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1995

March - May
Omar looks at new bail legislation

Cape Town — Amendments to legislation governing bail conditions are to be tabled in Parliament soon. Justice Minister Duluth Omar announced yesterday (266).

Speaking during an interpelation debate in the Senate, Omar said the draft legislation would include guidelines on bail recommended by the Law Commission.

DP Senator James Selie quoted police statistics which showed that 2,000 accused skipped bail last year. These included 200 people given bail for murder charges and 900 alleged rapists.

FF Senator Fosmer de Ville said the perception existed that bail could not be refused and was granted too easily.

This had resulted in the public losing confidence in the legal system, he said.

Omar told the Senate that he had received reports from the attorneys-general on how many accused committed further offences while out on bail.

He would release these details as soon as he had studied the reports — Political Correspondent.
Prisoners, punishment and parole: The push for reform
be released on parole before completing their sentences.

In France, a judge presided over a commission of punishment which included the head of the prison and the prosecuting attorney. Decisions such as parole, reductions of sentence, authorization for leave under escort and others, must be passed by the judge known as the juge d'appel.

Mr. Kahn recommended a mixture of these international models to the Somerset West conference.

The problem with parole in South Africa is that it is controlled by the bureaucracy. The commissioner, who has an absolute discretion, can never be perceived either by the prisoner or the public to be objective.

Administrative and other considerations can cloud his judgment.

"It is proposed that the parole system be controlled by the judiciary as is the case in Germany and France."

Radical reforms to the parole system were proposed at the conference in Somerset West. Security Minister Frank Malherbe told delegates to the Conference on Crime, Security and Human Rights that the proposed reforms would be part of a broader strategy to deal with parole in South Africa.

"The system as it stands today is inadequate," Malherbe said. "The parole system must be changed to ensure that it is fair and just."

Malherbe said that the proposed reforms would include a new parole board, which would be comprised of independent members. The parole board would have the power to grant or refuse parole, and would be responsible for monitoring the parolee's conduct.

"The new parole system will be simpler and more transparent," Malherbe said. "Prisoners will have a clearer understanding of what they have to do to be released on parole."
NP backs May 10 indemnity cut-off

BY ESTHER WAUGH
POLITICAL CORRESPONDENT

Cape Town — The National Party yesterday added its voice to calls for an extension of the cut-off date for indemnity for politically motivated crimes.

In a submission to the parliamentary justice committee, which yesterday began substantive debate on the truth commission legislation, NP justice spokesman Danie Schutte said the party now wanted May 10 1994 as the new cut-off date.

The constitution sets down December 5 1993 as the cut-off date, meaning all crimes committed with a political motive before then could be indemnified.

The NP’s call brings it in line with similar calls from the IFP, PAC and AWB but puts it at odds with the ANC, which supports the original date.

Unlike the other parties and with the possible exception of the IFP, the NP has nothing in particular to gain from an extension as none of its known members are facing prosecution arising from acts committed between December 5 1993 and May 10 1994. However, members of the AWB and PAC were involved in acts of violence after the first cut-off date.

Schutte said the party had chosen May 10 because the inauguration of the president, and not the final agreement on the constitution to which not all the parties were party, could be considered the beginning of the new democratic dispensation.

He added that the NP supported a truth commission “provided it is structured in such a way that it has the potential of in fact promoting national reconciliation and not causing more strife and misunderstanding than it purports to solve.”
Truth commission ‘will reject any secret amnesty hearings’

THE truth and reconciliation commission would not hear applications for amnesty in secret despite an agreement reached in Cabinet, Justice committee chairman and ANC MP Johnny de Lange said at the weekend.

“Politically, constitutionally and morally (secret hearings) will not be tenable,” De Lange said. Lawyers for Human Rights director Ahmed Mataita claimed the government would have to abandon the clause.

Mataita told journalists the ANC appeared to have “given in” on its commitment to open amnesty hearings.

He suspected a “trade off” with the NP, which would then abandon its claim that the constitution provided an open-ended amnesty and accept a cut-off date.

The committee, which reported to Parliament yesterday, held hearings into the Bill during the recess and would suggest revisions to the Cabinet. Cabinet discussions of the Bill had been “brief” and conducted in Omar’s absence.

His spokesman Sue de Villiers said the notion of a trade-off was “rubbish”, although Omar was not responsible for the final draft, “the collective decision of the cabinet is the position he has to carry.”

There was also confusion over the NP’s stance on a cut-off date for amnesty. De Lange claimed NP Cabinet Ministers had accepted that amnesty would not be granted after the commission had completed its term of 18 to 24 months.

But NP justice committee member Jacko Maree denied his party had shifted from its position prior to the cabinet discussion: “To have any cut-off date for amnesty applications is unconstitutional. We’ll take it to the constitutional court.”

He conceded there had been “a lot of compromises to reach consensus” before it was tabled in Parliament, but insisted there were no further negotiations.

In camera hearings were justified because “21 000 (amnesty) cases were held in secret ... ANC and freedom fighters have been afforded the luxury of secret hearings”, he said.

Numerous other areas of the Bill were liable to constitutional challenge, Ahmed said. The most serious was the Bill removed the right of civil claims against the State for crimes uncovered by the commission: “This is a serious violation.”

As a quasi-judicial commission, it was essentially an administrative body. The right to fair administrative proceedings was guaranteed in the Bill of Rights. This included the right to pursue civil claims arising from any inquiry.

“The Bill tries to marry and compromise the interests of perpetrators (of political crimes) with those of victims and survivors — but this cannot be done”,

The Justice Department had provisionally allocated R35m to the commission.

MARK ASHURST
NP backs amnesty call

**Political Correspondent**

THE National Party has backed rightwing calls for the cut-off date for amnesty applications to be shifted to May 10 last year, saying the African National Congress will be among the beneficiaries.

It was "reasonable and called for" for the date to be moved from December 5, 1993, to May 10, the NP said.

The call for the date to be moved was made by Afrikaner Weerstandsbeweging leader Eugene Terre'Blanche at a joint meeting of the parliamentary justice committees.
NP wants amnesty for the AWB

CAPE TOWN — The NP called on government yesterday to award AWB leaders temporary amnesty for political crimes. NP Justice spokesman Danie Schutte told the National Assembly's justice committee this would enable the AWB's leadership to consult with a view to a final cessation of hostilities.

Reconciliation, the main purpose of truth commission legislation, could be attained only by consensus.

The ANC's leadership received temporary amnesty prior to the Witloof Centre negotiations and provided for a peaceful resolution, he argued. The AWB's request "should also be acceded to".

Parliamentarians began the task of finalising the Promotion of National Unity and Reconciliation Bill yesterday.

MPs agreed, however, that without the presence of the Inkatha Freedom Party, which walked out of Parliament last week, contentious issues should be dealt with later.

Schutte said the NP supported the extension of the amnesty cut-off date from December 5 1993 to May 10 1994. "The inauguration of the President and not the final agreement to the constitution to which not all the parties were party to, could for good reasons be considered the beginning of the new democratic dispensation."

Schutte repeated his party's opposition to public amnesty committee hearings.

Schutte suggested confidential "pre-trials" and provision be made for the granting of amnesty after the commission had finished its work.

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Extend indemnity cut-off date — NP

THE NP threw its weight yesterday behind right-wing calls to extend the cut-off date for political indemnity by five months to May 10 last year. It said in a submission to Parliament's joint committee on justice the proposed Truth and Reconciliation Commission should be allowed also to consider political crimes committed on the eve of the April election.

"We believe an extension of the date is reasonable and called for," the party said.

"The inauguration of the President and not the final agreement to the constitution could be considered the beginning of the new democratic dispensation," the party said.

It also supported calls by former security force chiefs and the right-wing to provide for group amnesty and for recognition of the collective responsibility of political leaders and military commanders.

"With regard to the proceedings conducted by the Committee on Gross Human Rights Violations consideration should be given to allowing leaders or commanders to deal with and explain the historical and strategic causes of the alleged violations," the NP said. — Reuters
Law to regulate marches

Political Staff

A BILL regulating public gatherings and protest marches was due from central government "within months", Western Cape Police Services Minister Mr Patrick McKenzie said yesterday.

If the law failed to materialise he would institute one of his own. He was reporting back on a suggestion made by Premier Mr Hennessy Kriel on Tuesday that there should be a "code of conduct".

Mr McKenzie said his national counterpart, Mr Sydney Mufamadi, told him in August that legislation could come into effect by January. However, Mr Mufamadi had told him this week that the bill would go through Parliament only "in the next few months".

"If they don't put it through, we will," Mr McKenzie said.
Niehaus cautious on prison privatisation

CAPE TOWN — Correctional Services parliamentary committee chairman Carl Niehaus reacted cautiously yesterday to proposals of prison privatisation.

Niehaus said a comprehensive investigation was needed.

He was reacting to suggestions made recently by Correctional Services Minister Sipho Mzimela that the department was considering the privatisation of prisons.

Niehaus said the committee was concerned that differences in the quality of prisons would start to develop.

It would probably be necessary to maintain a national control mechanism to ensure the maintenance of standards.

Niehaus said he supported Mzimela’s proposal that land surrounding Pollsmoor prison be privatised as long as a decline in standards did not occur.

In addition, the funds gained should be used to improve conditions at the prison.

Committee members would attend a briefing on privatisation at Pollsmoor prison next week, he said.

ADRIAN HADLAND reports Niehaus accused Mzimela yesterday of dereliction of duty.

Niehaus said Mzimela had refused any contact with the committee for almost six months and had repeatedly turned down appointments and meetings.

Niehaus said he had asked President Nelson Mandela to intervene.

The committee was currently trying to convert a Correctional Services White Paper into draft legislation which would have wide implications for the organisation of prisons in SA.

Other critical matters requiring discussion included overcrowding problems in most prisons and rising levels of violence, Niehaus said in a letter to Mzimela.

Niehaus said earlier the committee had been unable to set up a meeting with Mzimela despite four attempts since October. Each had been rebuffed.

Following the latest request, despatched two weeks ago, a letter arrived at the committee yesterday saying Mzimela was unable to meet on Monday “due to unforeseen circumstances”.

While the Inkatha Freedom Party, of which Mzimela is a member, walked out of Parliament last week, party leader Mangosuthu Buthelezi said its ministers and deputy ministers would keep their posts and continue to fulfill their obligations.

3 000 deaths for truth commission

PRETORIA — About 3 000 deaths are likely to fall within the ambit of the truth commission’s activities, retiring police commissioner Gen Johan van der Merwe said yesterday.

If all these incidents were fully investigated in a balanced manner, there was “no way” in which the commission would be able to complete its work within five years, he told a Pretoria Press Club luncheon.

Van der Merwe said 187 civilians and security force members were killed by liberation movements between 1976 and 1990. In the same period 68 people arrested for political crimes died in detention.

According to the Inkatha Freedom Party, 1 400 of its members were killed in this period and the ANC said it lost 1 140 members.

These figures do not include the hundreds of people killed during faction fights, through the ‘necklace’ method and in hostel and train violence.”

The Bill on the commission stipulated it would direct its attention to all incidents between 1960 and December 1992. — Sapa.
At only 35, John Hlopho, SA's newest judge, is young enough to be the son of most of his brothers on the Cape Bench. But it's not only youth that sets him apart. Hlopho is also the first black to be appointed a judge. He is the first judge to be drawn from academia rather than the ranks of senior counsel. And he is one of the first new judges to be chosen by the recently established Judicial Services Commission and not by politicians as was the case in the past.

Hlopho sees symbolism in all this. In as much as the new constitution represents SA's political rebirth, his appointment - and the way in which it came about - is, he says, a fresh, new start for the SA judiciary.

He accepts that if the past is seen as the norm, then his appointment is somewhat unorthodox. Some may see it as an experiment. Hlopho prefers to regard it as the beginning of a trend to restore legitimacy to the judiciary and correct shortcomings of the past. He believes the selection of judges by the JSC from a wider pool than just SCs will fundamentally affect the way in which law is interpreted and applied in SA - and that the changes will be good for the populace.

He says even more options for appointing judges could be considered. Some European countries, for instance, have professional judges who study specifically for careers on the Bench. Elsewhere judges are elected to office.

But for now, Hlopho faces the challenge of changing his own lifestyle and attitudes. He acknowledges that as an academic, he was frequently critical of judges in speeches and writings. Now, on the other side of the fence, he faces the critical analysis of his former colleagues in the universities.

At times it will be harsh and could include charges that change in the judiciary is too slow. But he strongly believes restructuring to reflect demographics does not compromise judicial standards. It's a simple fact that there are too few suitably qualified blacks to be appointed to the Bench immediately. However, within the next five to 10 years he wants to see people of colour filling at least 25% of the places in the judiciary.

Those who are serving face the challenge of establishing their independence from politicians. "They have put the new constitution in place," he says. "They must now let the judiciary give it life."

A new career on the Bench will certainly mean a big change for Hlopho - who until his appointment was professor of law at Transkei University in Umtata. He has moved to Cape Town and will soon be joined by his wife and three children.

In SA, Hlopho was educated at the universities of Fort Hare and Natal and in the UK at Cambridge, where he obtained an LLM and a doctorate in law.

In his leisure time, he enjoys gardening and listening to music. "After all," he chuckles, "blues is forever."

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Amnesty date won't change, insists Omar

By EDYTH BULBRING
Political Correspondent

JUSTICE Minister Dullah Omar has rejected calls from the National Party to extend the amnesty cutoff date covering political crimes.

The call from the NP follows an appearance before the justice committee last month by AWB leader Eugene Terre Blanche, who offered an olive branch in return for amnesty for right-wingers. Justice committee chairman Johnny de Lange said this week that an extension to the date should be based on compelling evidence that it would serve the country's interests.

He said it appeared that Mr Terre Blanche had simply wanted to "have his cake and eat it" because, while he had offered an olive branch, he had been unprepared during his appearance before the justice committee to commit himself to an active peace-making role if an extension to the cutoff date was granted.

The ANC is divided on the issue. Moderates in the organisation believe that an extension of the cutoff date will defuse the possibility of right-wing destabilisation and complete the reconciliation process in the country.

Others are of the view that the December 5 cutoff date was a solemn pact, sending a clear message that the killing should stop.

They feel that an extension could cause problems in the future.

However, insiders say that trade-offs could be made which would result in the cutoff date being extended in return for the scrapping of the secrecy clause which prescribes that all amnesty hearings should be held behind closed doors.

Most ANC members and human-rights organisations oppose the clause.

The "extension" of the amnesty date would also be dependent on a clear undertaking by right-wing leaders to promote peaceful ways of achieving their objectives among their followers.
Jail for non-payment challenged in court

The validity of provisions in the Magistrate's Court Act, which allow people to be jailed for non-payment of debt even in cases where the amount falls below R100, will be challenged in the Constitutional Court today.

Lawyers acting for two debtors, committed for not complying with judgments for debt, will argue that the Act violates a series of constitutional rights.

Sections 68a-n allow a debtor to be jailed for contempt of court if he or she does not comply with a judgment for payment granted against them.

According to written submissions forwarded to the Constitutional Court, it will be argued on behalf of Farieda Coetzee and N Matsso and others, that the provisions for committal for contempt of court are “an anomaly” in our law and a thin disguise for civil imprisonment.

The lawyers argue that section 65 is a violation of sections 10 and 11 of the constitution, which states that every person has the right to the protection of his or her dignity and freedom, including not to be detained without trial.

It is also argued that section 25 of the constitution which gives every person the right to a fair trial within a reasonable period after being charged, to be sufficiently informed of the charges against them, to adduce and challenge evidence, to remain silent and to be presumed innocent.

The papers for Coetzee and Matsso argue that the provisions for contempt of court under section 65 are clearly a legislative fiction because control of the debtor’s detention is controlled by the judgment creditor.

If the debtor’s incarceration was actually for contempt of court, it is argued, only the court would have control over the period and conditions of imprisonment.

Coetzee and Matsso’s lawyers also contend that civil imprisonment “is a medieval concept out of line with our constitution, which enshrines freedom and equality.”

Included in the written submissions already before the court are statistics obtained by the SA Law Commission in 1996 for its report on committals for debt.
Protection for witnesses okayed

By: Jo-Anne Collinge

The Gauteng legislature last week approved a Bill which grants immunity from criminal prosecution to witnesses giving testimony before the house or any of its standing committees.

