which has enabled the court to imprison them.

A court order dealing with several sections of the Magistrates Court Act of 1944 found certain sections to be unconstitutional on Wednesday.

It was found that judgment debtor defaulters may be summonsed to court to show why they could not pay their debts — but may not be convicted for contempt of court and jailed.

Other sections affected included one making provision for 90 days imprisonment of defaulters and a warrant of arrest in addition to a R500 fine — recoverable by attachment of property.

Legal experts last night described the sections as having been controversial and contentious for many years because it had spread poverty among poorer communities in forcing "families and friends of debtors to raise money to keep the debtor out of prison".

'Include 2 women in rights court'

(252)

Political Correspondent

THE Black Sash has called on the Judicial Services Commission to hold public hearings for appointments to the constitutional court and to include two people — preferably women — from outside the legal fraternity

In a letter to Arthur Chaskalson, president of the constitutional court, Martha Bridgman of the Black Sash legislation watch group said a selection process which was transparent and accessible to concerned members of civil society would enhance the court's integrity, impartiality and credibility

Transparency and accessibility would be advanced if there were "public selection hearings especially if they were broadcast over electronic media"

ARG 9/7/94

Youth leagues demand rethink on amnesties

Sunday Times 1017194

Sunday Times Reporter

YOUTH leagues across the political spectrum and a prisons human-rights organisation have demanded that President Nelson Mandela rethink the amnesty and indemnity procedures now under way.

In a memorandum delivered to the Johannesburg Correctional Services offices yesterday, the youth organisations from the

IPP, ANC, Azapo and PAC expressed their dissatisfaction with the process, and its lack of transparency.

It said an amnesty resolution committee should be formed to "arrive at a fair, logical and informed system of amnesties and sentence deductions for various categories of common-law prisoners." This committee should be formed from a cross-

section of South African society

It called for prison conditions to be investigated as a matter of urgency by a commission of inquiry.

"These initiatives must be within the context of transformation of the whole prison and justice system of this country's democratisation, reconstruction, and reconciliation," the statement said.

In the memorandum all parties said the six-month across-the-board remission for common-law prisoners announced by Minister of Correctional Services Dr Siphiso Mzimela last month was "grossly unfair" and was administered "in a very inconsistent way".

It also expressed dissatisfaction with the amnesties afforded by the new government in terms of a

list drawn up by Second Deputy President F W de Klerk before the elections.

The statement, however, welcomed an announcement by Dr Mzimela on Friday that children under the age of 18, mothers of children under 12 and disabled persons in prison on May 10 — the day of President Mandela's inauguration — were to be released unconditionally.

AWB meets Omar on amnesty

PRETORIA. — The Afrikaner Weerstandsbeweging and Justice Minister Dullah Omar today discussed amnesty for rightwing political prisoners

The talks were held in good spirit and there was a possibility of another meeting, deputy AWB leader Ernest van der Westhuisen said

Mr van der Westhuisen and legal experts Fanie van Vuuren and Chris de Jager met Mr Omar at his Pretoria office

The talks, at the request of the

AWB, focused on the movement's demands that rightwing political prisoners also qualified for amnesty — including those who committed political offences after the cut-off date of December 5, 1993

(SAPA) (252)
"I would not exclude the possibility of further discussions," he said afterwards, but declined to elaborate

Justice ministry spokesman David Porogo said Mr Omar would issue a statement later — Sapa

ARG 12/1/94

Police action under spotlight

252

PRETORIA — Minister of Safety and Security Sydney Mufamadi yesterday announced a short-term directive to guide police during labour disputes.

Earlier, he had met officials of the South African Commercial, Catering and Allied Workers Union.

The urgent meeting came after countrywide clashes between police and striking Pick 'n Pay employees affiliated to Saccawu. More than 700 strikers have been arrested and scores injured.

Saccawu and the Congress of South African Trade Unions have criticised police action against the strikers, saying it was contrary to the spirit of the new South Africa.

Pick 'n Pay strikers have claimed ignorance of an Industrial Court inter-

dict restraining them from approaching within 500m of any of the firm's premises. ~~(S)~~ ~~(S)~~

The directive said if a police commander believed any party was in contempt of a court order negotiations must be held to seek compliance with the order.

Only if these failed, should arrests be made and all efforts should be made to avoid force. ARG 16/7/94

The statement said Mr Mufamadi and Saccawu regretted the violence that had marked the strike.

The statement said the government and civil society, including trade unions, would have to work together to create a climate conducive to the normalisation of police and community relations. — Sapa.

Is jailing debtors constitutional?

The case of caretaker Stevens may be the test

DAVID YUTAR
Staff Reporter

(252) ART 18/17/94

PEOPLE are never jailed simply because they are unable to pay a debt, says a city attorney, reacting sharply to the recent comments by a Supreme Court judge condemning the jailing of civil debtors.

Mr Justice E L King said the practice of imprisoning people for civil debts should be abolished.

He made the comment during what could become a constitutional test case affecting the thousands of people who are locked up every year because they have not paid their debts.

Mr Christopher Stevens, a caretaker with the department of Education and Culture, fell into arrears on a doctor's bill and the matter was handed over to the doctor's lawyers.

Alleging that although he had paid the bill itself, Mr Stevens was liable for collection costs, the doctor's lawyers obtained an order from the local magistrate authorising his arrest and detention.

Coming to Mr Stevens's aid, the Cape Town Legal Resources Centre (LRC) brought an application in the

Supreme Court arguing that their client's incarceration offended certain fundamental human rights as contained in the new constitution.

They said parts of the Magistrates Court Act providing for the imprisonment of people who had failed to pay their debts were unconstitutional and therefore invalid. Most democratic countries had abolished imprisonment for civil debts, said the LRC.

Reacting to the case, a city collections attorney said the idea that debtors are imprisoned simply for being in debt is a total misconception, shared by laypersons and lawyers alike.

Ms X said if anything, the law erred too much in favour of debtors, with its long and cumbersome procedure for enforcing overdue debts.