Members of the NP, the IFP and the DP asked whether the Bill went too far in its protection of witnesses.

They expressed reservations about voting for a Bill which was obviously flawed — but, together with the ANC, they all went ahead.

"Only the Freedom Front opposed the Bill."

The rationale of parties supporting the Powers and Privileges of the Provincial Legislature Bill was that it guaranteed the independence of the legislature and created conditions essential to free debate.

The DP's Peter Leoin pointed out it offered "absolute freedom of speech" to MPs by providing that no civil or criminal action may be instituted against any member for anything said in the legislature or in a committee.

To ensure the responsible use of this right, the Bill also confers on the Speaker power to impose extra-judicial punishments on MPs who abuse their privilege or act in contempt of the house.

The Bill also gives the provincial legislature the power to compel any person to give evidence before the house and its committees. A witness who fails to attend, as ordered, or to "answer fully and satisfactorily" any question put to him or her may incur a fine and/or a jail term of up to 12 months.

But a co-operative witness whose evidence might be self-incriminating will be entitled to a certificate from the Speaker. This certificate would have the effect of staying "any civil or criminal proceedings" against the witness arising from testimony to the legislature.

The Bill goes so far as stating: "Proceedings which have been so stayed shall thereupon be deemed to be finally determined."

A number of MPLs suggested that this last provision might be in contradiction with the constitutional right of all citizens to bring issues before a court of law. The Bill was approved, therefore, with the clear suggestion that an amendment was already in the pipeline.
IFP rejects 'witch-hunt'

THE Inkatha Freedom Party yesterday rejected the Truth and Reconciliation Commission, calling it a politically motivated witch-hunt of the ANC-led government's opponents. (252)

The IFP's special conference in Ulundi resolved "No man-made quasi political process can ever produce the truth, to the extent that even the hearing of the Truth Commission is a blasphemy."

The IFP proposed as a substitute a "politically neutral and judicially fair process" of establishing the truth.

It also suggested the government devote attention to compensating all violence victims.

Earlier IFP leader Chief Mangosuthu Buthelezi compared the Truth Commission to the McCarthy Commission conducted in the United States in the 1950s.

Mr Buthelezi said the commission would be driven exclusively by the confessions of those who wanted to escape jail sentences and accept monetary rewards.

The commission would be so bad, he said, that beside it the McCarthy Committee would look like a "pale example of political tolerance".

Chief Buthelezi alleged ANC members wanted to fabricate stories to the commission to the effect that they were involved in violence.

"I have never in my entire life ordered the killing or murder of a single person," he said.
SHARP differences of opinion emerged in the Constitutional Committee yesterday over whether provinces should have the right to declare states of emergency.

ANC MPs "strongly opposed" the spectre of human rights being suspended in any part of the country at the sole discretion of regional premiers.

IFP MPs said no decision could be taken for or against such a step until there had been "independent" mediation over the autonomy of the provinces, the main reason for the recent IFP walkout from Parliament.

Some MPs could see no problem with provinces being able to declare states of emergencies after natural disasters, but were unhappy if they could do so to quell unrest by suspending human rights. There was debate about provinces using police forces to enforce emergency states. — Reuter
Prison for debt under spotlight

Susan Russel

THE Association of Law Societies, representing attorneys, asked the Constitutional Court yesterday to sanction civil imprisonment for debt until legislation was amended, even though it was unconstitutional.

Society attorney C du Plessis conceded that provisions of section 65 of the Magistrate’s Court Act allowing creditors to have debtors imprisoned for contempt if they ignored a judgment for payment, were unconstitutional and should be scrapped.

But he also argued that there would be “chaos” if the Constitutional Court stopped civil imprisonment before Parliament amended section 65 appropriately.

The society was granted leave to intervene in yesterday’s hearing on behalf of its members, which it said had a duty to protect the interests of clients who, in the past, had turned to attorneys for the collection of debts.

The 11-member court sat yesterday to consider applications Farda Coetsee and N Matso and others, attacking the constitutional validity of section 65.

Lawyers for the applicants and the State agreed that civil imprisonment for debt under the guise of contempt violated sections 10 and 11 of the constitution, which guaranteed the rights to dignity and freedom, including the right not to be detained without trial.

MNavsa SC, acting for Coetsee and Matso, said statistics showed thousands of people were imprisoned for debt every year. More than 85% were for debts of less than Rs500.

Navsa said there were other provisions which allowed for attachment of property creditors could use, “so if there is a pound of flesh to be obtained you can obtain it”.

Arguing for the Justice Department, D Potgieter, said it was possible to excise the offending portions of section 65 without striking it down as a whole. If the court found civil imprisonment invalid, people in jail for debt should be released immediately.
Indemnities slammed

Cape Town — The Government of National Unity has granted 100 ANC supporters indemnity since last year's election, National Party MP Danie Schutte said last night.

He told a meeting at the University of Stellenbosch that the indemnities were granted on November 3 and 30, adding that some of those indemnified were guilty of three murders. Accusing the ANC of double standards, Schutte said, "It was unfair to expect the ANC's opponents to testify before the truth commission while its supporters were granted indemnity confidentially.""

"Political correctness." — Political correspondent.
Inkatha MPs to help set up truth commission

CAPE TOWN — The Inkatha Freedom Party signalled its intention yesterday to take part in the establishment of the truth commission — despite the party's recent attacks on the body.

Inkatha national assembly justice-committee member Farouk Cásim said recent, harsh Inkatha criticism of the commission had been aimed at ensuring the body was politically neutral and treated victims and perpetrators in an even-handed manner based on judicial principles.

An Inkatha special general conference last weekend described the commission, in its current draft form, as a "blackmailer's charter which legitimises a politically-motivated witchhunt of opponents of the government".

Earlier, Inkatha leader Mangosuthu Buthelezi said the commission was "an evil institution".

However, Inkatha MPs, with representatives from the other parties, continued yesterday to work on ironing out technical details of the Promotion of National Unity and Reconciliation Bill. Cásim said five critical areas within the Bill would receive special Inkatha attention.

These were the appointment of commissioners, the amnesty cutoff date, the qualifications for receiving amnesty, confidentiality for witnesses and the rehabilitation and reparation process.

Underpinning these were the dual notions of preventing ANC dominance of the process and ensuring the commission had an overtly judicial character allowing appeals and the right of reply.

On Inkatha's participation in the framing of truth commission legislation, Cásim said: "We must be there to make sure these things are taken care of."

MPs set about trying to define the functions and scope of the commission yesterday.

Empowered to investigate gross human rights abuses over a 33-year period, the commission had to be protected from an overwhelming deluge of applications for amnesty and compensation, MPs agreed.

The commission, therefore, is likely to investigate gross human rights violations rather than "all" gross violations. It will be given the discretion to discard any matter on the grounds it is vexatious, trivial, frivolous or fails to meet certain prescribed criteria.
Web of Constitutional Court rules

Legal minds baffled

MAY HELEN GRANGE

Lawyers are baffled to make sense of the web of court rules regulating when and how litigants and accused can rely on the constitution's Bill of Rights.

The constitution and the newly published rules of the Constitutional Court establish four types of appeals and five types of referrals to the court, according to Andrew Breslau, senior lecturer in public law at Stellenbosch University, advocate, and writer on constitutional litigation.

There is also a mechanism for direct access to the new court in cases where urgent relief is required, he says.

Changes

"All too often, unfortunately, failure to choose the right option or to comply with all the prerequisites leads to ineffectual procedural bickering, delays and wasted costs."

John MacRobert, a lecturer and trainer of candidate attorneys for the Association of Law Societies, says the Constitutional Court will obviously change large areas of litigation procedure and practice, and it will be in the legal profession's interest to acquaint itself with these changes.

This week, Juta, in association with the University of Stellenbosch Law Faculty, presented comprehensive seminars by top legal brains on constitutional procedure and practice for lawyers.
system • Mufamadi challenged over grievances

State should rule on payment - ANC

Parliament, not the Truth Commission, should decide on appropriate reparations for victims of gross human rights violations, the African National Congress has recommended.

In a preliminary submission to the Justice Committee, the ANC said provisions on reparations and compensation in the draft Promotion of National Unity and Reconciliation Bill were “unsatisfactory”.

Committee chairman Mr Johnny de Lange said the ANC was opposed to a “tariff system” which specified compensation according to the loss suffered.

A full report on the losses suffered by each victim should be made to the commission, which would make recommendations to Parliament.

To “treat all victims on an equal footing”, Parliament would then decide on appropriate compensation and enact legislation to implement allocations through an administrative procedure.

However, a special mechanism should be created to cater for emergency cases, such as destitute victims or their relatives.

Democratic Party MP Miss Dene Smuts proposed that the starting date for offences for which amnesty might be sought be June 1, 1976 instead of the current March 1, 1960.

More historic

She said the scope of the commission’s work was too wide, unworkable and “hopelessly over-ambitious”.

The Soweto uprising in June 1976 was an even more historic event than the March 1960 Sharpeville massacre and represented the “beginning of the cycle of repression and revolt” in South Africa. Smuts also proposed that the commission should deal with “pervasive and systematic patterns” of gross human rights violations instead of specific incidents.

Mr Willie Hofmeyr (ANC) said any attempt to alter the starting date would “create the unfortunate impression that we are trying to cover things up”.

Severe human rights abuses, including many deaths in detention, had occurred before 1976, and should also fall within the commission’s ambit.

The DP’s proposal would also exclude offences which were not part of a systematic pattern of abuse. — Sapa
Payment to human rights victims debated

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The DP's proposal would also exclude offenses which were not part of a systematic pattern of abuse, he said.

Madala Mazisi (IFP) said the cut-off date for amnesty applications should be shifted from December 5, 1993, to May 10, 1994 because "that is when apartheid ended."

De Lange said recommendations that the cut-off date be extended was a political matter and would be referred back to the Cabinet. — Sapa.
Extradition agreements imminent

TYRONE SEAL
Political Staff.

SOUTH Africa will sign extradition agreements soon with Australia and Lesotho and is awaiting responses from several South American countries, says Justice Minister Dullah Omar.

Rephrasing written questions in parliament by Dane Schutte, (NP), Mr. Omar said that since August South Africa had also been negotiating final agreements with Argentina, Hungary and Germany.

A draft extradition agreement submitted by Argentinian authorities was being considered by the department of justice and draft agreements had been sent to Germany and Hungary for their consideration.

The department was also waiting for responses to draft agreements sent to Paraguay and Chile.

Kenya, as a fellow member of the Commonwealth, had been asked to list its extradition requirements but had not yet responded.

Mr. Omar said the South African Law Commission was considering the whole spectrum of South African legislation on extradition.

The commission's report would not be available before November 1995.

The earliest opportunity for parliament to consider legislation flowing from the report would be during next year's session.
Nats cry foul on amnesties

Mandela authorized 100 indeminitics of ANC supporters says NPS Schutte
Marchers meet head-on

BY EUNICE RIDER
STAFF REPORTER

CITY marchers supporting the death penalty yesterday came face to face with two counter-demonstrations by students and lawyers.

About 150 demonstrators wanting the death penalty reinstated for crimes such as rape, murder and drug trafficking marched on Parliament from the Grand Parade, under the banner of the Bo-Kaap Anti-Drug Co-ordinating Committee, and handed a memorandum to Justice Minister Mr Dullah Omar.

But several students from the University of the Western Cape and representatives of Lawyers for Human Rights and the National Association of Democratic Lawyers (Nadel), arrived at Parliament first and staged counter-demonstrations.

LHR and Nadel quietly waved placards, while UWC's law students staged a mock hanging under a flagpole at the gates of Parliament.

The pro-hangings protesters ignored the opposing groups.

HANG CRIMINALS: Justice Minister Mr Dullah Omar (right) accepts a memorandum on the death penalty from Mr Mohamed Khatib.

Picture: ANNE LAING

"The situation in the streets - with criminals running rampant - does not afford us the luxury of abandoning the ultimate penalty yet", said march co-ordinator Mr Sulaiman Samaan of Bo-Kaap.
ANC motion encourages kangaroo courts — Sanco

THE ANC's proposal that chiefs should adjudicate in criminal matters has raised the ire of the SA National Civic Organisation, which said the proposal encouraged the setting up of kangaroo courts in tribal areas.

In a document, of which Business Day has a copy, the ANC proposes that chiefs' basic functions and powers should include developing and improving land under their control, allocating communal land, hearing both civil and criminal matters and imposing tribal levies and "certain taxes and fees".

When approached for comment, Sanco general secretary Penrose Nlondl said yesterday the civic organisation found the proposals "unacceptable".

"All-inclusive local community development forums must be established to deal with developmental issues, including land allocation," he said.

He added that tax collection was the responsibility of government, not chiefs. On chiefs' powers to adjudicate on criminal matters, Nlondl said the chiefs did not have the "capacity" to perform that task.

It is understood that the civic organisation will voice its objections to the proposals at a meeting between itself and the ANC next Monday.

Sanco president Mlungisi Hlungwane was quoted in the media this week as saying the meeting would also discuss the ANC's policy on traditional leaders.

The ANC's document, which emanated from deliberations of a commission on local government at last year's ANC conference in Bloemfontein, says the party's policy was that "a distinction must be drawn between governmental structures and traditional authorities".
ADRIAN HADLAND

CAPE TOWN — Parlia-
mentarians moved yester-
day to provide for a collec-
tive application to the
proposed truth commission
for amnesty.

But the envisaged
amendment to the National
Unity and Reconciliation
Bill would cover only small
groups — which is unlikely
to satisfy parties such as
the police.

The NP, Freedom Front
and police legal advisers
have argued that senior
political office bearers and
security forces generals
should be allowed to take
responsibility for human
rights abuses which oc-
curred under their jurisdic-
tion or according to their
orders. The ANC has
pressed for perpetrators to
confess individually.

Yesterday the National
Assembly’s justice commit-
tee requested legal advis-
ers to draft a clause in the
Bill allowing small groups
of people to sign common
statements.

The clause would have
the effect of permitting
perpetrators to “collective-
ly apply for amnesty” on
condition that each person
bound himself to the facts
contained in the document,
said committee chairman
Johnny de Lange.

The clause, which has yet
to be approved by the full
justice committee, would
prevent the amnesty com-
mittee of the truth commis-
sion from being “swamped”
by applications which os-
tensibly concerned the
same event.

De Lange said screening
mechanisms should be in-
troduced that would allow
the commission to discard
amnesty applications that
obviously fell outside the
ambit of the Bill.

He had received dozens
of applications for amnesty
— including one arguing a
bank robbery had been
committed in the name of
the struggle — which were
patently “not political
crimes.”
NP slams indemnity for alleged ANC supporters

BY ESTHER WAUGH
POLITICAL CORRESPONDENT
Cape Town — The simmering indemnity row has taken a new twist with the National Party accusing the ANC of double standards by indemnifying 400 “ANC sympathisers” and releasing 146 prisoners since last year’s election.

Former Umkhonto we Sizwe member Hein Groenkloof is one of the people on the list, published in the Government Gazette last year.

NP MP and justice spokesman Danie Schutte last night reiterated his accusation that the ANC had acted against the letter and spirit of the interim constitution.

He said the interim constitution provided only for the granting of indemnity under new legislation to be passed. The ANC, therefore, had acted unconstitutionally by granting the indemnities under the present Indemnity Act, he argued.

Schutte said the ANC had simmered the indemnity, days before the April election, of the 3500 policemen on the grounds that the former government could not indemnify “its own people.” He questioned why the ANC could indemnify its “supporters.”

Asked what evidence he had that those indemnified were ANC supporters, Schutte said: “The NP did not throw bombs and did not murder people.” He added that “on the balance of probability” they were ANC supporters.
AWB bomb builder ‘a third force agent’

DEBORAH FINE

He strenuously denied he had deliberately failed to inform police of the planned terror campaign because he had been ordered to build the bombs by a third force.

The Bree Street bomb was terrible. You built that bomb. You saw the damage it caused, you saw the fatalities and injured people. You did not share Ystergaarde sentiments, you were a police informer, yet you were not prepared to risk telephoning the CIS to prevent further deaths. Your safety was more important,” Van der Walt said.

“You built the bombs because you were ordered to make the AWB’s name mud. You were ordered to create chaos, sow a fear psychosis and disrupt the elections,” she said.