"It is a total misconception to think that debtors are locked up simply because they cannot pay," she said.

Describing existing collection procedure as "expensive, inefficient and ineffective", Ms X said that imprisonment was a "last resort" used only in a "small percentage of

cases', where protracted and expensive collection procedures against a debtor had proved futile.

"Imprisonment is used only where it is shown that a debtor has 'wilfully withheld payment'."

"It is never used where a debtor is, in good faith, unable to pay his debts."

"The Magistrates Court Act procedure is designed to identify those people who are able to pay, but have either refused or failed to respond to the creditor's attempts to enforce his rights."

"If there is any weakness in the system, it is that debtors can still get away with not paying their debts."

The Act provided for a warrant of arrest to be issued only after a host of other measures including the issuing of a summons, taking a default judgment and warning the debtor of a financial inquiry into his affairs.

"Only where a debtor persistently fails to respond to such warnings can a creditor apply for a warrant of his arrest."

"At any stage, the debtor can insist that he be brought before a

magistrate to show that he has not 'wilfully withheld payment'."

"If he shows that to be the case or makes an offer to pay, the warrant must immediately be suspended."

"Where he shows he is unable to pay, (that his expenses exceed his income) the warrant for his arrest is indefinitely suspended."

The entire procedure was laboriously explained to illiterate debtors, said Ms X.

"Sometimes the collecting attorney has to bring a debtor to court three or four times, in cases where he is clearly able to pay but has failed to do so."

A commission of inquiry had been sitting for four years to look into simplifying the procedure and making it easier for a creditor "unable to get his money from a debtor who simply refuses or fails to pay although able to do so."

"That is the correct venue at which the desirability of jailing debtors should be discussed," said Ms X.

Ms X added that it was "not in

the interest of creditors to lock up their debtors".

"This is because once a debtor is arrested, the creditor cannot bring him back to court to face another financial inquiry."

"But the warrant of arrest does help in the sense that where a debtor is arrested, the money is almost always paid soon."

"The percentage of people arrested on warrants is minimal but the amounts of money collected thereby enormous."

"There is also the constitutional right of creditors to have a system they can rely on to enforce their rights."

Ms X predicted "dire results" for the economy if the sanction of imprisonment of civil debtors was abolished.

"Creditors will simply refuse to do business with people they fear lack a minimum creditworthiness."

"Business will be undermined as those very people now facing arrest and imprisonment because they are in debt, fail to receive credit in the first place."

Interpreters 'have the last word'

□ Demand for better deal halts trials

DAVID YUTAR
Staff Reporter

A COUNTRY-wide strike by court interpreters has resulted in the postponement of trials in magistrates' and regional courts by up to four weeks.

Yesterday, about 50 interpreters, clerks and security personnel from courts throughout the Peninsula demonstrated outside the Mitchell's Plain Magistrate's Court in support of the strike.

They are among 850 members of the South African Court Interpretation Officers and Allied Workers Union who are demanding better wages and working conditions.

The strikers represent 90 percent of the union's national membership. National president Melusi Benguela said the strike would continue until next Tuesday — "and maybe longer if no results are obtained."

Strikers' demands include a living wage, a non-pensionable allowance equal to other civil servants, and the revision of promotion criteria which union members claim favour whites.

The strikers also want their grievances to be dealt with by the Department of Justice, instead of the Public Service Commission.

They say the department has a R2 million surplus which it can use to bring about parity.

The union said court interpreters earned a maximum of R32 000 a year and received a monthly non-pensionable allowance of R14 while other, "mainly white" civil servants received R205.

The union has requested a meeting with national Public Service and Administration minister Zola Skweyiya to discuss its demands. Mr Benguela said union members were the victims of discriminatory

policies "inherited by the new government from the apartheid regime".

Members had gone on strike earlier this year, but had suspended all industrial action during the April 27 elections to give the incoming government a chance to address the issues, he said.

Court officials demonstrating outside the Mitchell's Plain court yesterday carried placards demanding Mr Skweyiya and Justice Minister Dullah Omar address their demands as a matter of urgency.

One poster accused the Public Service Commission of adopting a "Let them eat cake" attitude towards union members, while another called for its scrapping.

In a statement, Mr Omar said his department's recommendation to solve the problem had been "brushed aside within the structures of the public service." Sapa reported Mr Omar saying his department was sympathetic to the striking interpreters.