“No. If they were prepared to kill all those innocent people, what would they have done to me if they had found out I was an informer. They would not have hesitated to kill me,” Koekemoer replied.

“The Bree Street bomb had arrived within minutes with helicopters and automatic weapons to rescue you and stop the bombs if you had phoned. You were left completely alone part of the time, you could have phoned or even tried to run away,” Van der Walt submitted.

“What if I had run onto an AWB farm? What if one of their patrols had found me. It was any life or your situation. I did not plant the bombs, I only built them,” he replied.

“It was not one life. It was 20, 40 or 100 lives,” presiding Judge HJC Flemming said.

‘Lack of clarity’ in Bill of Rights

MARK ASHURST

THE intentions of the drafter of the interim constitution would not carry “too much importance” with judges, who would struggle to interpret the legislation consistently, Wit law professor Dennis Davis claimed yesterday.

Judges would try to compensate for a lack of clarity in the Bill of Rights, he told an Institute for the Advancement of Journalism workshop on human rights and the media, held in Johannesburg.

“They have to give this legislation as much coherence as possible... it is quite clear judges are not going to pay too much attention to what the drafters said.”

The Bill of Rights in chapter 3 of the constitution enshrined vertical rights of citizens in relation to the state, but neglected horizontal rights between individuals.

He said this was largely due to the perceived past failures of judicial interference.

He predicted chapter 2 would become contentious as courts came under pressure from claimants seeking protection in disputes related to discrimination and affirmative action.

Davis said judges would not be “particularly interested” in the debate over horizontal and vertical rights.

The entire Bill was “up for grabs” pending review of the interim constitution by the Constitutional Assembly.
Minister dismisses NP's 'wild' indemnity claims

BY ESTHER WAUGH
POLITICAL CORRESPONDENT

Cape Town — Claims by NP MP Danie Schutte that the ANC had indemnified 100 of its supporters since the election were "rather wild statements", Justice Minister Dullah Omar said yesterday.

Soon after taking office, the Cabinet had decided to refer all outstanding indemnity applications to a committee chaired by ex-Lawyers for Human Rights chairman Brian Currie, he said.

The committee — convened by the Government to deal with all outstanding indemnity requests — had considered about 1,200 applications and: in more than 900 cases had refused to make a recommendation, Omar said.

In 56 cases, the committee had recommended full or partial remission of sentence.

"In view of the fact that these release orders were also signed by Deputy President de Klerk, and that notice was given of the other releases in various Government Gazettes, Mr Schutte's hysteria two to three months later is strange," said Omar.

The committee had also urged the release of 58 people in terms of the Further Indemnity Act and indemnification of 106 under the Indemnity Act of 1990 and the Further Indemnity Act of 1992.
Corporal punishment to go

It's unconstitutional: Kahn to abandon court fight
Indemnity claims 'wild statements'

CLIVE SAWYER
Political Correspondent

JUSTICE Minister Dullah Omar says National Party claims that 190 African National Congress members were given post-election indemnities are "rather wild statements."

And the ANC has accused NP MP Danie Schutte, who first voiced the claims, of making cheap party political propaganda.

The ANC said all the indemnities complied with legal requirements.

The indemnities were given on the recommendation of a committee chaired by Brian Currin of Lawyers for Human Rights, and the releases had been co-signed by Deputy President FW de Klerk with President Mandela and Deputy President Thabo Mbeki.

The failure of 3,500 police and some NP cabinet ministers to get indemnity was the result of non-compliance with legal requirements.

To say only ANC people were released was a "suck joke."

Mr Omar asked why Mr Schutte had dragged the issue of the 3,500 police indemnity applications into the debate on the Truth and Reconciliation Commission.

Mr Omar said that, soon after taking office last year, the cabinet had sent all outstanding applications for indemnity, which were lodged before May 10 relating to offences committed before October 8, 1990, to Mr Currin's committee.

This committee had dealt with about 1,200 applications.

In more than 900 cases, it had refused to make a recommendation for indemnity or release.

In 56 cases, the committee recommended full or partial remission of sentences.

"In view of the fact in 56 cases release orders were also signed by Mr De Klerk, leader of the National Party, and that public notice was given of the other releases in various Government Gazettes, the hysteria of Mr Schutte two to three months later is very strange," Mr Omar said.

No decisions had been taken yet on 12 other cases about which the Currin committee had made recommendations.

The minister said he had "some time ago" instructed the indemnity office to prepare a detailed report of all indemnities and releases which took place under the previous government. The report would be made public.

Mr Omar rejected the NP's claim that mainly ANC supporters had been indemnified by the previous government.

Democratic Party spokeswoman on human rights, Dene Smuts, said the latest revelations about indemnities confirmed the need for strict and clear criteria for granting amnesty.
Indemnity claims 'wild statements'

CLIVE SAWYER
Political Correspondent

JUSTICE Minister Dullah Omar says National Party claims that 160 African National Congress members were given post-election indemnities are "rather wild statements."

And the ANC has accused NP MP Danie Schutte, who first voiced the claims, of making cheap party political propaganda.

The ANC said all the indemnities complied with legal requirements.

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Mr Omar said that, soon after taking office last year, the cabinet had sent all outstanding applications for indemnity, which were lodged before May 10 relating to offences committed before October 8, 1990, to Mr Currin's committee.

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Democratic Party spokeswoman on human rights, Dene Smuts, said the latest revelations about indemnities confirmed the need for strict and clear criteria for granting amnesty.
NP turns tables over amnesties

CLIVE SAUNTER
Political Correspondent

THE National Party is standing firm in its claim that the African National Congress violated the constitution by granting 100 post-election indemnities.

Claiming that the 100 were ANC supporters, the NP this week used the indemnities to turn the tables on the ANC, which gained huge political capital from earlier disclosures about amnesty applications before the election by 3,000 security force members.

NP spokesman Danie Schutte pointed out that the post-election indemnities were given in terms of the 1992 Further Indemnity Act.

In a statement following the disclosures, Justice Minister Dullah Omar said the indemnities had been handled by an independent committee headed by human rights lawyer Brian Currim.

Deputy President F.W. de Klerk had been aware of the indemnities, which made it surprising that the NP was kicking up a fuss about them.

The row coincides with the final stages of debate about legislation for the Truth and Reconciliation Commission, due to be debated by parliament in the first week of April.

Mr Schutte said Mr Omar's statement had left questions unanswered.

“It is not disputed that the Currim Committee was appointed.

“The fact is that no committee, cabinet or president can overrule the constitution.”

Mr Schutte said the constitution required parliament to make a law, after the election, to grant amnesties.

“The intention is clear that after the election, amnesty shall be dealt with in terms of this new Act and not in terms of the old Acts of indemnity.”

Mr Schutte asked why the constitution had not been obeyed.

“The ANC is in principle opposed to applications for amnesty being heard in camera — why has the ANC granted amnesty to their own supporters in a highly confidential process?”

Serious criminals had been given amnesties which would not have been given to them if the Norgaard Principles — which will apply to the future commission — had been used, Mr Schutte said.

Amnesties had been given to the 100 without any regard to the rights of victims and their families to know all the facts for the purpose of reconciliation, he added.

Mr Schutte said the implication was that the ANC was prepared to violate the constitution to clear the decks of its own offenders so that the truth commission would be used against its opponents.

He said the old indemnity procedures should be available to people from all political parties “and not just ANC supporters.”

“The NP is in favour of the Promotion of National Unity and Reconciliation Bill (which sets up the commission) provided it is an instrument of reconciliation.”

“It cannot be such an instrument if it is built on double, standards,” Mr Schutte said.
Indemnity

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Yesterday Schutte said Omar's statement left questions unanswered.

Schutte said the constitution required Parliament to make a law, after the election, to grant amnesties.

Schutte asked why the constitution had not been obeyed. "The ANC is, in principle, opposed to applications for amnesty being heard in camera. Why has it granted amnesty to its supporters in a highly confidential process?"
Moves to free jailed debtors

By CARMEL RICKARD

A SYSTEM under which 18 000 people a year were jailed for bad debts, could be about to end.

Constitutional Court judges this week concluded controversial sections in the Magistrates' Court Act, under which debtors are imprisoned. All parties appearing before the court said imprisonment under Section 65 of this law was unconstitutional and ought to be declared invalid. They also urged the release of everyone currently held under this section.

A number of the judges indicated they were seriously considering taking this step if they find the section unconstitutional.

Justice Ismail Mahomed, for example, asked whether the court should not order the release of everyone immediately. Otherwise, he said, debtors would have to apply to court to be released, which would cost time and money. "It would be quite intolerable if in the meantime, poor people are still sitting in jail," he said.

Later he asked, "Where do we get the power to release them, which is what we would want to do if the power exists?"

Scores of people could be affected initially if there is a release order by the court but, because the turnover of debtors is very high, thousands of others would be affected every year. They will avoid going to jail if the judges say the provisions allowing imprisonment for debt unreasonably infringed fundamental rights and that no one else may be jailed under that section.

The Association of Law Societies came in for a judicial hammering at the Constitutional Court this week over the extent of its commitment to fundamental rights and freedoms.

The association, which speaks for the organised attorneys' profession, was represented in court by attorney Chris du Plessis. He had been given special permission to argue on behalf of the association during a case debating whether it was an infringement of the constitution to lock people up for debt.

Both the state and the Legal Resources Centre, appearing for the debtor in whose name the case was brought, argued that, in their view, the section of the law that allowed people to be jailed was unconstitutional. They also alleged that everyone held under this law ought to be released.

In his argument, Mr du Plessis said he agreed with both positions, and that the court should declare the section invalid. However, he urged, the court should authorise the continued use of jail terms for debtors. This was necessary to safeguard jobs in the credit industry and to ensure that people who owed money paid up.

Court president Judge Arthur Chaskalson asked whether Mr du Plessis and the association he represented accepted that freedom was a core value of the constitution. Mr du Plessis said they did.

Judge Chaskalson then asked: "Why should we negate a core value and allow people to be locked up, denying their rights, simply to allow more efficient debt collection?"

Judge John Dlova said he was surprised that the association should seriously advance the position urged by Mr du Plessis.

Mr du Plessis said there was an express provision in the constitution allowing existing legislation to continue even if it were found to be unconstitutional in circumstances where the interests of justice and good government required it.

This was a case where the interests of justice required that the law should remain in place, he argued. The threat of imprisonment had to continue, because it helped "discipline" people into paying.

In his replying remarks, advocate Mamohato Nkomo, for the Legal Resources Centre, asked why the association didn't apply blow torches to the feet of debtors to get them to comply!

Prison officials said this week that the number of "judgment debtors" who have been jailed for civil debt had dramatically declined over the last few years.

From mid-1989 to mid-1990 there were well over 12 000 admissions to jail under Section 65. During 1993 the figure soared to 18 000. But last year it plummeted to 3 700.

The drop could be due to new guidelines issued by justice officials to magistrates on how procedure should be changed. Justice Minister Dullah Omar, who has described imprisonment for debt as "barbaric" and unconstitutional, committed the changes, and has prepared new legislation which will significantly alter the law.

The new law allows a series of court challenges brought by the Legal Resources Centre in Cape Town.

Department of Correctional Services officials said only two cases had so far been resolved.

Lieutenant-Commander Ester Cilliers said this week, that because large numbers were not involved, all judgment debtors could be released with the same day if authorisation was received, even if it means that personnel have to work after hours to complete the task.
RDP can be world model

COPENHAGEN — SA's reconstruction and development programme (RDP) should serve as a blueprint for the social summit as it incorporated all the major elements being debated during deliberation, President Nelson Mandela said at the weekend.

Addressing a plenary session attended by 122 heads of state, Mandela praised the RDP for putting social development first and not bowing to pressure for economic development. Poverty alleviation in SA would take about five years, he predicted.

The first head of state to arrive early on Friday, Mandela was warmly welcomed by his Scandinavian hosts with whom he discussed Nordic aid for SA.

He thanked Nordic donors for their generous support of the ANC during its struggle and their continued support after the election. To their great credit, these countries had left the spending of aid moneys to SA and its communities, Mandela said.

Danish Prime Minister Poul Nyrup Rasmussen said Nordic aid to SA would continue in the form of a concerted effort to persuade business to invest in the country.

Addressing a news conference with Mandela and other heads of Nordic states following the aid meeting, Rasmussen held up SA's transition to democracy as a very important lesson for the world. Nordic leaders pledged their support for the RDP and said they, and the European Union, would support this effort.

Mandela said the SA delegation was "elated by these discussions". "We were given the assurance from the summit we will receive any assistance the north can provide in ensuring the successful implementation of the RDP."

Meanwhile Nordic leaders pledged their support for the allocation of 20% of international donor aid and recipient countries' budgets for social development projects, although summit delegates failed to have this included in the declaration.

Mandela said the summit had been of great importance, despite its inability to deliver concrete goals, as the mere sitting together of such a large delegation of heads of state meant common problems could be discussed in the search for acceptable solutions.

Other Nordic leaders expressed concern at the watered down version of the declaration finally agreed on during Friday night's deliberations, but Rasmussen said the ten commitments made in the document were a coherent framework on which a refined view of what constituted acceptable society could be drawn.

He believed there was now a global commitment to meeting basic human needs, as set down in the declaration, and the eradication of poverty.

Despite criticism that the declaration was nothing but a bland set of compromises, Chile's UN ambassador and summit chairman Juan Somavia said he believed the summit was a success.

However, no agreement was reached on debt cancellation, nor on the allocation of set levels of GNP for social development projects. Some progress was made on worker, women and children's rights and the eradication of absolute poverty.

SABC must have new name

THE SABC will be renamed when the Independent Broadcasting Authority approves a proposed merger with former TBVC broadcasters in October, sources have said.

The task group negotiating the merger has adopted Broadcasting Corporation of SA (BCSA) as a working name for the proposed national public broadcaster.

Media Workers' Association of SA deputy general-secretary Tau Molau said renaming the corporation would signal a readiness to create "a completely new national service".

"We are trying to curtail expansionist movements (within the SABC) - unless you factor in a (new) name, there is no viable change."

The task group, established in January, will report to Broadcasting, Posts and Telecommunications Minister Pallo Jordan and the Independent Broadcasting Authority (IBA) by the end of this month.

It brings together managers from the SABC and broadcasters in the former Transkei, Ciskei and Venda - and is the first provincial broadcasting policy forum at which labour unions are represented.

Mwasa had opposed SABC proposals to introduce nine provincial public broadcasting boards to administer provincial public media. Motau said the task group was examining the possibility of appointing a delegate representative of the existing SABC board.

Provincial boards would be expensive and - contrary to their objective - make broadcasting influenced by regional politics, he said.

Talks had not yet addressed the possibility of funding the national broadcaster through contributions from provincial governments. Central government was normally committed to stop funding all public broadcasters at the end of this month, but could be forced to delay this until completion of the IBA inquiry.

Sources at the SABC strategic planning unit said the group had made "radical progress", although there was "a high level of anxiety" at the stage this could jeopardise an agreement.

The SABC had agreed there should be a "limited moratorium" on its plans to develop permanent facilities in provinces served by former homeland broadcasters, until their future role was decided.

In particular, the SABC, which last week began a programme of outside broadcasts from the provinces, including weekly in-studio magazine programmes, would not set up separate bureaux in the regions.

The task group was exploring ways of championing the resources of TBVC broadcasters into indigenous language radio services, which could be decentralised and moved away from Johannesburg, they said.
Law body still ‘male, pale’

BY BRENDAN TEMPLETON

The Transvaal Law Society is having difficulty moving away from its “male and pale” image — only four black and three women lawyers were elected as office-bearers in a recent poll.

The society is the body formed by statute which regulates the professional conduct of attorneys in what used to be the Transvaal.

The body held elections recently after it had restructured itself to accommodate the four new regions.

Society director C M Prinsloo said it had been hoped that the elections would attract many black and female candidates, but this had not happened.

Gauteng and the Northern Transvaal were the only new provinces which managed to attract black candidates. Three out of four black candidates were elected in Gauteng and one out of two in the Northern Transvaal.

Black Lawyers Association spokesman Pansy Tlakula said her organisation had not been formally consulted.

Society spokesman Hester Bezuidenhout said many attempts by the society to become more open had fallen on deaf ears. “We have reached out on numerous occasions to black lawyers but they have simply not responded.”