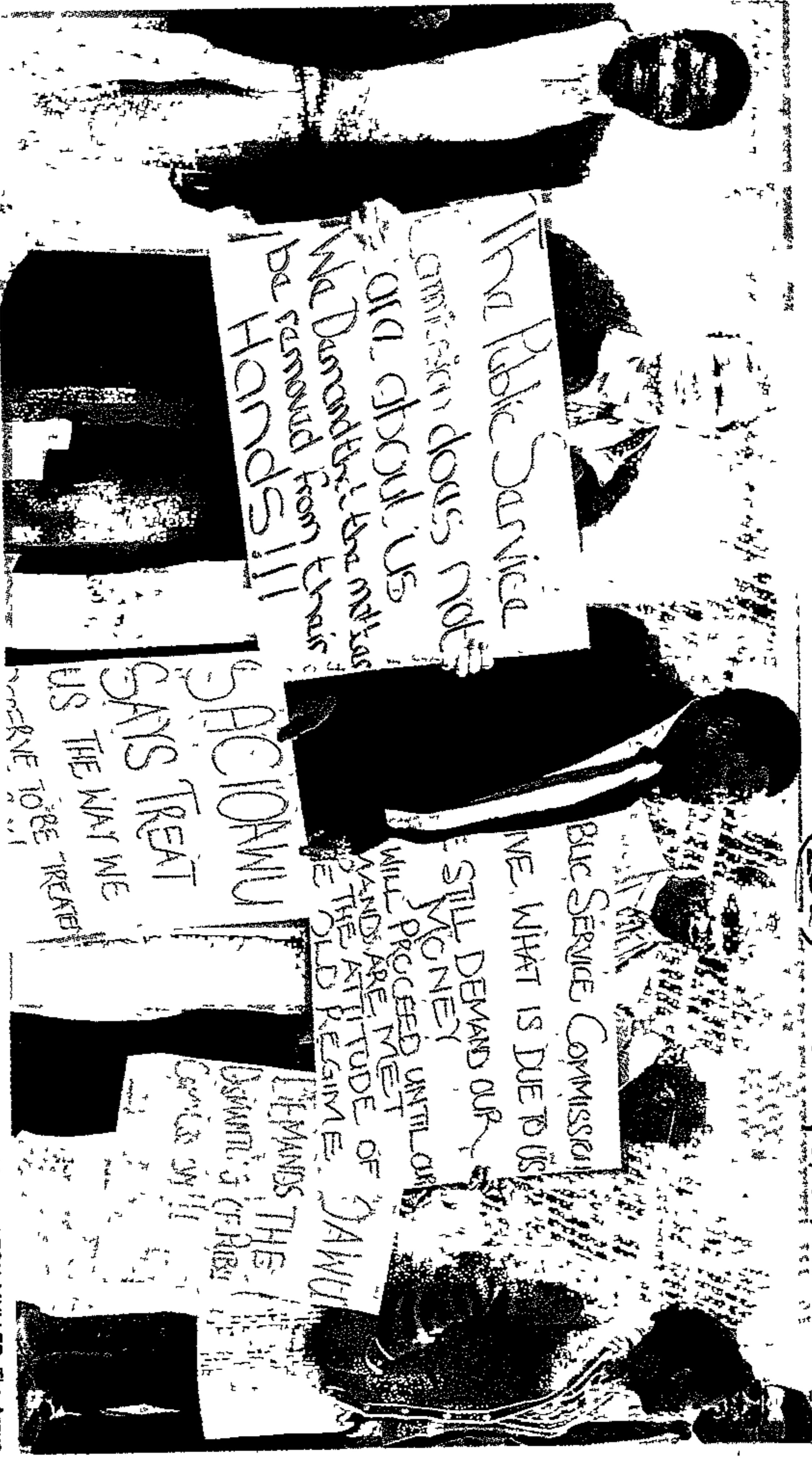
He assured interpreters he would do "everything possible" to further their cause within the Public Service Commission.

He and the Ministry of Justice would continue "to persuade relevant structures in the Public Service Commission to facilitate settlement of this matter as soon as possible".

Mr Omar denied interpreters had been promised pay rises from July 1.

In the PWV region, union representatives said they would continue with a sit-in until their grievances about pension disparities had been met and appealed to policemen not to take over interpreters' duties.

The union's Eastern Cape branch has expressed outrage at the call for a nationwide strike and said interpreters in the province were still at work.



WE PROTEST! Striking interpreters and other court officials demonstrate outside the Mitchell's Plain Magistrate's Court. Their action has resulted in trials at magistrate and regional courts throughout the Peninsula being postponed for up to four weeks.

Picture LEON MULLER, The Argus

(252) Aft 20/1/94

Interpreters picket at court

(252) (S) CT 21/7/94
MORE than 50 striking court interpreters picketed outside the Mitchells Plain Magistrate's Court for two hours yesterday, calling for an end to discriminatory monthly allowances.

Magistrate's courts across the Peninsula were forced to postpone numerous cases that required the use of interpreters yesterday as the strike entered its second day.

Interpreters are demanding an increase in their R15 monthly allowances to equal the R205 granted to administrative clerks.

Justice Minister Mr Dullah Omar has said interpreters deserve the same allowances and has blamed the Public Service Bargaining Council for refusing to give the go-ahead.

SA Court Interpretation Officers and Allied Workers' Union national secretary Mr Dumile Siko said strikers were still waiting for a response to their request for an urgent meeting with the Public Service Commission.

● Court interpreters in Port Elizabeth have joined the strike after a meeting held there yesterday. — Staff Reporter, Sapa

Truth commission time set

THE truth and reconciliation commission being established by Justice Minister Dullah Omar would be in place by October and disbanded after 18 months, Justice spokesman David Porogo said yesterday.

The commission would review and continue work done by the Goldstone commission and other inquiries, although the scope of its investigations could be determined by the 18-month time limit.

"The commission's period of service must be short. A long inquiry would be highly problematic," said Porogo.

Lawyers for Human Rights director of litigation Ahmed Motala said an inquiry lasting longer than 18 months could lose public credibility.

Other legislation, including a compensation scheme for victims of political and other crimes, could not be introduced until President Nelson Mandela had received a final report from the commission.

Time would also be a factor in deciding

MARK ASHURST

cut-off dates for its investigations. It could go back as far as 1910, although 1960 or 1976 was more likely *Bill Day*

A principal reason for the long duration of the Goldstone commission's investigations had been its status as a judicial commission, said Motala. If the truth commission was created as a non-judicial body its work would not be slowed down by the demands of judicial process *(252)*

Porogo said "The purpose of the commission is not to accuse people, but to let the truth be known." *217194*

A final draft of legislation setting up the commission would be ready next month. Cabinet had not yet set a date to discuss the Bill. But while talks between Omar and right-wing groups were continuing, there was no question of the cut-off date for politically motivated crimes being ex-

To Page 2

Commission

From Page 1

tended beyond December 5 1993

Omar was in favour of "maximum transparency" in the workings of the commission, although there would be provisions to protect the identities of people investigated and found to be innocent.

SA could learn from the experience of similar commissions in other countries.

A Chilean commission — consisting of 16

investigators — had completed its work within nine months. It had received more than 2 500 applications from the public, although its inquiry had been limited to deaths and assassinations.

Although the parameters of inquiry for the SA commission were not yet known, it was likely to receive "many thousands" of applications, Motala said.

Courts continue to put off cases as strike goes on

Staff Reporter

(252) (2) ARG 21/1/94
MAGISTRAT'S courts across the country continued to postpone trials as the nationwide strike by interpreters entered its third day.

In the Peninsula courts have postponed scores of trials and other hearings.