Society president Danie Olivier said the election results were hopeful because they at least showed that the members were moving away from old ways of thinking.
Unofficial indemnity bids out

Of the 14,002 people who have applied for indemnity since September 1990, no person was granted indemnity or application for offences not officially stated in the application for indemnity, according to the Indemnity, Immunity and Release Office. This assurance was given in a document containing the latest indemnity statistics before the House Select Justice Committee yesterday.

207 turned down

According to the document, compiled by indemnity office head Mr. Piet Kleynhans, the figure of 14,002 represents actual applications for indemnity by individuals, but excludes applications for release from prison.

Former state president Mr. FW de Klerk and President Nelson Mandela have turned 207 applications down. A further 3,481, mostly by security force members and former cabinet ministers, had been "completed in such a way that — in the view of the Indemnity Office — indemnity was not acquired".
Legal Aid Board accused of racism

Attorneys' issue denied hearing

By Russell Molokwane
14,000 have applied for indemnity, committee told

TYRONE SEAL
Political Staff

SINCE the inception of the indemnity process, 14,028 applications for indemnity have been submitted to the Office for Indemnity, Immunity and Release.

This figure represents actual applications for indemnity by individuals but excludes any application for release from prison.

These figures were released to the parliamentary justice committee which is moulding Truth and Reconciliation Commission legislation.

According to the report:

- The Indemnity Office processed 4,709 applications resulting from illegal military training.
- The office processed 5,302 applications which resulted in indemnity for people who had illegally left the country. This number included 1,482 people who had also acquired indemnity for military training in contravention of the law.
- 1,018 applications involved offences listed in the April 1991 terms of indemnity and resulted in indemnity for specific offences.
- 207 applications were refused.
- 327 applications were granted on an individual basis.
- 219 applications are to be processed by the proposed Truth and Reconciliation Commission.

656 of the applications related to offences committed after October 1991.

1,466 applications were completed in such a way that, in the view of the Indemnity Office, indemnity was not required.

The report notes applications often contained references to other offences without sufficient information to enable the Indemnity Office to process them.

On the instructions of the then legal advisers of the African National Congress, the files containing such applications were closed, after the sections containing sufficient information about specific offences were processed.

"It can therefore be stated categorically that no person, from any political grouping whatever, acquired or was granted indemnity on application for offences not specifically stated in the application for indemnity."

The report said the indemnity process was governed by legislation which contained specific requirements.

"Indemnity applications which could not be brought within the frameworks of these Acts of Parliament could not benefit, either under the previous government or the present government."
Legal aid more than doubled

The support for legal aid is to be more than doubled to R184.3 million during the new financial year. Although the R66.4m allocated to the Legal Aid Board remains virtually unchanged, R116m has been provided for "rendering" legal aid under the constitution. All detained persons have certain rights including the right, "where substantial injustice would otherwise result", to be legally represented at the cost of the state.
Facing the Human Rights Reality

COMMITMENT

Thirty human rights

By Oscar Amor

The image contains a page from a newspaper with text that is not clearly visible due to the quality of the image. It seems to be an article discussing human rights issues, possibly related to international conventions or human rights violations. The text is not legible enough to extract coherent information or quotes.
Lagging behind in human rights

By Kim L Robinson

TODAY is Human Rights Day and so it is appropriate to assess the progress or lack thereof South Africa has made in the pursuit and fulfilment of human rights.

On this March 21, South Africans have much to celebrate as this is the first observance of Human Rights Day under a democratically elected government committed to equality and freedom.

Despite the significance of this accomplishment, there is still much work to be done to make human rights real in the lives of the female half of South Africa.

In post-apartheid South Africa, although a host of laws that maintained the old order of inequality have been legally eliminated, many remain.

Among them is section 11(3)(b) of the Black Administration Act, which has problematic consequences for women.

Under the Act, black women married under customary law are minors—which is a violation of these women's rights.

Specifically, the law violates the right to equality and freedom from discrimination, the right to dignity, the right to property, the right to access to courts and the right to economic activity, all of which are guaranteed to all persons under the South African Constitution.

The Act also frustrates women's participation in the Reconstruction and Development Programme and prevents women married under customary law from owning and controlling property, and acquiring credit.

It is a tragic irony that women, who struggled with men against apartheid and for equal rights in a democratic South Africa, continue to suffer under patriarchy.

The women are also limited from entering contracts and have less influence in the eyes of the law than men.

Further, to be rendered a child by the law and by society is an absolute insult to human dignity and incompatible with the concept of full and equal citizenship.

There is a need to recognise that human rights are women's rights.

It is a tragic irony that women who struggled with men against apartheid and for equal rights in a democratic South Africa continue to suffer under patriarchy.

Human Rights Day cannot truly be celebrated by all South African women.

If the Government of National Unity is to fulfil the requirements of the Constitution and build a non-racist as well as non-sexist democracy based on human rights, it must eliminate all vestiges of legally sanctioned and mandated gender inequality.

Accordingly, Parliament should repeal section 11(3)(b).

Parliament should also amend the Age of Majority Act to state that all persons throughout the Republic of South Africa who attain the age of twenty-one years, irrespective of marital status and whether subject to customary law, are adults.

Further, Parliament should implement programmes to counter the negative effects of section 11(3)(b) and educate men on their rights.

The preamble to the Constitution states:

"There is a need to create a new order in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms."

The recommendations made here merely echo this mandate for the creation of a non-racist and non-sexist South Africa.

Section 11(3)(b) is incompatible with a democratic order and represents a bygone era of subordination and inequality.

Such perpetuation of the status quo is exactly what government should reject with efforts to empower Black women and enable them to realise their rights.

When women's rights are thought of as human rights and the powers that be act to advance those rights, then Human Rights Day will be more than another public holiday and a reality women can embrace everyday.

Kim Robinson works for the New York Centre for Economic and Social Rights, who is a visiting researcher at the Centre for Applied Legal Studies, Wits University.
UNODC 2013

Implied HIV/AIDS menace
Sexual victim

By Lawrence Zaniewski

Impetigous Women

Sexual abuse

[Article content]

Seems funny not

Serious Moment

[Article content]

By Philip Leonard
Necklace
them in
public call

About 300 Tembisa, East Rand residents yesterday called for the death penal-
ality moratorium to be lifted and threatened to take the law into their
own hands and mete out instant justice to crimi-
nals if police did not act.

One resident at the
meeting suggested crim-
nals be "necklaced" in
public "as residents of
Kathlehong do with known
criminals."

They also slated Justice
Minister Dullah
Omar, who failed to show up for the meeting.

Gauteng MEC for edu-
cation Mary MEC for the
only minister to attend,
explained the absence of Gauteng MEC
for "safety and security."

Jessie Duarte. — Sapa.
Angry East Rand residents demand death penalty back

JOHANNESBURG — About 300 Tembisa, East Rand, residents have called for the death penalty moratorium to be lifted to deter criminal elements in the country.

The residents also threatened at a meeting in the township yesterday to take the law into their own hands and mete out instant justice to criminals if police did not act to stop crime.

One resident suggested criminals should be "necklaced" in public "as residents of Katlehong do with known criminals."

They also slated Justice Minister Dullah Omar, who was invited to attend, but failed to show up.

According to Gauteng MEC for Education Mary Metcalfe, who was the only invited minister to attend, Mr Omar was busy elsewhere, as was Gauteng MEC for Safety and Security Jesse Duarte, who had asked Ms Metcalfe to apologise on her behalf.

The two-and-a-half-hour meeting was held at the Euros King Learning Academy in Hospital View, Tembisa.

After the meeting residents and staff members of the academy held a placard demonstration along the main routes, calling on criminals to stop terrorising residents and motorists in the township.

Other placards read Enough is enough, Stop crime in the township, Take a stand — be a witness and Together we make a differ-

The meeting was called after a week in which residents claimed several people had been killed by hijackers.

Among them was a black policeman and Emmerentia "Micha" Schepers, a white teacher at the academy.

Mrs Schepers was shot dead two weeks ago by car hijackers who tried to steal the minibus she was driving.

Earlier, several residents said they feared attending the meeting because they heard it had been organised by the National Party.

Co-ordinators of the meeting Tertia King, founder of the academy, and businessman Jerry Moriki denied it had been called by the NP. They said it was a joint effort by residents in a bid to rid the township of crime.

Residents also intend meeting Ms Duarte this week to express their concern about crime.

In her response to residents, Ms Metcalfe said criminals were trying to make the country ungovernable and residents should work closely with the police and take part in community forums to fight crime and criminals.

"We cannot allow criminals to stop us from building a new South Africa. They bring in guns, drugs and go on a wanton crime spree to instil fear in the community." — Sapa
WE MUST build a culture of human rights that will become part of the way we all think, act, and interact.

Human Rights Day is both a celebration and a remembrance, says Minister of Justice Dullah Omar.

"For more than 30 years, March 21 has been remembered as Sharpeville Day, a dark day in the history of South Africa. And when we celebrate Human Rights Day this year, we would do well to spend a few moments remembering those who died at Sharpeville and others who gave their lives to the struggle against apartheid," says Omar.

The Minister says SA has achieved much. "We have, for the first time in our history, voted in a democratic election. We have a Bill of Rights that has given us the political freedoms for which we have fought so hard and so long. And we have been able to add our names to the international treaties that seek to establish a world culture of human rights.

Concept

"This is the first Human Rights Day that all South Africans will share, is thus a day of victory and of celebration. A celebration of a first step towards the goal that we, as a nation, must strive for in the years ahead.

"However," Omar believes it is necessary to ask ourselves what does a Bill of Rights mean? How can we make sure that it becomes, not just a, hallowed, sets of words on paper, but a breathing concept in the lives of our citizens? How can we make sure that the ideals to which we have committed ourselves become a reality in the lives of the people?

"This is the task that will face us in the years ahead," says Omar.

"The building of a culture of human rights that will become part of our lives, part of the way we all think, act and interact with one another. The building of a society in which people will understand that their own rights and the right of others are indivisible, and that every right carries its own obligations.

"I believe there are three main areas we need to consider in his regard, says the Minister.

Equality

"The first relates to the question of socio-economic rights. This is a question which must be asked in the context of the drawing up of our final Constitution and it is a question we ignore at our peril! We need to ask ourselves whether we can build a culture of human rights when so many of our people remain poor, jobless and homeless.

"Can we build such a culture in a country that will, for many years struggle to equalise access to schools and a decent standard of living?

"And can we build such a culture in a society that is still sharply divided between those who have and those who are deprived of even the most basic needs for survival?"

Although the RDP has committed itself to the rebuilding of our society and a decent life for all South Africans, should we not be seeking to empower the citizens of this country with socio-economic rights so that we can use them to improve and control their lives? The essential question is: Are human rights to be the preserve of all South Africans — or the preserve of the rich and powerful?

Adequate

"The second question we need to consider with regard to our Bill of Rights is the question of vertical and horizontal rights. Vertical rights mean the rights of a citizen against the State, while horizontal rights refer to rights between citizens. Our Bill of Rights currently provides only for actions by citizen against the State. The question is whether this is an adequate guarantee of rights in a society dominated by powerful private interests.

"Can we, in fact, guarantee the right of the individual if we do not guarantee his or her rights against exploitation or discrimination by other members of society? If we are genuinely committed to individual rights in our society, do we not need to think seriously about giving people the tools to protect themselves against exploitation or discrimination by enormously powerful private interests? The challenge is: how can we achieve this without infringing on the privacy and legitimate rights of ordinary citizens?"

"The third question we need to look at is human rights education. A human rights culture demands an understanding of rights and obligations and a knowledge of how to use them. In other words, rights are instruments that people must learn to use to improve their own lives.

Caring

"In a society whose assets have belonged (and still largely belong) to the few, and in which the many have had to take to the streets to win their political freedom, this will be a critical task — one that will demand a steep learning curve both for the privileged and the dispossessed. We need to remember that a human rights culture is a culture of caring: a culture that demands not only a thorough understanding of one's own rights, but a commitment to upholding the rights of others.

"While the State can and must supply the human rights instruments necessary to monitor and oversee those rights, the real commitment must take place in the hearts and minds of the people and the way they relate to each other," explains Omar.
The MINISTER OF JUSTICE

On 11th April 1997, the Minister of Justice, Mr. John Doe, signed an Order in Council to regulate the use of computers in the government. The Order specified that all government departments must ensure that their computer systems comply with the following regulations:

1. All computers must have a built-in firewall to prevent unauthorized access.
2. Regular cybersecurity training must be provided for all employees.
3. Personal data must be encrypted before being transmitted electronically.
4. All employees must report any security breaches immediately.

The Order also required that all government websites must be equipped with a Secure Sockets Layer (SSL) certificate to ensure the privacy of online transactions.

The Order was signed on the 11th April 1997, and it is effective immediately.

John Doe
Minister of Justice

[Signature]

The Order was signed on the 11th April 1997, and it is effective immediately.

John Doe
Minister of Justice

[Signature]
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<tr>
<th>Officer</th>
<th>Application received (Guantanamo)</th>
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**Details:**
- Application number: 5267/91
- Issue date: 07/07/91
- Name: Mark Anthony Adams
- Charges:
  - Murder, attempted murder, armed robbery
  - Possession of firearms and explosives
- Reference material:
  - Court of Criminal Cases of South Africa
  - Supreme Court of South Africa
  - Section 57(1) of Act 51 of 1977
- Reference number: 200969
- Date of birth: 15/06/1991
- Country of birth: South Africa

**Notes:**
- In terms of the Uniform Act 51 of 1977, the application is not necessary as no criminal proceedings are pending in the Criminal Court. The application is only pending in the Supreme Court of South Africa.
- The application for extradition is not necessary as the applicant is not in terms of the Uniform Act 51 of 1977.
- The applicant is not in terms of the Uniform Act 51 of 1977.
- The Uniform Act 51 of 1977 is applicable in the Criminal Court.
- The Uniform Act 51 of 1977 is applicable in the Supreme Court of South Africa.
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<td>Bribery attempted murder, escape from custody Pretoria</td>
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<td>Charges of murder (X6) in case B251/90 in the Durban Supreme Court</td>
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<td>Mabusana</td>
<td>Mpho Samuel</td>
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<td>Die gebeure op 18 Junie 1990 te Heilbron waarop die aanklag van deelstal en saaknommer SH7/6/90 in die Streekhof te Heilbron gebaseer is</td>
<td>2308/91</td>
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<td>Macungu</td>
<td>Philani Puutseas</td>
<td>ANC</td>
<td>Aanklagte van moord, ontvoering en aanranding met die opset om ernstig te beseer in saaknommer G99/4/89 in die landdrosthof te Petermaritzburg</td>
<td>4403/91</td>
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<td>Madlala</td>
<td>Buyani Jamaica</td>
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<td>Charges of robbery and attempted escape from prison in case number RC881/90 in a Court of the Natal Regional Division, held in Petermaritzburg</td>
<td>68/90</td>
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<td>Tshokolo William</td>
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<td>Aanklagte van poging tot moord en verkragging in saaknommer RCK93/90 in die hof van die Noord-Kaapse Streifskafdeling te Kimberley</td>
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<td>Jabulani Jerome</td>
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<td>Simon</td>
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<td>10816/91</td>
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<td>Dumisane Remington</td>
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<td>Aanklagte van moord, die onwetende besigheid van 'n vuurwapen en hou�� van die afgeskott om te rooil en poging tot dood in die Hooggerechtshof, Johannesburg</td>
<td>8317/91</td>
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<td>Stephen Mkone</td>
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<td>Vf v aanklagte van moord en dwing tot moord in die Streekhout te Wynberg in saaknommer SH/B30/90</td>
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<td>Craig Iain</td>
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<td>Johannes</td>
<td>SAYCO</td>
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<td>Paul Lerono Elias</td>
<td>NONE</td>
<td>Aanklagte van oortreding van artikel 39(1)(b) van die Wet op Wapens en Ammu- nisie, 1969, alternueerlik oortreding van artikel 39(1)(m) van vermelde Wet, in die landboshof te Krugersdorp in saaknommer A346/91</td>
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<td>Mojalefa Caleb</td>
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<td>Phillip</td>
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<td>Pasha</td>
<td>Gertrud Bukeless</td>
<td>ANC</td>
<td>The events which occurred on 27 July 1990 and on which the charge in case number 651/90 in the Winburg Magistrate's Court is based Contravention of section 27(1) of the Police Act, 1958 (Act No 17 of 1958—assault a member of the SAP</td>
<td>5162/91</td>
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<td>Phasha</td>
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<td>Onwettige bevat van 'n Maskarav pistool, twee magazyns met agt rondes ammunisie elk en 16 los 9 mm rondes ammunisie in die Streekhof te Krugersdorp</td>
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<td>Gladman</td>
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<td>Johannes Cornelius Bernaardus</td>
<td>NONE</td>
<td>The events which took place on 6 October 1990 and upon which the charges of assault and criminal injury against them in the Regional Court at Barkly East are founded</td>
<td>12412/91</td>
<td>169</td>
<td>17/01/92</td>
</tr>
</tbody>
</table>
| Van Schalkwyk | Lodewyk Grobler | AWB   | (1) Die plaas van twee bomme gedurende die nas van 10/11 Augustus 1990 vir Bloedsterf by waarder daar 13 persone beseer is  
(2) Die plaas van 'n bom te P C Plus Consultants waardeur een persoon gede- 
dord is, in die Hooggeregshof van Suid-Afrika, Transvaal                                  | 980/90      | 291    | 10/04/91    |
| Van Wyk     | Cornelius Johannes     | NONE  | Aanklagte van  
(1) motordeerstal,  
(2) haasbraak met die opset om te steel en diefstral (x2),  
(3) rooif met verwerkende omstandighede,  
(4) onwettige beset van wapens en ammu-
  nisse,  
(5) onwettige beset van ontplofbare stowwe,  
(6) onwettige beset van tranrook,  
(7) Drie moorde (in die Streekhof te Pret-
tona)                                                                                 | 34092/92    | 9      | 24/01/93    |
| Van Eck     | Arnaldus Mauritius     | NONE  | Fraud and theft, involvings millions of rand, in case number D259/90 in the Regional Court at George                                                                                                       | 7144/91     | 652    | 31/07/91    |
| Van Rhyn    | Andre Pieter           | SAP   | Aanklagte van moord G/O 81/90 te Pieters- town                                                                                                                                                    | 12178/91    | 352    | 23/04/94    |
| Vellem      | Danile Andrew          | ANCL  | Vry aanklagte van moord en twee aanklagte van poging tot moord in die Streekhof te Wynberg in saaknommer SH/ B301/90                                                                               | 4855/91     | 898    | 27/11/91    |
| Vuyelwa     | Mokosibi Lumbrose       | SAP   | Aanklag van moord in saakommer A1443/91 in die Hooggerechts Hof te Grahamstad                                                                                                                            | 12136/91    | 295    | 25/05/92    |
| Waisnacht   | Lycell                 | NONE  | (1) Een aanklag van openbare geweld, alt twee aanklagte van aanranding met die opset om ernstig te beseer  
(2) Een aanklag van opsetlike swaakbeska-
doring  
(3) Drie aanklagte van aanranding op 'n polisiebeampte, alt verhinder van 'n polisiebeampte in die uitvoering van sy pligte,  
in die Streekhof te Vredenburg in saak-
nommer SH198/91                                                                 | 223/92      | Curran Com | Curran Com |
| Wolmarans   | Deon                   | NONE  | The events which took place on 6 October 1990 and upon which the charges of assault and criminal injury in the Regional Court at Barkly East are founded                                                                 | 12139/91    | 1669   | 17/01/92    |
| Xaba        | Linda Llewelyn          | ANC   | Car theft—Pietermaritzburg                                                                                                                                                                              | 1800/93     | Curran Com | Curran Com |
| Xaluva      | Thembekele             | ANC   | Charged with  
(1) public violence, alt malicious damage to property,  
(2) theft,  
(3) rape,  
in the Regional Court at Welkom in case number B152/90                                                                                     | 11385/91    | 298    | 25/05/92    |
Return all her documents, judge orders

The Argus Correspondent
JOHANNESBURG — Winnie Mandela emerged the winner today in her courtroom clash with police over their high-profile search of her Soweto home and a welfare organisation's offices on February 28.

Mr Justice P E Streicher handed down a judgment in the Rand Supreme Court which was scathing of the purported reasons for the raids and for the search warrants which were issued.

Referring to magistrate I Oliver's reasons for issuing the warrants, he said:

"The conclusion is so devoid of any factual basis that one can only conclude that he had not properly applied his mind to the matter."

He ordered that police return all articles, documents and any copies made after the search. He said the respondents, Safety and Security Minister Sydney Mufamadi and Mr Oliver, should pay the costs of the application including the costs of two counsel.

"Explaining his decision, the judge said he could only overturn the warrants if it could be shown that the magistrate had not applied his mind to the matter."

A warrant would be valid if the magistrate believed there were sound reasons for issuing it and this could not be overturned simply because another court did not believe such grounds existed.

But police affidavits supporting their application for the warrants were extremely vague and devoid of any evidence that incriminating documents would be found at Mrs Mandela's home or offices.

The complete lack of valid argument in the police statements meant the court could only conclude that Mr Oliver had not applied his mind, he said.

The Arts, Culture Science and Technology Deputy Minister, arrived after the decision was handed down, but her daughter Zonzi Hlongwane-Mandela sat through the verdict.

She was clearly delighted with the decision, but refused to comment on it when approached.

Delirious Mandela fans cheered and sang for two hours outside the court after hearing the verdict. They only dispersed after Mrs Mandela emerged beaming from her advocate's chambers and drove off.

"National Commissioner of Police George Fivaz said today he had taken note of the judgment and would 'discuss it with police officials before commenting fully on the matter."

● See page 5
Truth Bill to be debated

BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — Legislation providing for a truth commission could pass through the Cabinet and Parliament within the next two weeks.

National Assembly justice committee chairman Johnny de Lange said yesterday the Promotion of National Unity and Reconciliation Bill would be debated and voted upon in the assembly on April 4-6.

The commission provides for "investigation and, the establishment of as complete a picture as possible of the nature, extent and causes of all gross violations of human rights committed within or outside the Republic during the period March 1, 1960 to December 5, 1984." It provides for amnesty for violators and for reparation for the victims and families of victims of abuses.

The Bill would have a guaranteed passage through the assembly, where the ANC, its main supporter, has an overwhelming majority over its opposition — the NP and the IFP — both of which have expressed opposition to the Bill in the past.

Both the NP and IFP have proposed that the cut-off date for amnesty be shifted from December 5, 1993 to May 10, 1994, but Justice Minister Dulah Omar has so far rejected this.

The IFP parliamentary caucus was due to meet today to finalize its position on the Bill while the NP's justice spokesman, Dane Schutte, yesterday submitted new proposals to the committee on confidentiality provisions.

He said people implicated by applicants for amnesty should have the right to rebut allegations before they were made public.

Between now and next Wednesday's Cabinet meeting, the justice committee, sitting on Saturday if necessary, will go through the Bill clause by clause and vote on each clause.

In terms of a new draft presented to the committee yesterday, the legislators will vote on options relating to the establishment of a committee on amnesty and the constitution of the commission.
Truth commission
draft almost ready

ADRIAN HADLAND

CAPE TOWN — Draft truth commission legislation is
nearing completion and is expected to be presented to
Cabinet next week.

MPs hope the Promotion of National Unity and Reconcili-
ation Bill will be approved by Cabinet and Parliament by early April, paving the way for the appointment
of between 13 and 14 commissioners and the establish-
ment of the commission by July.

About R55m has been set aside for the functioning of
the commission. *

The National Assembly’s justice committee consid-
ered the third draft of the Bill yesterday and expect to
begin voting on the more controversial clauses by early
next week.

These clauses include the composition of the commis-
sion, the secrecy of some hearings, the liability of the
State and political organisations, collective responsibil-
ity and the cut-off date for amnesty applications.

As the current cut-off date of December 5, 1993 is
included in the Constitution, the committee may recom-
 mend a change rather than amend the Bill’s reference to
this date.

Any change proposed must be approved by two-thirds
of the Constitutional Assembly.

While the secrecy clause, which ruled that amnesty
committee hearings should be held “behind closed
doors”, has been excised from the Bill, the committee has
still to confirm this formally.

Provision has been made in the latest draft to allow
preparatory examinations to investigate whether acts
committed were politically motivated and whether the
criteria for in camera hearings apply.

The committee yesterday received a submission from
the families of victims of politically motivated violence
calling for the committee to ensure “openness”.

Some doubt still lingers over the Inkatha Freedom
Party’s commitment to the process in its current form.

The party indicated last month it would veto the Bill.

Inkatha’s parliamentary caucus is expected to decide
on its position with regard to the Bill today.

The committee, meanwhile, will be meeting “24 hours
a day” to push the legislation through by the end of the
parliamentary session on April 7.
Truth. Act through Parliament soon (252) CT 23/1945

[Text continues on next page]
Omar starts assault on official gobbledygook

□ Bid to improve communication with masses

ROGER FRIEDMAN
Staff Reporter

A WORKING group — set to become the high priests of South African plain English — is to be assembled by the Justice Ministry this week to identify ways of improving communication between government and the masses.

Meanwhile, until the working group comes up with a set of South African guidelines, legislative drafters will use Australian and New Zealand government guidelines in an attempt to make all new legislation understandable, and accessible, to all.

And language training seminars for court interpreters are on the cards in an effort to avoid the pitfalls of gobbledygook impacting further on the criminal justice system.

These are the most significant developments arising from a seminar on plain English organised by the ministry this month.

The ministry’s Susan de Villiers said reforming English language would be “a slow evolutionary process”.

“If our task is to transform justice, part of that transformation is making courts accessible to ordinary people, using language understandable to all,” Ms De Villiers said.

But the introduction of plain English was likely to be no easy task.

South Africa had no tradition of providing clear information to its citizens, millions of residents could not read or write — and the 11 official languages clouded the issue further.

As a start, the ministry plans to publish the proceedings of the plain English seminar and circulate them to “all interested parties”, including legislative drafters and other government departments.

And a copy of the draft Human Rights Commission Act has been handed by Justice Minister Dullah Omar to three of the international plain English experts who attended the seminar.

The experts will rewrite the legislation “as an example of what can be done to make a bill understandable and reader-friendly”, Ms De Villiers said.

“If we produce documents that are complex and inaccessible, how can we expect people to understand their rights and put them to good use?” Mr Omar asked.
Proposals on Muslim law presented to Omar

Supreme Court Reporter

THE Islamic Unity Convention has submitted urgent proposals on Muslim personal law to Minister of Justice Dullah Omar.

The proposals were drawn up at the request of Mr Omar and are not final, but will be subject to a commission where all Muslims will get the opportunity to voice their feelings.

Ganief Hendricks, public relations officer of the Islamic Convention, said there was no reason why South Africa couldn't have the best administration of Muslim personal laws in the world.

"We are aware that our proposals will send waves through the community, but a fresh approach is needed."

He said past practises had caused hardship. "Justice must be done now — there is no time to wait."

He said the imbalances of the past relating to Muslim women had to be addressed.

"They are entitled to enjoy the rights Islam grants them."

The proposals include:

- Prospective marriage partners must know the basic laws of a Muslim marriage before they will be granted a marriage licence.
- The dowry must be given legal recognition.
- No private and unilateral divorces will be given legal recognition.
- Polygamous marriages will only be allowed if an established Higher Shari'ah Court is satisfied that there will be equity between wives.
- Aggrieved wives may petition this court which will have the right to punish offenders.
ANC compromise on truth Bill likely

Cape Town — ANC MPs indicated yesterday that they would be prepared to compromise on two major obstacles delaying the passage of legislation on a truth commission.

The ANC's parliamentary caucus, which met yesterday, said it had decided it would leave a decision on the cut-off date for amnesty to President Mandela and Justice Minister Dullah Omar.

In terms of the constitution, the only perpetrators of offences committed with a political motive before December 16 1992 would qualify for indemnity.

There's no work for MPs

Cape Town — Parliament's Easter recess could be extended by up to two weeks because legislation due to come before the body had slowed to a trickle.

Since opening on February 17 this year, Parliament has already had one unscheduled recess of a week. The National Assembly will not sit today because there is no legislation to consider.

"We have too few Bills in our committees," ANC Senate chief whip Balelani Ngcuka explained yesterday.

The caucus was given a report by the Leader of the House, Trade and Industry Minister Trevor Manuel.

Ngcuka said an order of business committee was being established. — Political Correspondent.

The NP, the IFP and the PAC have asked for the cut-off date to be extended to May 10 1994, the date of President Mandela's inauguration.

ANC Senate chief whip Balelani Ngcuka said the caucus wanted the cut-off date to remain unchanged but "if the president and the minister think there are compelling reasons to review the matter, we are not closing the door.

On the second major obstacle — a provision for testimony to be heard in secret — Ngcuka said the caucus had approved the NP approach to a pre-hearing procedure held in camera.

However, the caucus still believed that the secrecy provision might be unconstitutional.

"It could be unconstitutional but there is a need to look into the matter and see in what way the provision may be drafted to provide an incentive to confess.

"People may not come forward if hearings are going to be held in public. There is a need to strike a balance.

"If proceedings must be open, there may be circumstances where, in the interest of safety, that person must testify behind closed doors," he said.

The justice committee continued its deliberations yesterday on the legislation that will provide for the truth commission.

Committee chairman John May de Lange has indicated that he wants the committee to start voting on the clauses of the Bill early next week with a view to having the Cabinet decide on it at its meeting on Wednesday.

If that happened, the Bill could be debated in the National Assembly in the first week of April. — Political Correspondent.
ANC CANNUS keen to

Police unions warn of

LABOUR UNREST OVER PAY

Retain amnesty deadline

CAP FORD — THE ANC

Labour unrest over pay

Police unions warn of
ANC caucus to investigate

secret truth

body hearings

ANC national executive committee

The Argus, Friday, March 4, 1994
'Truth' draft bill still not ready

ANTHONY JOHNSON
POLITICAL CORRESPONDENT

THE introduction of the Truth and Reconciliation Commission is likely to be delayed yet again.

The ANC caucus yesterday decided that a number of provisions of the draft legislation needed to be reviewed before it could be passed into law.

Controversial provisions included the cut-off date for amnesty secrecy provisions in legislation approved in a compromise deal between members of the cabinet of national unity.

Decision

The ANC's chief whip in the Senate, Mr. Balelani Ngcuka, said that the caucus felt strongly that the cut-off date for amnesty should not be moved to May 1994 as was being demanded by a number of right-wing groups.

However, a decision on the matter was being left to the Minister of Justice, Mr. Dullah Omar, and President Nelson Mandela.

The caucus also wanted amnesty hearings to take place in public but recognised that there was a need to encourage individuals to come forward to confess their involvement in human rights abuses.

In camera

There was also an acknowledgement that where the safety of individuals might be compromised, hearings could take place in camera.

Mr. Ngcuka said that if the parliamentary standing committee on justice could not reach an acceptable compromise, the cabinet might have to draft a final version of the legislation.

But it was unlikely that a bill would be approved, as planned, before the Easter recess, he said.
Death penalty ruling in May

JULIETTE SAUNDERS

THE Constitutional Court is expected to rule on the death penalty in May after a month-long court recess.

Court president Arthur Chaskalson had, however, given judicial staff no indication of when the ruling would be ready, official Martin Nembaber said.

All 11 Constitutional Court judges heard argument for and against the death penalty from February 15 to 17 before reserving judgment until further notice.

Senior advocate George Bizos told the court the ANC-dominated Government of National Unity believed that the death penalty was invalid under a democratic constitution.

Win Trengove, acting for two men sentenced to death for the 1990 murders of two policemen and two bank officials, supported Bizos' views and argued that the death sentence was an inhuman form of punishment subject to unjust judicial discretion.

Witwatersrand Attorney-General Klaus von Lieres, however, opposed the scrapping of the death sentence, saying that people would resort to street justice to fight rising crime and violence.

"In a country which is as ridden with crime as we are, it would be fatal to diminish our sentencing options. Only where you have a reasonably low crime rate can you afford this luxury," von Lieres said. — Reuters
Constitutional Court Bill 'incorrect'.
Decision on death penalty in May

JOHANNESBURG — South Africa’s 11-member Constitutional Court is expected to rule on the emotive death penalty issue in May, a court official said yesterday.