On another strike front, Atlantis Diesel Engines reported good progress in wage negotiations and the work rate today after the Atlantis company obtained an interdict yesterday against 250 strikers.

Department of Justice spokesman Pieter Durand said 25 of 360 magistrate's courts countrywide had been affected by the strike. "Not all cases necessitate interpreters," he pointed out.

The court interpreters, who are members of the South African Court Interpretation Officers and Allied Workers Union (Sacioawu), are demanding wage increases and other benefits from the Public

Service Commission.

As many as 900 interpreters and other court personnel are believed to be on strike in support of the demands.

Union national secretary Dumile Siko said they were still awaiting a meeting with Public Service and Administration Minister Zola Skweyiya.

Yesterday Atlantis Diesel Engines was granted an urgent interdict in the Supreme Court restraining about 250 striking members of the National Union of Metal Workers of South Africa (Numsa) from entering the factory.

ADE claimed equipment had been damaged and workers assaulted by strikers.

The strike by Numsa members began yesterday. The union is demanding a 15 percent wage increase while ADE has offered nine percent.

Truth commission: 'Falsification' claim

□ Bid to blackmail the ANC, says Maharaj

MICHAEL MORRIS
Political Correspondent

A CABINET minister claims secret files on the ANC's past activities are being falsified and distorted to embarrass the organisation in a future truth commission

Transport Minister Mac Maharaj — a key ANC strategist — also lashed out at elements in the government and security agencies for trying to blackmail the ANC into toning down demands for full disclosure of apartheid atrocities

In a frank speech at the Mayibuye Centre at the University of the Western Cape last night — at the premiere of the BBC film *Voices From Robben Island* — Mr Maharaj

(252) FILE 21/7/94
said "Even now, records are being falsified and distorted to show us in a bad light"

His remarks reflect simmering tension in the government of national unity over how extensive a truth commission should be, and whether or not the armed struggle should be equated with abuses by the apartheid government

The ANC was not afraid of admitting its own wrongs, but would resist any attempt to equate these with apartheid atrocities, Mr Maharaj said

"There are people in this country who are trying to blackmail us by saying, that when the truth comes out, it will include things about the violence of the ANC

"I am not talking with any

bitterness. But I say to these people 'Do not think you can blackmail us and believe we are scared of the truth?'

"I am ready to put on the table all the bad things I have done. I am not ashamed I took up arms and, in the course of taking up arms, you have to do things in the pursuit of right and justice and democracy

"But I will never allow any mistake I committed to be equated with the crimes of apartheid"

Mr Maharaj gave the Mayibuye Centre three volumes of a National Intelligence Services dossier on himself, dealing extensively with, among other things, his correspondence from Robben Island, his family and friends and his role as a "revolutionary"

'Scrutinise medics role in human rights abuse'

South

By Quentin Wilson

PROFESSIONAL health workers, including those district surgeons, prison doctors and psychologists who "failed to speak out critically against human rights abuses in the past" need to be put on the agenda of the Truth Commission.

According to the Cape Town based Trauma Centre for Victims of Violence and Torture, the serious breaches of medical ethics regarding the treatment of detainees and political prisoners should be one of the areas investigated 2217-2617194

This is one of the proposals made by the Trauma Centre which has entered the debate on how the Truth Commission should operate (252)

The commission is to be set-up by the Ministry of Justice to investigate all human rights abuses which occurred during the apartheid era

The Trauma Centre believes the commission should investigate offences committed from the imposition of apartheid in 1948 to the removal of the apartheid government officially on May 10 1994.

The Trauma Centre urged that the following state institutions receive special scrutiny

* The SAP, including the Civil Co-operation Bureau, the Security Branch, command structures, special investigation units and other covert operations

* The SADF, including Koevoet and Military Intelligence The State Security Council, the Department of Correctional Services, the Department of Justice, medical staff responsible for the health care of detainees and political prisoners, political office-holders and policy-makers and homeland security forces

The Trauma Centre added that the commission should investigate human rights abuses "committed by opponents of apartheid as well"

A spokesperson for the Department of Justice, Mr David Porogo, said he expected the Truth Commission to be established "soon after the next sitting of parliament in August"

Masses of evidence on political violence collected

Goldstone will pass on files

Star 22/7/94

■ PRETORIA CORRESPONDENT

The Goldstone Commission is due to close shop later this year, but many of its files and documents are likely to be passed on to the new Truth and Reconciliation Commission.

The Goldstone Commission, headed by Mr Justice Richard Goldstone, has collected masses of evidence on political violence, Third Force dirty tricks and police misconduct in its three years of existence.

Its contract will lapse in October, Justice Ministry spokesman David Porogo confirmed yesterday.

The commission gave notice in February that it almost completed its mandate (252)

The Justice Ministry and sources in the commission said information and files collected during its term would probably be passed on to the Truth and Reconciliation Commission.

The new commission is expected to begin operating by November and would have a limited lifespan of 18 months, Porogo said.

Although the closing date for comments from interested parties on the new commission was June 31, the ministry had been

flooded with submissions and would continue to accept them.

Among the submissions is one from SAPS Commissioner General Johan van der Merwe, warning that the new commission's brief to grant amnesty to political offenders in return for full disclosure could embarrass senior Government members.

An official announcement on the winding-down of the Goldstone Commission could be expected from the Government soon, Porogo said.

Most of the commission's work is completed but it is still wrapping up investigations into taxi

wars, the June 1992 Boipatong massacre and a report on the effect of violence on children.

Among the files which could be handed to the Truth and Reconciliation Commission are those relating to alleged hit squads and illegal arms dealings.

The future of Mr Justice Goldstone's staff has yet to be decided but many will probably return to the organisations from which they were originally seconded.

It is not yet known whether any of the judge's personnel will accompany him to The Hague when he begins work for the United Nations.

Attorneys upset over standstill at courts

ATTORNEYS have called for a swift end to the interpreters' strike, saying the situation in the country's courts has become "unbearable".