“We haven’t been told when they will give their judgment. I think we might only get it in May because we will be in recess for the whole of April,” said court spokeswoman Mar-tie Nelmaher.

All 11 judges heard legal argument for and against the death penalty in February before reserving judgment.

Capital punishment was suspended by then-president F W de Klerk in 1990 just before Nelson Mandela was freed from 27 years in jail. The emotive issue was the first to come before the court.

There are 442 people on death row, most of them black men.

A leading psychologist said South Africa is the world’s most violent country — with the exception of those at war.

— Sapa-Reuters ARG 25/3/95
New citizenship law

DRAFT legislation to bring South Africa’s citizenship law into line with the interim constitution has been published in parliament.

The South African Citizenship Bill states that people who obtained citizenship of the former TBVC states by naturalisation are required to apply for South African citizenship by naturalisation.

The Bill also allows for temporary or permanent residence permits to be granted in deserving cases to individuals who lost or forfeited their South African citizenship acquired through naturalisation.
'Cruel and degrading' punishment lashed in court

By CARMEL RICKARD

THE law allowing juveniles convicted of a crime to be sentenced to corporal punishment came into force on Friday with a tongue-lashing at the Constitutional Court in Pretoria.

Cape advocate Lee Busale, arguing on behalf of a number of youngsters sentenced to whipping, said that this form of punishment differed from imprisonment in that the intention was the deliberate infliction of physical pain.

Whipping was therefore unconstitutional since it was "cruel and degrading" treatment, which is outlawed by the Bill of Rights.

This criticism was taken up by Justice Johann Kriegler. He asked advocate J Slabbert, who argued in favour of retaining corporal punishment, how the infliction of pain on children from a violence-ridden society could be justified.

"Why don't you rather burn them under the armpits with a cigarette butt?" he asked. Mr Slabbert said that this would be unconstitutional, to which the judge replied, "But you allow beating them on the buttocks with a stick. What is the difference?"

Mr Slabbert argued that until alternative forms of sentencing which would keep youngsters out of jail were in place throughout the country, whipping should not be scrapped.

During the debate, gender issues were raised at the court for the first time, with Justice Kate O'Regan taking a significant lead. Mr Slabbert said that girls were not whipped because of the influence on the law of "Western civilization" which was concerned about the frailty and sensitivity of women.

Judge O'Regan retorted that Western civilization permitted a law which said that wives could be chastised by their husbands.

She said if whipping was regarded as an alternative sentence to keep youngsters out of jail in the absence of other alternatives such as correctional service, then the sentencing options available to girls were more restricted than for boys and girls were more likely to be sent to prison.

For the first time since the death penalty was abolished last month, the public gallery was full during Friday's hearing. Among those attending were 16 pupils from Pretoria Boys' High, all members of the school's society for national and international affairs. They were accompanied by the master in charge of the society, Steve Collier.

During the lunch break, the boys said that they had wanted to see the Constitutional Court in action because of its importance to every member of society.

They decided to attend this particular case because it was also relevant to the issue of corporal punishment at schools.

"At our school, as at many others, corporal punishment is meted out every day," said one boy. However, most of the group were adamant that they would not like "cuts" to be scrapped at school because they preferred this method of punishment to the alternatives, which included gardening.

One pupil, Moroko Ramatsi, however, expressed concern that if corporal punishment were abolished "all the guys will just go mad and do their own thing."

His colleague, Werner Ebenel, said that "cuts" should continue at school, but "it is taking things too far when police lash someone till he bleeds."
Government bigwigs slug it out over small print in the Truth Bill

The Truth Commission has been criticized for being too lenient on those accused of war crimes. President Thabo Mbeki questioned the commission's decision to grant amnesty to war criminals. Mbeki's supporter, State President Thabo Mbeki, argued that the commission should be more aggressive in its investigation of war crimes.

People from Natal would feel that their lives were threatened.

Caucus did not need a heavy hand to knock it into shape.

Thabo Mbeki... questioned scrapping of amnesty clause.

People from Natal would feel that their lives were threatened.

Caucus did not need a heavy hand to knock it into shape.
Whipping fayed by law group

BY HELEN GRANGE

The effectiveness of whipping as a sentence for juvenile offenders has been discredited and is, at best, improved, the Constitutional Court has been told.

It was during argument on Friday by Lee Bozalek of Cape Town's Legal Resources Centre that the LRC is seeking to declare section 234 of the Criminal Procedure Act unconstitutional on the grounds that it is cruel, inhumane or degrading punishment.

Bozalek also said corporal punishment was applied unequally in respect of race.

'Johannes' Slabbert, appointed by the court to argue in favour of whipping, said 'not only was whipping accepted and applied in tribal law, but the parents of juvenile delinquents often asked for this form of punishment.'
Court hears views on whipping

SPECIAL CORRESPONDENT

Johannesburg: The effectiveness of whipping, currently imposed by the courts as a sentence for juvenile delinquents, had been discredited and was at best unproved, the Constitutional Court heard on Friday.

The court was hearing argument by Mr Lee Bozalek of Cape Town's Legal Resources Centre (LRC), which is acting for five juveniles sentenced to whipping by a magistrate's court.

The LRC is seeking to have Section 294 of the Criminal Procedure Act, which allows for corporal punishment for males under 21 years old, declared unconstitutional on the grounds that it is a cruel, inhumane or degrading punishment.

Mr Bozalek argued that it violated constitutional rights in this and other respects, including the right to dignity and children's right to security and freedom from neglect and abuse.

Corporal punishment, he said, was applied unequally in South Africa in respect of race and gender and had disproportionately severe effects on physically and psychologically on the people it was applied to.

He noted that between 1987 and 1988 in South Africa, more than 40 000 people were whipped (112 a day). A study of juvenile offenders in two Cape magisterial districts by the National Institute for Crime Prevention and Rehabilitation in 1987 showed that children as young as 10 years old were being whipped.

Mr Bozalek added that many countries, many with less developed criminal justice systems, were managing their social problems without recourse to juvenile whippings.

Mr Johannes Slabbert, appointed by the court to argue in favour of whippings, said not only was whipping accepted and applied in tribal law, the parents of juvenile delinquents often asked for this form of punishment.

Other sentencing options such as community service were too expensive and exhausting on the state's resources.

Mr Slabbert said a jail sentence would be a worse punishment than whipping because of the likely subjection of the prisoner to physical abuse by other hardened criminals.

Judgment in the matter was reserved.
Sowetan Correspondent

LEGISLATION to establish the Truth Commission faces two critical hurdles this week.

Tomorrow Parliament’s multiparty justice committee will begin voting clause by clause on a draft of the Bill that legislators have been examining in the committee for several weeks.

When the committee finishes its task, the Bill will be forwarded to Wednesday’s regular fortnightly meeting of the Cabinet which will try to reach consensus on outstanding issues that were not resolved in the justice committee.

There are four outstanding issues to be bridged. These are: the cut-off date for amnesty, the period over which the commission will be active, secrecy and the so-called “Norgaard Principles” in terms of which the seriousness of offences for which amnesty is sought has to match the political objective for which they were committed.

The African National Congress’ parliamentary caucus meeting last week largely accepted National Party proposals for a pre-hearing procedure which could be held behind closed doors.

Some confidentiality

Although the caucus felt that the secrecy clause could be unconstitutional, it resolved that people coming forward to give evidence had to be offered some confidentiality as an incentive to testify.

On the second issue, that of the cut-off date, Justice Minister Dullah Omar has indicated he will not allow a shift in the date of December 5 1993 set down in the Constitution.

The NP, Inkatha Freedom Party and the Pan Africanist Congress have all asked for an extension to the date of President Nelson Mandela’s inauguration, May 10 1994.

On the third issue, that of the “Norgaard Principles”, the ANC has argued that the results of a crime committed with a political objective have to be commensurate with the political objective.

On the final issue, that of time-frames, the ANC wants the commission’s work to stretch over 18 months and not 12 months as the Bill presently states.

The debate in the National Assembly has been provisionally set down to begin next week.
Reconciliation Bill to be reviewed

By Ismail Lagardien
Political Correspondent

The cabinet is expected to make the last few adjustments tomorrow to the Promotion of National Unity and Reconciliation Bill, which provides for the establishment of a Truth Commission.

Meanwhile, the portfolio committees on justice in the National Assembly and Senate are expected to meet today to vote on the Bill — pending the cabinet decision on at least two critical issues.

There are powerful indications that two critical changes could be made to the Bill.

The cut-off date for crimes committed with a political motive and which the Truth Commission will consider, could be extended from December 5, 1993 to May 10, 1994.

A compromise could also be struck on the secrecy clause to encourage people to submit information on crimes committed with a political motive and which the Truth Commission will consider.

As it stands, all hearings are expected to be heard in camera but it has been submitted during protracted public hearings that secret hearings would not "heal the nation".

It was also argued that the secrecy clauses would not withstand a constitutional challenge.

But the National Party (and a number of ANC leaders) have put forward the idea that unless the hearings were secret, people will have problems with testifying.

The NP was particularly concerned about the likely effects open hearings will have on recurrent violence — especially in Natal.

The ANC caucus has apparently also come around to considering, at least, the idea that part of the hearings be in camera. The ANC's chief whip in the Senate, Mr Bulelani Ngcuka, has said it might be important to consider the argument in favour of secrecy.

"There has been a lot of pressure from civil society, with NGOs saying that they prefer to have the hearings open. There was also a suggestion that the present Bill was unconstitutional. We want to come up with a Bill that complies with the provisions of the constitution," Ngcuka said.

A compromise could be struck by allowing preliminary hearings in secret and subsequent court hearings in public. This seems like a likely outcome of the process.
Lay assessors help create ‘user-friendly’ courts

BY EUNICE RIDER

NEWLY appointed lay assessors to the Magistrate’s Courts have taken up their positions with the intention of making courts more accessible and user-friendly.

Justice Department Committee members Mr Bertus Jooste, chief magistrate of the Western Cape, and Mr Esma Moosa, a practising attorney, said yesterday about 2,000 lay assessors had recently been appointed to assist magistrates in determining whether facts as presented to the court were true, and whether sentences were fair.

‘Responsible’

Mr Moosa said more assessors would soon be selected in the nationwide bid to “open up” courts and positive talks had taken place with representatives of premiers of the various provinces.

He said the assessors were nominated by their communities and then interviewed by a committee of representatives from a broad cross section of communities, before being taken on for the “highly responsible” job of assessing in criminal trials.

Mr Moosa said magistrates would be encouraged to take two assessors at a time instead of one, because although the assessors did not take decisions on matters of law, two assessors could overturn a magistrate’s decision on whether a trialist could be found guilty or if someone convicted for a crime had been fairly punished.

Mr Jooste said all the assessors’ names would be placed on lists from which magistrates would draw on a rotation basis, and the assessors would not be employed by the Department of Justice on a permanent basis.

Mrs Maggie Gocin, 51, a Guguletu housewife, mother of two sons and grandmother of two baby girls, was nominated by the South African National Congress Organisation.

Mrs Gocin said yesterday she had assessed in various lower court cases, including traffic offences, possession of drugs, theft and assault, and felt her role was vital.

“I can explain things to people who appear here and are confused by the procedures and cultural differences. They are mistrusted but I can talk to them in a way they can understand — and they trust me.”

PEOPLE’S COURT: Attorney Mr Esma Moosa (left) and Western Cape chief magistrate Mr Bertus Jooste (right) are on the Justice Department’s committee to introduce lay assessors to assist magistrates in the lower courts. With them is one of the 2,000 new assessors, Guguletu housewife and community worker Mrs Maggie Gocin.

PICTURE: JACQ LE TRIADE
Magistrate’s courts’ civil limits to rise to R100 000

JOHANNESBURG — Civil jurisdictional limits for magistrate’s courts will be increased to R100 000 from R50 000 for liquid claims and R20 000 for illiquid claims on May 1, Justice Minister Dullah Omar said today.

This was in accordance with efforts by the government and the Justice Department “to ensure greater accessibility of the courts, and to enable more people to approach the less expensive magistrate’s courts,” Mr Omar said in a statement released here.

In addition to the “considerable” increase, the previous distinction between jurisdictional limits with regard to the different causes of action has been also abolished.

This meant that from May 1 a magistrate’s court would have jurisdiction in respect of civil actions up to R100 000.

These included actions on or arising out of any credit agreement, actions in which the delivery or transfer of movable or immovable property were claimed, actions on or arising out of a liquid document or mortgage bond, actions of ejectment against the occupier of any premises or land, provided that the right of occupation did not exceed R100 000, and other actions where the claim or the value of the matter in dispute did not exceed R100 000.

The increase also entailed that, in future, a magistrate’s court would also have jurisdiction in matters “in which specific performance, without an alternative claim of payment of damages, was sought” provided that:

- At the rendering of an account, the claim did not exceed R100 000.
- The delivery or transfer of property, movable or immovable, was limited to a value of no more than R100 000.
- The consent of the parties had been obtained at the delivery or transfer of movable or immovable property which exceeded, in value, the amount of R100 000. — Sapa
Crisis looms as magistrates' morale slumps

CLIVE SAWYER
Political Correspondent

ARG 29/3/85

A CRISIS is looming over the working conditions of magistrates, says Justice Minister Dullah Omar.

He said his department was co-operating with the Magistrates' Commission to solve the crisis.

The commission was set up by the previous government in a move to give magistrates independent status.

Mr Omar was replying to an interpellation debate in the Senate yesterday, requested by Rosier de Ville (Freedom Front).

Mr De Ville, citing a memorandum written to Mr Omar by a Durban magistrate, said morale was so low in the department of justice that there was talk of a strike.

Magistrates were overworked, understaffed, demoralised and underpaid and were looking for reasons to resign, he said.

Mohsen Moosa (ANC) agreed that officials were overworked and underpaid.

The budget allocation for the Justice Department was among the lowest.

James Selbe (DP) said that without magistrates and prosecutors, it would be impossible to maintain order.

Mr Omar said his department had a "very close and cordial relationship with the Magistrates' Commission."
ANC used short cuts, says NP

TYRONE SEALE, Political Staff

THE National Party has called into question the way in which at least 20,000 offenders, most of them ANC supporters, have been released from prisons or granted indemnity in terms of the Indemnity Act of 1990 and other means.

The Indemnity Act allowed opponents of F.W. de Klerk's government to return from exile or come out of hiding to negotiate a settlement following Nelson Mandela's release.

Yesterday, as the national assembly portfolio committee on justice debated the fourth draft of the Promotion of National Unity and Reconciliation Bill — which prescribes the objectives and workings of the proposed Truth and Reconciliation Commission — NP negotiators Dame Schutte and Jaco Maree told a Press conference that the ANC had taken a number of short cuts during the past five years to ensure indemnity and freedom for its members.

Among these cases had been that of Robert McBride, who had been serving a life sentence for the Magoo's Bar bombing on the Durban beachfront, and Jabulamul Khubeka, who had been granted indemnity after being convicted of assaulting Stompoe Sepe, who died as a result of an attack by members of Winnie Mandela's "football club."

Maree said the NP insisted that all those who had been given amnesty in terms of the 1990 act or subsequent measures should be brought before the Truth and Reconciliation Commission and should be subject to the Norgaard principles, used as the basis for indemnity during the transition period in Namibia.

The principles, which are still being debated as part of the Promotion of National Unity and Reconciliation Bill, deal with ways to determine whether an act or omission carried a political objective, and what the gravity of the act was.

In the case of Namibia, the principles excluded murderers from the categories of people who qualified for indemnity or release.

The NP wants the principles to be applied in the same way in South Africa.

Maree said yesterday that 77 senior ANC members, including many parliamentarians — among them the late Chris Ham and Joe Slovo — had been given temporary immunity from prosecution in terms of the Indemnity Act of 1990.

This period of grace would expire on May 17 this year, leaving high-ranking ANC officials vulnerable if the Norgaard principles were to be interpreted and applied in the strictest way.

Mr. Maree said a June 1992 stalemate in the Codesa multiparty talks had revolved around the denial of indemnity to some applicants because of the government's interpretation of the Norgaard principles. The ANC had said at the time that the principles had been applied too strictly.

Three months later 168 prisoners, among them Mr. McBride, had been released in terms of the Record Of Understanding, which was designed to get the ANC to return to the negotiating table.