As the strike by about 80 court interpreters entered its third day in Cape Town yesterday, the Association of Law Societies (ALS) complained that many awaiting-trial prisoners were being incarcerated unnecessarily.

ALS spokesman Mr André van Vuuren has urged the Department of Justice and Public Service Commission (PSC) to take urgent steps to resolve the dispute. Interpreters are demanding that their present R15 a month allowance equal the R205 allowance paid to clerical staff.

Sympathy strike

Mr Van Vuuren said: "The strike not only disrupts the courts but inconveniences the public and creates additional costs for the accused. The situation also creates problems of unproductivity and frustration for attorneys."

A PSC state spokesman said interpreters' demands could only be satisfied through a majority decision in the Public Service Bargaining Council's central chamber. The issue is to be discussed again at their July 26 sitting.

● Policemen and prison warders at courts in Grahamstown yesterday went on strike in sympathy with striking court interpreters, a Court Interpreters' Union spokesman said. — Staff Reporter, Own Correspondent

Omar takes up striking interpreters' fight

JUSTICE Minister Dullah Omar is negotiating on behalf of striking court interpreters in a bid to end a four-day illegal strike by the SA Court Interpretation Officers' and Allied Workers' Union

The strike has increased tensions between the Justice Department and the Public Service Commission, which Omar holds responsible for the dispute over the discriminatory system of salary allowances for court interpreters

"The recommendation of the Justice Department to resolve the problem has been brushed aside within the structures of the

MARK ASHURST

public service Had the decision been left to the department alone, the matter would have been settled long ago," Omar said

The union, founded in March, does not have sufficient members to be recognised by the public service bargaining council — the Public Service Commission body that sets pay levels.

Omar expressed his sympathy for the court interpreters and held the bargaining council responsible for the nationwide disruption of courts. The council had "refused

to give a go-ahead for settling the matter"

Justice spokesman Pieter du Rand confirmed that Omar had discussed the matter with Public Service and Administration Minister Zola Skweyiya

Strikers' hopes of a settlement were raised this week when Justice director-general Jasper Noeth indicated that funds were available to meet the demands. About R2m could be used to redress the imbalance in salary allowances

The dispute had simmered for several years, but gained impetus when Omar took

To Page 2

Interpreters

up the strikers' cause soon after assuming office. Allowances granted to court interpreters in terms of a July 1991 pay settlement are pensionable, whereas those received by administration clerks are not

"The Justice Department sees no basis for such discrimination and agreed it should be abolished by giving interpreters the same allowance," Omar said

Union members have demanded a written guarantee that their claim will be met by Tuesday. Members would decide whether to step up action if this demand was not met, union vice-president Moses Molebatsi said "We are definitely not going to accept any settlement that is not back-

dated to July 1991 Interpreters received the smallest court officials' increase"

STEPHANE BOTHMA reports that senior Justice officials said the strike was costing the country millions of rands and aggravating the already substantial backlog in criminal court cases

In terms of the new Public Service Labour Relations Act, which classified courts as an essential service, the wage strike was illegal and should not be condoned by the department, an official said

More than 80% of criminal trials required interpreters' services and since the strike started, several thousand trials had had to be rescheduled.

From Page 1

Attorneys in court-crisis plea

ARL 22/7/94

Staff Reporter and Sapa

ATTORNEYS have called for a speedy end to the three-day-old court workers' strike, which has affected 70 courts countrywide.

The Department of Justice said today negotiations between the public service negotiating chamber and the South African Court Interpretation Officers and Allied Workers' Union (Sacioawu) were continuing.

Association of Law Societies director-general André van Vuuren said the strike had created an unbearable situation for everybody involved in

the administration of justice.

Not only did the strike disrupt the courts, it meant many awaiting-trial prisoners were kept in jail unnecessarily, he said (252) (252)

The association was not insympathetic to the interpreters' grievances

The strikers want a living wage, a non-pensionable allowance equal to other civil servants and the review of promotion policies which they claim favour white employees

The union said the strike involved not only interpreters but clerks, ushers and registrars

Strikes spread

252 (B) (B)
CT22/7/94

IN an unprecedented move, Labour Minister Mr Tito Mboweni yesterday appointed an independent mediator in the Pick 'n Pay/SA Commercial, Catering and Allied Workers' Union (Saccawu) dispute.

The move came as strike action in various fields spread across South Africa causing President Nelson Mandela to consider cutting short his State visit to Mozambique (see Page 5)

The mediator is Mr Charles Nupen, director of Independent Mediation Service of SA.

Although a minister is legally entitled to intervene under the Labour Relations Act, commentators said no minister had "in recent memory" acted as Mr Mboweni had

The government has also stepped in to defuse the court interpreters' strike, with Justice Minister Mr Dullah Omar negotiating on behalf of the interpreters in a bid to end the four-day illegal strike by the SA Court Interpretation Officers' and Allied Workers' Union (See Page 2).

The strike has increased tensions between the Justice Department and the Public Service Commission, which Mr Omar holds responsible for the dispute over the discriminatory system of salary allowances for court interpreters

Relations also worsened between the National Union of Mineworkers and De Beers yesterday when De Beers walked out of wage negotiations, accusing the union of bad faith

Messages of support from the PAC and ANC secretary-general Mr Cyril Ramaphosa followed the appointment of Mr Nupen as mediator in the Pick 'n Pay strike.

Although no deaths have been reported, Mr Ramaphosa said that if the parties had followed this course of action earlier "lives could have been saved and the hardening of attitudes could have been pre-empted"

And the South African Council of



LABOUR TROUBLE . . . This Pick 'n Pay striker confronted a policeman outside the Gardens supermarket yesterday as labour unrest spread.

• More reports, picture — Page 2

Picture: BENNY GOOL

Churches (SACC) made a dramatic appeal for conciliation. It said the country could "ill afford this nature of confrontation as it seeks to build a new society based on true democratic principles" and appealed to all parties to end the conflict.

• In Cape Town many shops in the Gardens Centre, including the Pick 'n Pay store, were forced to close by picketing Saccawu members

• At Highlands House in Vredehoek, anti-Jewish insults were hurled across barbed wire at occupants when protesting National Education Health and Allied Workers' Union (Nehawu) members were joined by striking Pick 'n Pay workers and CPA traffic officials, who left their sirens blaring

• On the Reef about 800 Pick 'n Pay

strikers were arrested at the Highgate and Flora shopping centres on the West Rand after occupying shops and intimidating customers and temporary workers. Pickets and marches were also held in East London, Bisho, Queenstown and Durban

• Industrial unrest also hit the mining industry yesterday, with the 1 200 National Union of Mineworkers (NUM) going on strike at the refinery at Rustenberg Platinum Holdings Ltd. Earlier, NUM declared a dispute over deadlocked annual pay talks

• Mineral and Energy Affairs Minister Mr Pik Botha has received a report from the East Rand Proprietary Mines Limited in Boksburg on the dismissal of Zulu-speaking miners from ERPM.

• About 10 000 National Union of

To page 2

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P.T.O.

Judicial shift towards transparency

Lesley Cowling

TRANSPARENCY" has never been a legal term, but judges and legal practitioners are learning to follow this precept closely in constructing the new constitutional court.

The Judicial Services Commission, charged with presenting a list of 10 constitutional court nominees to President Nelson Mandela, said this week it would hold public interviews before selecting candidates. It also decided to advertise for nominations in the press and accept them from any organisation or person, instead of confining the selection to legal organisations.

Mandela will choose six of the nominees for the court and another four will come from the judiciary, to make up the 11-member commission along with recently appointed court president Arthur Chaskalson.

The Judicial Services Commission, headed by Chief Justice Michael Corbett, did place some limits on the proceedings. Corbett said guidelines would be drawn up to protect candi-

dates from "improper questioning" during the interviews, which will take place in September.

The commission also decided not to televise the interviews, as is the practice in the United States. But journalists and members of the public will have the same access that they have to ordinary court proceedings.

Chaskalson has also indicated a willingness to hear representations on the issue of whether or not constitutional court proceedings themselves will be televised.

The question of cameras in courtrooms came up at an informal meeting this week between Chaskalson, media representatives and the legal profession. Chaskalson said the constitutional court would consider an SABC request to televise proceedings. This was something he would not decide alone but in concert with the 11 constitutional court judges once they had been appointed.

Chaskalson noted there was opposition in the profession to courtroom cameras, but suggested the SABC submit a written proposal for the judges to consider.

WM 22-28/7/94 (252)

Those in favour argue that televised proceedings would make the constitutional court more accessible to the public.

Chaskalson's willingness to consider the request represents a shift in judicial attitudes towards transparency. The meeting itself, called by Chaskalson to discuss what services might be needed in the constitutional court building, signalled a concern that the court be accessible.

This week's meeting of the judicial services commission also marked the end of a dispute between professional legal associations over who should represent them on the commission. According to the constitution, advocates and attorneys must appoint two commission members from their respective professions.

The General Council of the Bar and the Association of Law Societies (ALS) selected two representatives each. But the National Association of Democratic Lawyers and the Black Lawyers Association (BLA), which represents the interests of black lawyers, said they had not been consulted, and appointed their own rep-



New openness ... Arthur Chaskalson

representatives

In terms of a compromise reached, the representatives of the Bar council and the ALS on the commission were nominees from all four organisations. Wim Trengove, chairman of the Bar, and Durban senior counsel Marumo Moerane, the Nadel-BLA choice, represented advocates, while Louis van Zyl, the ALS choice, and BLA president Phineas Mupfapilo represented attorneys.

Govt offers R2m to court interpreters

259

CT 23/7/94

PRETORIA — The Justice department is prepared to make R2 million available for payment to striking interpreters, it announced yesterday

Justice minister Mr Dullah Omar and Public Service minister Mr Zola Skweyiya will hold an emergency meeting here on Monday with representatives of the South African Court Interpretation Officers and Allied Workers Union (SACIOAWU) in an attempt to end the five-day court interpreters' strike

This follows fruitless talks between a technical committee and SACIOAWU executive members here yesterday

About 70 courts nationwide have been affected

— Sapa

Omar and Skweyiya to step in over interpreters' strike

PRETORIA — Justice Minister Dullah Omar and Public Service Minister Zola Skweyiya will hold an emergency meeting here on Monday with representatives of the South African Court Interpretation Officers and Allied Workers Union (SACIOAWU) in an attempt to end the five-day court interpreters' strike. (25) (52)

This follows fruitless talks between a technical committee and SACIOAWU executive

members here yesterday.

The justice department said it was prepared to make R2 million available for payment to interpreters who have been striking since Monday over non-pensionable allowances. About 70 courts country-wide have been affected.

ARG 23/7/94
In Johannesburg a march by interpreters from the magistrate's courts was called off in favour of picketing — Sapa

Big salaries: Interdict ⁽²⁵⁰⁾ threatened ^{CF 23/7/94}

By CHRIS BATEMAN
Political Staff

ANGRY members of the Public Servants Association (PSA) have threatened to get a court interdict to prevent the appointment of "special advisers" to ministers, claiming they are being paid exorbitant salaries.

However, at least one special adviser hit back yesterday, claiming that recent press reports failed to "compare apples with apples." He said he was paid R19 200 a month, but he did not get perks.

"The reports don't mention that the R10 000 to R11 000 cited for a director can be boosted by 50-60% when you add on his perks," he said.

At 60% this would bring the salary to R17 600.

The adviser — one of two for a certain minister — said he could also be given just one month's notice.

"Some other advisers have three months' notice," he said.

The source said perks for senior state officials included generous housing subsidies, cars, medical aid and pensions, and they had lengthy contracts.

Talks

Mr Corrie Smit, a spokesman for the Public Service Commission, said talks were being held with PSA in an attempt to reach a solution.

He confirmed that there had been correspondence with PSA lawyers.

The controversy stems from recent cabinet approval for the appointment on contracts of two "special advisers" to each minister.