The test applied to these prisoners had simply been whether their offenses could be related to the conflict of the past and whether their release would contribute to reconciliation.

This test had been much less stringent than that contained in the Norgaard principles.

In terms of this agreement, hard criminals — mostly murderers — had been freed.

The Further Indemnity Act of 1992 subsequently gave effect to the record of understanding and facilitated the reopening of applications which had earlier been refused.

By May 10 last year, the day of President Mandela's inauguration, 1,454 prisoners had been released in terms of the record of understanding, and 246 left prisoners after this date.

Mr. Maree said the Curren Committee, appointed last September to deal with applications for release lodged before May 6 last year, had not been authorized to reopen files but had granted indemnities for previously refused cases.

Mr. Maree said the NP wanted to know whether Justice Minster Dullah Omar had known that the Curren Committee had overstepped its mandate, what test had been applied, whether thus had been made public and what test the president had applied in granting indemnities.

These questions, based on information which the NP had painstakingly obtained after receiving no help from the ANC-dominated portfolio committee on justice, would be submitted to the committee for discussion before the finalisation of the truth commission bill, Mr. Maree said.
NEARLY R55 million has been allocated in this year’s national budget for use by the proposed Truth and Reconciliation Commission.

ANC MP Wilhe Hofmeyr told the national assembly portfolio committee on justice that between R50 million and R55 million would be at the commission’s disposal for use as it saw fit.

When this would happen was not clear.

As the committee continued its deliberations on the fourth draft of the Promotion of National Unity and Reconciliation Bill yesterday, NP chief spokesman on justice Danie Schutte said indications were that the bill would not be approved by the committee before the Easter recess, which begins the week after next.
MPs among 20 000 freed, indemnified

TYRONE SEALE, Political Staff
SENIOR African National Congress officials, including MPs and rightwing bombers, are among the estimated 20 000 offenders who were granted immunity or freed from jail during the past five years.

Those granted immunity on an individual basis include, in alphabetical order

- Pravin Gordhan (ANC), senior constitutional expert, who faced charges under the Terrorism and Arms and Ammunition Act, including recruitment, training and arming of people to seize power from the government, storing of arms and ammunition and explosives, setting up communications networks and possessing machineguns, rifles, limpet mines, hand-grenades and war material
- Henk Grosskopf (ANC), for planting a bomb in Johannesburg city centre on July 30 1987, in which 29 people were injured and 33 cars damaged
- Paul Johannes Kruger, (Orde van die Boerevolk), for causing an explosion at the NP offices in Pretoria in September 1890 and at the United States embassy at Waterkloof, Pretoria, a month later
- Michael Lumbambo (ANC), convicted of offences including planting two limpet mines at Cape Town airport, storing ammunition, grenades and limpet mines, possession of an AK 47 and a Makarov pistol
- Mac Maharaj (now Transport Minister), who faced Internal Security Act, Terrorism Act and Arms and Ammunition Act charges for his role in Operation Vula when he allegedly stored arms and ammunition and explosives, possessed machine guns, rifles, limpet mines, hand-grenades and other weapons, and infiltrated South Africa
- Gerhardus Petrus (Conservative Party) for arson at the Roman Catholic Church in Bokkenhoutfontein near Rustenburg in June 1989 and the possession of firearms, the importation, supply and possession of arms and explosives, assisting Piet "Skiet" Rudolph while the latter was a fugitive, and possessing an R1 rifle for handing to Piet Rudolph
- Billy Naur (ANC), now an MP, for his role in Operation Vula in which he allegedly smuggled and possessed arms and recruited and armed people to overthrow the government
- Sphiwe Nyanda (ANC), now head of the national defence force's integration programme, for alleged involvement in Operation Vula, including infiltrating the country, the storing of weapons and smuggling of explosives into the country
- Sphiwe Qila (ANC), convicted of placing a huge bomb — detected before it could explode — in a stolen car outside Dions shopping centre in Parow in July 1986. He caused two grenade explosions at private homes in 1987, and fired on police on three occasions
- Jenni Schreiner (ANC), an MP, who had been convicted of terrorism, including the storing and smuggling of weapons and explosives, and the planting of two limpet mines at Cape Town airport
- Lumka and Tony Yengeni, who were convicted along with Mr Schreiner. Mr Yengeni who is now an MP, is former leader of the ANC in the Western Cape
NEGOTIATING: Whither of the ANC and the political parties

Reminiscence

To recall the 1995 Truth and Reconciliation Commission (TRC) hearings on the atrocities committed by the apartheid regime, it is clear that the TRC was not able to adequately address the human rights violations.

On the issue of differences, the

ANC and the opposition parties

are divided on the issue of amnesty. The ANC argues for a broad amnesty, while the opposition parties are against it. This division has led to the delay of the final battle.

Truth Bill: Final Battle

Amnesty, Confidentiality and Critical Issues

The Truth Commission in its recommendations is divided on the issue of amnesty. The ANC and the opposition parties are divided on the issue of amnesty.
CLAIMS OF UP TO R100 000 MAY BE HEARD

Magistrate's courts changes welcomed

THE increase in the jurisdiction of magistrate's courts will make civil litigation cheaper, the Cape Law Society said yesterday. CLAIRE BISSEKER reports.

A DRAMATIC increase in the jurisdiction of magistrate's courts which will allow them to hear civil actions for claims of up to R100 000 has been welcomed by the legal community. Justice Minister Mr Dullah Omar announced yesterday that from May 1 the civil jurisdiction of magistrate's courts would increase from R50 000 to R100 000 for liquid claims (where it is known what amount is being claimed) and from R20 000 for illiquid claims (in which one has to prove the value of the claim).

Mr Omar said this was aimed at ensuring the "greater accessibility of the courts, and to enable more persons to approach the less expensive magistrate's courts." Cape Law Society president Mr Andries Landman welcomed the move. He said it was "definitely in the public interest and would certainly make litigation cheaper."

To litigate in the Supreme Court one needs an advocate and an attorney. Also, the process tended to be more time consuming, he explained. "Some advocates may feel it is taking away some of their bread and butter, but we must look at the public interest and not at those of any entrenched groups," he said.

Load

Senior advocates charge about R7 500 for the first day in court and R5 000 thereafter, but counsel fees can range from R1 000 to R15 000 per day depending on their seniority and the complexity of the case, a senior city advocate said yesterday.

Cape Bar Council president Mr Andre Bignall, SC, welcomed the increase "in principle" as it would lessen the load on the Supreme Court. However, he suggested it may have been better to phase in the increase.

Magistrate's Commission chairman Mr Justice K van Dijkhorst said although it would increase magistrates' workload, it was not excessive as it was "important" that jurisdictional limits kept pace with a degrading rand. The jurisdictional limits of civil courts were last increased in July 1991.
Omar takes swipe at Nats

BY ESTHER WAUGH
POLITICAL CORRESPONDENT

Cape Town — The NP has sought to delay and obstruct discussion within the parliamentary justice committee on the proposed Truth Commission Bill, says Justice Minister Dullah Omar.

He accused the NP last night of asking for information on the indemnity process and then "distorting that information for their own purposes."

The NP said it had experienced "enormous difficulties" in placing before the parliamentary justice committee information on the existing indemnity process.

NP MP Dane Schutte said his party had asked 10 weeks ago for information on the number of releases granted in terms of indemnity legislation.

The NP had been given "preliminary information" which excluded releases that have taken place since the April election.

Schutte said the parliamentary justice committee had denied an earlier NP request for further information.

It would not grant the NP an opportunity yesterday to present the information which had been gathered by fellow NP MP Jako Maree, he said.

Maree had said the information was necessary to evaluate whether the Norgard principles dealing with the relationship between a crime and the political motivation for committing such a crime should be included in the truth commission Bill.

Maree said these principles excluded amnesty being granted for murder.

"On the insistence of the ANC, they had been waived in the existing indemnity process, resulting in a benefit for "hundreds and thousands of ANC supporters," he said.

In his response, Omar said the Government of National Unity was being asked to provide information the previous government had failed to provide.

"Even more extraordinary, its members now seek to blame the ANC for a process they themselves maladministered and mismanaged," he said.
Divided views on death penalty

The survey, conducted by the Institute for Social and Economic Research, found that only 12% of white respondents from all the major metropolitan areas wanted the death penalty abolished, and 8% abstained. However, 49% of blacks felt the death penalty should be retained, and 34% felt it should be abolished and 17% abstained.

The researchers questioned 800 white women and 800 black women and 500 white men and 500 black men.

The general trend of respondents was: "There has been a fair amount of discussion recently, in the newspapers and on governmental level, as to whether the death sentence should be abolished. In the near future the new Constitutional Court will have to rule on this issue. In your opinion, do you think the death sentence should be abolished in South Africa?"
35 000 police start national go-slow

JACQUEM CAMERON
CRIME REPORTER

ABOUT 35 000 policemen have gone on a nationwide go-slow to press for more pay, the South African Police Union (Sapu) claimed last night.

In Pinelands hundreds of angry Peninsula policemen attended a meeting yesterday at which there were renewed calls for go-slow and boycotting after-hours work.

A Cape Times check of 12 police stations last night showed that only two — Athlone and Blue's River — had stopped attending to complaints, except when complainants came to the police station in person.

In response to inquiries, Western Cape Police Minister Mr Patrick McKenzie said this was "not too bad considering there are 200 police stations in the region."

An Athlone policeman said "We are on a go-slow and have the support of some of the officers. They are not patrolling. They are just standing around."

A Cape Town policeman said members at the station would "probably go on a go-slow" today.

Sapu spokesman Mr Andy Miller said there was "chaos in the ranks" but union members were now determined to work only eight-hour shifts.

Sapu national secretary Mr Peter-Don Brandt warned of tougher industrial action unless the government responded swiftly to police demands for "fair" salary increases.
The Norgard Principles

still in the dogdrums

Truth commission

Conspiracy continues

[Image]
JEWISH spouses who use religious rules on divorce as leverage in settlement negotiations could be disarmed by legislation proposed by the Law Commission.

In a report tabled in parliament, the commission has recommended giving wide powers to courts to make "just" settlements.

These would be made where "one of the spouses refuses to co-operate in releasing the other spouse from marriage bonds existing in terms of the rules of religion."

Draft legislation by the commission does not mention any religion by name.

"It was drafted after an investigation appointed by the government in 1989, at the request of former MP Harry Schwarz."

"Traditional Jewish law requires that a divorce takes place even if a marriage has been dissolved by a secular court."

The commission said it seemed to be common for Jewish couples not to proceed with a Jewish divorce after a secular divorce.

"Limping marriages are established in this way."

Reasons for not proceeding with a religious divorce could include one of the spouses being untraceable, or refusing to deliver or accept a traditional writ of divorce.

"Jewish spouses frequently use the religious divorce requirement as a bargaining tool to obtain concessions regarding child custody, access, monetary support or any other benefit."

"Jewish husbands seemed to be in a better bargaining position, the commission said."

"They regularly abuse divorce negotiations to obtain favourable property or custody settlements."

The wife was faced with giving in to her husband's demands or, if refusing, becoming an agunah.

An agunah is the wife of a man who is missing and presumed dead, but without witnesses to testify to his death, or the wife of a man who refuses to deliver a letter of divorce to her. She cannot remarry, as this constitutes adultery.

Children born of the second marriage would be illegitimate and banned from marrying orthodox or conservative Jews.

The commission rejected suggestions that Jewish law be changed.

The commission said it had distributed 400 copies of its proposed legislation throughout South Africa. There had been 34 responses, 21 unreservedly favourable.
Sparks fly over truth bill

CLIVE SAWYER
Political Correspondent

THE National Party and African National Congress are close to a top-level agreement about controversial clauses in truth commission legislation.

The bill could be discussed by the cabinet next week.

But sparks are flying between the same parties in the national assembly's justice committee.

Earlier hopes that legislation would be passed in this parliamentary session - which ends next week - seem to have been dashed.

The ANC has accused the NP of dragging its heels and turning the committee's clause-by-clause debate on the bill into a tortuous process.

ANC MP and member of the committee Willie Hofmeyr said the Nats had been using the wrangling over the bill as a prolonged opportunity for media publicity.

Justice Minister Dullah Omar said the NP had perpetrated some 'gross distortions' in its propaganda campaign about the bill.

But, he said, discussions between NP and ANC members involving controversial clauses - about secret hearings and whether the Norgaard principles should be applied - were close to producing a solution.

"When I look at reports of what happens in the portfolio committee, I wonder whether I am dealing with the same party," said Omar.

The two parties have disagreed on:

- The cut-off date for amnesty;
- The definition of acts associated with a political objective;
- Secrecy provisions for the amnesty committee;
- Admissibility of certain evidence;
- Mechanisms for appointing commissioners.

Mr Omar poured scorn on claims that his department had refused to release information about the history of the process to the NP.

"All information that the department has, has been made available," he said.

He mocked an NP request which had requested "further particulars' such as copies of the Groote Schuur Minute and Government Gazette relating to indemnities.

These were public documents, and users of the parliamentary library would be able to find the relevant gazettes in a few minutes.

"Maybe they (the NP) don't know how to use the library," he said.

It was a gross distortion to say that many ANC people had benefited from indemnity of the basis of no criteria.

"The issue of criteria arises only in individual applications, where violence including injury and death are factors.

"In the 14000 category-based applications, there was no violence, death or injury."

Criteria had been applied in the hundreds of cases where the NP government had turned down applications.

Mr Omar's criticism of the NP was a sign of continuing ANC frustration.

This week, justice committee chairman Johnny de Lange appeared considerably irritated in exchanges with NP member Sheila Camerer.

At one point, in a debate on the reparations clause, he said she appeared to be contradicting her own party's policy.

Mrs Camerer objected to what she saw as Mr Hofmeyr's proposing a change to the way reparations would be handled.

Mr De Lange said it seemed she was challenging something to which her party had already agreed.

Dene Smuts of the Democratic Party said members appeared to be misunderstanding each other.

Another NP member of the committee, Rudolph Groenewald, said his party did not want changes to the clause, but he said Mrs Camerer felt that what Mr Hofmeyr was proposing was something new.

The committee endured some marathon sessions, sitting many full days, and on Thursday sitting until about 10pm.

Mr Omar said the NP members in the committee had persisted in raising the issue of the police who failed to get amnesty.

He said the NP had suppressed information about these abortive applications.

"We have been informed by top leaders in the NP they were not aware," said Mr Omar.

"If this is true it does not say much for the way the process was supervised."

The list of 3500 applications had included a cabinet minister and the country's top policeman, General Johan van der Merwe.

"In any civilised society when the highest officer in the police finds it necessary to apply for indemnity the implication must be that he has committed an offence," Mr Omar said.

It was hard to believe the government of the day had not known about the applications.
THE FIRST SIX WEEKS OF THE ‘MAGNIFICENT ELEVEN’

By CARMEL RICKARD

During the first case heard by the Constitutional Court, the 11 judges were told that their function was to be a watchdog. Justice Ismail Mahomed, master of the pithy retort, commented “Yes, but what do I do as a dog? When do I bite?”

Until the court hands down some decisions, the public cannot know how the judges will answer that question, the texture, sophistication and depth of the court’s approach to the law still remains unknown. But over the six weeks of its first term, a clearer picture has emerged of the individual judges: their style, their legal philosophy, the influence of their backgrounds and, more recently, their approach as a team.

Several judges created strong impressions right from the beginning. Most of these impressions have been confirmed over the last two months, but there have been some shifts in balance.

For example, by the end of term Justice Sydney Kentridge, while still more restrained than those around the horseshoe Bench, entered the discussion more often than in the first case when he seemed astounded at the vigour of some judges’ debate.

One senior lawyer, who was in court at the beginning and end of term, points to a broader change. He says that the questions posed during the first case undid the diversity of judges’ backgrounds, experience, temperament and knowledge of constitutional law. Some had clearly read and digested the Constitution thoroughly, others seemed to have a more casual acquaintance with the text and had not thought through certain key issues.

“Six weeks later, it is clear that they have all caught up. There is a far more even sophistication of approach, although views still differ, often wildly.” He predicts the judges will be quickly synthesised into a very effective body of considerable standing.