According to reports the PSA have negotiated a moratorium on all further specialist appointments until July 29 or pending the outcome of negotiations.

Another source suggested that the specialist adviser deal be offered to senior state officials.

The PSA says the advisers are being paid R19 200 a month (or R120 an hour), R24 000 a month (or R150 an hour) or R28 800 a month (or R180 an hour), depending on skills, qualifications and experience

E Cape court interpreters break strike

PORT ELIZABETH — Court interpreters here returned to work today in defiance of a week-old countrywide strike.

The strike was called by the national president of the interpreters' union, Melusi Bengqula, over non-pensionable allowances *ARL 25/7/94*

Port Elizabeth court interpreters did not fully agree with the strike. Some stayed away last week and others reported for duty. — Sapa.

Interpreters' URGENT move

PRETORIA. — An attempt will be made today to place the issue of the court interpreters' strike before the Bargaining Council as a matter of urgency, Minister of Justice Mr Dullah Omar said yesterday. (252)

Talks were held between strikers, Mr Omar, Minister of Public Service and Administration Dr Zola Skweyiya and representatives of the Department of Justice yesterday. (252)

Mr Omar said all the parties were concerned that courts had come to a standstill and hoped the Bargaining Council would come up with a solution without delay.

"The onus is now on the Bargaining Council to see to it that the matter is settled." — Sapa

1976/11/19

Omar acts (252)

PRETORIA Minister of Justice Dullah Omar said after a meeting here with Minister of Public Service and Administration Zola Skweyiya and representatives of the Department of Justice on a strike by court interpreters that he would try today to put the issue urgently before the Bargaining Council

Torture commission call

Star 27/7/94

■ BY JO-ANNE COLLINGE

The official investigation into alleged police torture in the Vaal — involving as many as 200 individual complaints — must culminate in a full-scale commission of inquiry, says advocate Jan Munnik, police reporting officer for the Witwatersrand

Such a commission would take accumulated evidence into account and allow for a situation where "one case will strengthen another", Munnik pointed out to the PWV Legislature's Standing Committee on Public Safety and Security, which met near Johannesburg yesterday

If the authorities were to ignore the benefits of a commission and opt purely for criminal prosecution, it was less likely that justice would be done, he suggested. This was because the attorney-general — viewing each case in isolation — might conclude in many instances that

he had too little evidence for successful prosecution

Munnik said he believed that PWV Public Safety and Security Minister Jessie Duarte favoured setting up a commission which would allow the overall pattern to emerge

The investigation has its roots in the uncovering of torture equipment at a Vanderbijlpark police station by a Dutch observer mission in May

Complaints (252)

Munnik gave the following details

■ About 100 complaints of torture and assault by policemen were already before the investigating team. About 70 related to the Dutch initiative and the remainder comprised older complaints

■ Approximately 70 percent of these complaints involved the Vanderbijlpark Murder and Rob-

bery Squad. There were isolated complaints against policemen at other stations and against the Internal Stability Unit and the Unrest and Violent Crimes Unit

■ A further 100-odd cases were estimated to be in the hands of attorneys who had been instructed to pursue civil claims for damages for torture and assault. They would be brought within the ambit of the official investigation

There has been a long tussle about about who will conduct the investigation. Finally, it seems, Munnik and his Complaints Investigation Unit (CIU) — suitably augmented for the purpose — will be in charge

In answer to a question, Munnik said that his experience in investigating about 390 cases across the Reef and in the Vaal had led him to conclude that "police torture generally is a much bigger problem than people suppose"

Talks with Dullah Omar ends interpreters' strike

COURT interpreters have decided to end their nation-wide strike, Justice Minister Mr Dullah Omar said yesterday.

(252) (52)
They decided to end their strike after discussions with himself, Public Services and Administration Minister Dr Zola Skweyiya, and senior officials, he said in a statement.

OT 28/7/94
Mr Omar said their demand for their non-pensionable allowances to be brought into line with those of other administrative clerks would be met in the interim while negotiations on the issue continued.

Interpreters to return to court while talks continue

81 Day 28/7/94

CAPE TOWN — Court interpreters had decided to end their nationwide strike, Justice Minister Dullah Omar said yesterday.

They made the decision after discussions with him, Public Services and Administration Minister Zola Skweyiya and senior officials, he said.

While negotiations would continue, interim measures would be taken to meet demands for their non-pensionable allowances to be brought into line with those of other administrative clerks.

MARK ASHURST reports that Justice Department spokesman Pieter du Rand said the interpreters had held "fruitful discussions" with the Public Service Bargaining Council. The council, which did not recognise the strikers' SA Court Interpretation Officers' and Allied Workers' Union, had not reached a decision on the union's pay claim.

However, the negotiating chamber of the council — the arm of the Public Service Commission which handled wage claims — voted on Monday to allow a union official to present the strikers' case.

A final decision on the claim was expected at the close of the council session on Friday, he said.

Omar assured union officials his depart-

Political Staff

ment was "sincere" in its representation of the union's case to the council.

Omar's spokesman, David Porogo, said Justice director-general Jasper Noeth had offered R2m to the commission from his department's budget surplus to fund non-pensionable allowances for interpreters.

Omar praised the "responsible" attitude of court interpreters, who began an illegal strike 10 days ago to protest against a discriminatory system of salary allowances (252) (152).

"The termination of the strike does not, however, detract from the fact that court interpreters have a legitimate cause. I trust that the council will reach a positive conclusion as a matter of great urgency."

Interpreters' allowances are pensionable but those received by clerks in terms of the same 1991 pay settlement are not.

Although union leaders had agreed to recommend a return to work, sources said members would be wary of assurances that fell short of a guarantee from the council.

Omar had persuaded court interpreters staging a similar illegal strike in the Cape in June to return to work but had not secured the promised pay settlement.

Talks with Dullah Omar ends interpreters' strike

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(252) (S)
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28/7/94

Dispute over powers of public protectors

ARG 29/7/94 (252)

CLIVE SAWYER
Political Correspondent

GIVING powers to public protectors to enter and search buildings and seize documents would be unconstitutional, says the Association of Law Societies

Comments on the Public Protector Bill — which provides for officials with the status of Supreme Court judges to probe corruption — were tabled before the parliamentary standing committee on justice today

The public protector will take over the role of the state ombudsman

A clause in the bill allows the public protector, or anyone authorised by him — with or without warning — to enter and search a building, seize and copy documents and question people

The association said this was “definitely beyond the powers (allowed) in the constitution”

The association also challenged a clause which would

make it a crime to anticipate an investigation or findings by the public protector so as to influence the result

It rejected a clause which would make contempt of an investigation legally equivalent to contempt of court

At its last session, parliament amended the constitution to extend the deadline for appointment of the public protector to September 20

Today’s justice committee meeting was an “informal” dis-

cussion of clauses of the bill, chairman Johnny de Lange said

Committee member Willie Hofmeyr (ANC) said there were about 40 points in the bill his party wanted to discuss with justice department officials

Danie Schutte (NP) said calling a meeting of the committee for a single day, during a parliamentary recess, was a waste of taxpayers’ money

Parliament opens next week

Existing indemnities to be retained — Omar

ARG 30/7/94 (252)

JEAN LE MAY
Weekend Argus Reporter

SOUTH Africans who have already received indemnity for politically-motivated crimes will remain in the clear when the new Commission on Truth and Reconciliation gets going

Minister of Justice Dullah Omar said last night that those indemnified under existing indemnity acts would be deemed to have been given indemnity under the new act, which would bring about the Commission of Truth and Reconciliation

Mr Omar was delivering the opening address to a South African conference on truth and reconciliation held in Cape Town this weekend and attended by the former president of Chile, Patricio Aylwin

Mr Omar said the new commission would comprise eight to 10 people appointed by President Mandela on the recommendation of a joint committee of parliament

Incumbents should be "impartial, respected, not have a high political profile and represent a broad cross-section of

the population" There would be three specialised committees — one dealing with amnesty, one dealing with violations of human rights and the third dealing with reparation for victims

The indemnity cut-off date for offences committed was to be December 5 last year (the date specified in the constitution), said Mr Omar. Applications would have to be made by a date fixed by law which, he said, would give people a couple of months in which to apply for indemnity

Political offences would be deemed to cover not only the liberation movement, but also the state security forces and other organisations

The committee on human rights violations would attempt to establish as complete a picture as possible of gross human rights violations which took place inside and outside South Africa between March 1, 1960 and December 5, 1993. One of its duties would be to establish whether the human rights violations were due to deliberate planning on the part of the

state, liberation movements or individuals, and if so, the nature of such planning

Mr Omar stressed that the commission would not have the power to prosecute, nor would it perform any judicial function. It would have investigative powers, the power to subpoena witnesses, the power of search and access to all documents. Steps would be taken to protect witnesses and their identities whenever possible

The committee on reparation would make recommendations on appropriate legal, institutional and administrative measures to deal with reparations and other claims of victims

Questions to be faced, and for which answers would have to be found, were: Should all hearings be open, should names of persons implicated or giving evidence be made public and should perpetrators of human rights violations be allowed to hold public office?

Mr Omar emphasised that the object was not to conduct a witch hunt or haul violators of human rights before the courts to face charges

'Pursuit of truth could hurt SA'

PURSUING the truth with too much enthusiasm could completely derail the healing process South Africa was so desperately yearning for, deputy principal of the University of Cape Town Dr Mamphela Ramphele said yesterday.

Speaking in Cape Town at a conference on truth and reconciliation she said an abscess could not heal unless it was properly and thoroughly cleaned, and pain was an integral part of healing.

However, too deep an incision could damage vital organs, and too great a level of pain could kill the patient.

CALL TO RELEASE FILES

See PAGE 2

Dr Ramphele said she had some misgivings about how much thought had gone into the government's proposed truth commission. She asked whose truth the commission was going to pursue, and whether there was any scope for more than one truth.

She also asked what was meant by human rights violations, and whether this would include violations of the rights of workers, and of women and children in both the private and public spheres. — Sapa

Truth ^{tribunal}

Omar describes

how it will work

By BARRY STREEK,
Political Staff

PROPOSALS for establishing a 'truth commission' will be submitted to the cabinet in the next few weeks and tabled in Parliament during the session that starts on Monday, the Minister of Justice, Mr Dullah Omar, revealed yesterday.

He also said violators of human rights — in the state security forces and the liberation movements — would have to confess to their crimes within two or three months after the establishment of the commission to qualify for indemnity.

"People will have to apply for indemnity and make a full disclosure," Mr Omar said in the city when he opened the three-day SA Conference on Truth and Reconciliation.

If people did not apply for indemnity, they would have to face possible prosecution.

He said it was envisaged the Truth and Reconciliation Commission, consisting of eight to 10 people, would sit for 12 months, with a possible extension of six months.

Mr Omar, who said the proposals would probably be submitted to the

cabinet in mid-August, also confirmed the cut-off date for offences for indemnity or amnesty remained December 5 last year, confirming those responsible for the Heidelberg Tavern killings or election violence would not qualify.

"I wish to stress the aim is not to conduct a witch-hunt or to haul violators before court to face charges.

"It is necessary to enable South Africans to come to terms with their past and advance reconciliation."

The chairman of the Goldstone Commission, Mr Justice Richard Goldstone, who is attending the conference, said he supported the general approach to the Truth and Reconciliation Commission.

But he felt those who had committed murder, rape and torture should be tried and not indemnified.

Mr Omar said it was proposed the commission be appointed by the president on the recommendation of a joint committee of Parliament.

Investigative

The commission would have three committees — one dealing with amnesty, including indemnity, a second with violations of human rights and a third with reparation for victims.

Mr Omar stressed the commission "will not have powers of prosecution nor perform any judicial functions."

"It will have investigative powers, subpoena witnesses, search and have access to all documents."



BOX OF TRICKS
their class is making
United States in