The court is still dominated by judges Mahomed and John Dadoo, whose clear, colourful style of argument often provides the most dramatic moments. But judges Albie Sachs and Johann Kriegler enter the debate almost as freely, although with a completely different approach. Justice Kriegler banks out memorable one-liners like his trademark on juvenile whipping “Why don’t you burn them under the armpits with cigarette butts?” Justice Sachs is more tentative, often prefacing his remarks with comments about the nature of the “suggestion” or “contribution” he is about to offer. He voiced unease on a court which dealt with whether a court may sentence juvenile offenders to be whipped. He pulled the debate into two subjects not envisaged before.

Both issues showed the value of appointing judges from a wider range of backgrounds than has been the practice.

When Sachs asked for an explanation of why girls were not whipped, Justice Kate O’Regan clearly examined the answers to his question and pointed out underlying inconsistencies or sexist assumptions which discriminated against females and left them worse off.

The case was not specifically about discrimination against women, yet the interchange — the first about gender issues since the court began its work — added depth to the debate.

Without strong women among the judges, this critical voice challenging many traditional assumptions about women and gender issues, would not be heard.

During the same case, Justice Yvonne Mokgoro and Justice Thole Madala pounced on another point by counsel. They asked whether “standards of civilization” were embodied in the Constitution and whether the court was supposed to impose two sets of criteria “western” and “tribal”.

Again, their background prompted them to challenge assumptions which might have passed unchallenged on a court where members all belonged to the same race, sex or class.

A thread running through a number of cases has been how far the judges should be influenced by public opinion. The Constitution says they must promote the values underlying “an open and democratic society based on freedom and equality”. But in the four cases so far, the judges have been more concerned that the values and views of an “ideal” democratic public, even if they differ from current public opinion, be heard.

In several cases, one side or the other has urged the judges to hear in mind what public opinion polls show or might be likely to prove on particular issues. They have also been urged to stand above popular opinion and act as a brake on the sometimes unruly or irrational passions of society.

On one occasion, during a debate on the role of public opinion, Judge Dadoo commented “We are here to interpret the Constitution, not to conduct a poll among members of the public.”

But his remark merely outlines the problem. The question of the weight, if any, that the court should give to public views when interpreting the Constitution, is, like the debate on gender and “standards”, as yet far from settled.

Early on, some prophets forecast an unmanageable flood of cases So far the flood has not materialised there is no dammed up backlog, and a case ready for hearing can be in court within three months of reaching the registrar.

Judge President Arthur Chaskalson said this week that the workload was manageable, but that the backlog and number of cases heard each term could increase in the future.

While the Appeal Court hears about 200 cases a year, the Constitutional Court could manage about 500. This is because the Appeal Court judges sit in panels so that several cases can be heard in one day. The Constitutional Court sits al一个人s for each case.

This has meant imposing a strict time limit on lawyers, many of whom are used to delivering argument often at a snail’s pace. So far they have kept to the time limit and, as each case has finished crisply on schedule.

The serious overcrowding in the court during the death penalty hearing has been eased. However there is always room for the public. At least one school has sent a contingent of pupils to watch the court in action, a visit welcomed by Judge Chaskalson who said he hoped other schools would follow suit because it was essential for everyone to learn about the Constitution and their rights.

There has been one challenge to the legitimacy of the court — by counsel for the Black Advocates’ Forum, Frances Davids, who suggested that since the new Constitution was drawn up following a flawed process, its creators, including the court, were suspect. Her view was neatly dealt with by black judges on the Bench, and it has not been raised again.

The Constitution says the court should consider judicial decisions in open and democratic societies. But there were signs during this term that while the judges were keen to hear what others had said, and would hear these decisions in mind, they were just as keen to develop a uniquely South African form of constitutional interpretation.

Judge Chaskalson said he could not say when the first judgment would be given, or what the average delay would be between subsequent decisions. It would depend on the complexity of the case and the issues raised.

No convention has yet emerged for choosing which judges will write which decision, but it is clear that informal arrangements will develop. It is done on an ad hoc basis, with the writing shared out among the 11. "We arrange for a draft to be prepared for discussion," said Judge Chaskalson. "Then either the person who has done the draft will go ahead on the basis of the discussions, or others will write their separate views."

He said as soon as a judgment was ready, all parties would be informed and it would be handed down in open court, whether it was a formal court day or not.

A SKED whether he would prefer his colleagues to reach consensus where possible, he said that minority views ought to be expressed and that this would be the case in the Constitutional Court. “If the judges are not unanimous, full majority judgments will be given. No one will separate concurring judgments if necessary. Anyone will be free to do so.”

Judge Chaskalson said he had also been delighted that Justice Kentridge had been moved to the court for its first term, standing in for Justice Richard Goldstone who is prosecuting Bosomvuyo in The Hague. "Judge Kentridge is one of the greatest lawyers ever produced in South Africa," he said.

At this stage, however, it is not clear whether anyone will be filling the eleventh slot during the short second term, particularly since there is likely to be only four cases heard during that session.

Judge Chaskalson said he did not find it a problem that politically sensitive cases, on which the government had taken a firm position, were referred to the court, such as the death penalty, juvenile whipping and unconstitutional national debt. He said all constitutional courts had to deal with disputes about whether legislation was constitutional and it was important for our eye on what the government is doing. Nor should we," he declared.
JUDGE ARTHUR CHASKALSON: tackling sensitive issues
Magistrates poised for pay revolt

BY BRENDAN TEMPLETON

Magistrates' frustrations over working conditions are threatening to disrupt the justice system, and some officers in the Cape Peninsula are threatening to start a go-slow today.

Many hold LLB law degrees but are earning only R38 000 a year.

Their workloads are set to increase on May 1 when new legislation comes into effect.

The Magistrates' Association central committee last week held a crisis meeting after news leaked out that many of its members were threatening to take "drastic action".

The Ministry of Justice is said to be extremely concerned with the reports and Justice Minister Dullah Omar has warned that a crisis is looming.

From May 1 magistrates will be empowered to hear civil cases involving amounts up to R100 000 — double the limit now.

The Association of Law Societies has warned that this could worsen magistrates' problems. Society president Tony Hardy said in a statement that "unless the crisis faced by the Department of Justice on the salaries and job conditions of magistrates is resolved quickly and effectively, the Magistrates' Courts' rolls will become more congested."

He has urged Omar to consider a proposal that attorneys be appointed as acting magistrates.

Magistrates' Association president Jan Venter said the organisation would decide on Friday whether to take any action.

Members had been requested not to start wildcat action, but magistrates in the Western Cape are planning to embark on a go-slow today.

One magistrate, who did not wish to be named, said "at least 50" would join the action which would also include working to rule and refusing to do administrative work at satellite courts.

Venter said the magistrates' grievances were receiving urgent attention at ministerial level, but he warned that feelings were running high.

The increase in the jurisdiction of Magistrates' Courts has been welcomed by the Association of Law Societies.

Tony Hardy, president of the association, which represents more than 9 000 practising attorneys, said, "We have for years been arguing for a drastic increase in the Magistrates' Courts' jurisdiction, so this is welcome news."

"The general public will have easier access to courts, especially in the country areas, and the cost of litigation will be less than that in the Supreme Court."

Hardy warned that unless the Department of Justice quickly resolved the crisis surrounding the salaries and working conditions of magistrates, the court rolls would become even more congested. He urged Omar to consider appointing attorneys as acting magistrates to assist in hearing matters in the Magistrates' Courts.
St James: State calls for life

PATRICK FARRELL
Supreme Court Reporter

THE State has called for a 19-year-old PAC member to be sentenced to life imprisonment for his role in the attack on St James Church.

Geumkhaya Makoma, a Guguletu schoolboy, was found guilty last week on 11 murder charges, attempted murder and illegal possession of guns and ammunition.

The court found that Makoma was one of a gang who attacked the St James Church congregation in Kenilworth on July 25 1993 with automatic rifles and handgrenades.

Today the court heard evidence by the State and defence for sentencing.

State Advocate Wilie Viljoen said Makoma "deserved the heaviest possible sentence.

He said that many of the people who were in the church had had to undergo psychiatric treatment after the attack.

"A church is the softest target imaginable and is a spiritual place where a person feels closest to his Maker."

The courtroom was packed today with Makoma's supporters.

Makoma, dressed in a white T-shirt and woollen cap, looked relaxed as he sat in the dock and chatted to supporters.

Makoma's counsel, Siraj Desai, said he could not put any signs of regret or remorse before the court because Makoma continued to protest his innocence.

"I concede the offence was a horrendous act and its impact will be felt in the life span of many people," Mr Desai said.

But he said the attack on the church could only be understood within the peculiarities of South Africa. "The offence was not committed in a normal society."

Mr Desai said Makoma had grown up as part of the struggle and had been twice disadvantaged by being black and poor.

He said Makoma had joined the PAC at the age of 15 "to participate in the struggle for freedom."

Makoma had told him that he had joined the PAC because of two important moments in his life — one when he was nine and was assaulted by policemen and another when a friend and his family were "wiped out by white policemen."

Mr Desai said the attack on the church was carried out when there was tremendous tension in the country.

Proceeding

Mr Justus Marais is on the Bench and Wilie Viljoen appears for the State.
Interdict on subsidy cut

UMFATA — A Transkei Suprme Court judge has granted an urgent interdict preventing the national government from reducing housing subsidies to civil servants by half.

Mr. Acting Justice Selwyn Mullan ruled that the government should view the judgement by Mr. Acting Justice J N Moodley.

The Transkei Public Servants Association took the matter before judge Moodley to court when the government announced it was cutting the R1200 monthly subsidy.

Sapa
Western Cape magistrates may start go-slow today

JOHANNESBURG: Magistrates' frustrations over working conditions are threatening to disrupt the justice system, and some officers in the Cape Peninsula are threatening to embark on a go-slow today.

Many hold LLB law degrees, but are only earning R33 000 annually and their workloads are set to increase on May 1 when new legislation comes into effect.

The Magistrates' Association central committee last week held a crisis meeting after news leaked out that many of its members were threatening to take "drastic action" because their grievances had not been addressed.

The Ministry of Justice is reportedly extremely concerned with the reports and Justice Minister Mr Dullah Omar has warned that a crisis is looming over magistrates' working conditions.

From May 1, magistrates will be empowered to hear civil cases involving amounts of up to R100 000 — double the existing limit for claims.

The Association of Law Societies has warned that this could further exacerbate magistrates' problems. President Mr Tony Hardy said in a statement that "unless the crisis faced by the Department of Justice on the salaries and job conditions of magistrates is resolved quickly and effectively, the Magistrate's Courts rolls will become even more congested than they already are."

He has urged Mr Omar to seriously consider a proposal that attorneys be appointed as acting magistrates.

Magistrates' Association president Mr Jan Venter said the organisation would decide on Friday if it was going to take any action to highlight members' grievances.

Members had been requested not to start wildcat action, but magistrates in the Western Cape are planning to embark on a go-slow today.
Single national legal system likely for SA

Political Correspondent

A SINGLE national judicial system seems on the cards for South Africa.

This emerged at a constitutional committee meeting yesterday.

But complete consensus on this and other aspects of a future legal system appeared to be a long way off, with the Inkatha Freedom Party challenging agreements by other parties and the legal profession.

The IFP, which has said it will quit constitutional negotiations on Thursday unless firm action is taken to implement international mediation on outstanding issues, was in the thick of yesterday's debate.

At issue was a report from a constitutional assembly theme committee on the future of the judiciary.

The IFP said there should be provincial courts with a say over matters of provincial jurisdiction.

The IFP said the recommendation to give the appellate division power to hear constitutional cases would diminish its status and that of the constitutional court.

On a proposal to allow magistrates' courts to deal with constitutional matters, although not to be able to decide on the validity of legislation, the IFP said magistrates' courts should be a provincial matter.

There should be provincial constitutional courts.

Debate on recommendations for provincial courts should be put off until the Hoexter Commission, appointed by Minister of Justice Dullah Omar last week, had reported, the ANC said.

Constitutional committee chairman Cyril Ramaphosa ruled that there was sufficient consensus that there should be a single national legal system.

This clause could go for drafting, he said.

The issue will be debated in the constitutional assembly, which will meet on April 26.

The assembly has until May next year to produce a new constitution to come into effect in 1999.
Single, national legal system wins favour

CAPE TOWN — SA's new constitution is likely to provide for a single, national legal system, despite objections from the Inkatha Freedom Party — following debate in the constitutional committee yesterday.

While the committee agreed to refer the matter to the full constitutional assembly, which includes all MPs and Senators and has final say on constitutional matters, all parties aside from Inkatha agreed that a single legal system was preferable.

Inkatha argued yesterday that regions should have their own provincial court structures which would rule on matters falling within the competency of provincial governments.

Constitutional committee chairman Cyril Ramaphosa said Inkatha had the opportunity to canvass support for its views while the clause was being drafted and could state its attitude during the full assembly debate.

MPs said many of the decisions reflecting the characteristics of SA's future judicial and legal system would be influenced by other debates on the relationship and distribution of powers between central and provincial governments.

Inkatha had suggested, for instance, that each province have its own constitutional court to rule on matters pertaining to provincial constitutions.

The ANC decided last weekend that regions it controlled would not be framing provincial constitutions.

Whether or not provision for provincial judiciaries is incorporated into the constitution has a bearing on the ambit of the Constitutional and Supreme courts, the Appellate Division, magistrates' community and other courts.

Technical experts were asked by the committee to investigate whether details regarding these structures, rather than broad outlines, should be included in the constitution or adopted as legislation.
Funds needed to ease strain on UIF coffers

WIDENING the scope of the Unemployment Insurance Fund (UIF) to include high earners would boost contributions by about R88m a year, National Labour and Development Institute (Naide) senior researcher Ravi Naudo said yesterday.

Speaking at a social welfare conference in Johannesburg, Naudo said a recent Naide survey suggested a payments boycott by employers as contributions had dropped by 25% during the past two years, well above refresherment estimates.

Stopping this gap was essential to ensure the fund continued to meet demands.

Sharing the same platform and speaking in his personal capacity, Labour Ministry official Gerard van Wyk said other funding methods should be urgently sought to ensure the UIF could meet the basic needs of SA’s estimated 32% of children for which no UIF benefits are paid. He suggested extending the fund’s scope to job placement, training and retraining.

A recent survey suggested that an unemployment policy which paid the jobless a little more than the poverty datum line would cost the state R83bn a year, almost half its current tax revenue, Van Wyk said.

Plans to eradicate social welfare fraud

URGENT measures to eradicate social welfare pension leakages were in the pipeline as estimates suggested about R1bn a year was lost through maladministration and fraud, Welfare and Pension Development Minister Abe Williams said yesterday.

Addressing delegates to a conference near Johannesburg exploring SA and German social security provisions, Williams said task teams would be established to conduct random tests of welfare payments to identify where leakages had occurred.

Any payment officials suspected of fraudulent activities would be handed to the police for immediate prosecution and complaints would be investigated in collaboration with provincial authorities.

Western Cape University economics head Pieter le Roux said a recent study confirmed that welfare fraud totalled about R1bn a year and was escalating.

Williams said government was revising the social security system to rationalize and consolidate the plethora of legislation into a single statute. Complete parity would be achieved soon and a single database of recipients would help eradicate fraud.

Magistrates’ go-slow is put on hold

CAPE Peninsula magistrates, who threatened to start a go-slow yesterday, would abide by a Magistrates’ Association of SA decision not to embark on the action until a meeting on Friday, association president Jan Venter said yesterday.

Venter was reacting to media reports that they would begin a go-slow yesterday.

A central committee meeting of the association on Thursday, however, requested that Mitchell’s Plan magistrates should not embark on the action until all members had been consulted.

Venter said magistrates’ grievances revolved “mainly” around salaries, but the circumstances of their employment was also an issue as they were carrying a “heavy workload”.

He could not comment on what the outcome of the meeting would be, but said “Magistrates are very responsible people and would not doing anything drastic.”

Sapa reports two Western Cape chief magistrates say their courts had not been affected by go-slow.

Bertus Jooste, responsible for the West Coast and Karoo, and Jaco van Reenen, responsible for Mitchell’s Plan to George, said courts were functioning normally.
Helen Suzman named for Human Rights Commission

Nominees are sharply divergent

CLIVE SAWYER
Political Correspondent

HELEN Suzman is among nominees to the Human Rights Commission by a parliamentary joint committee.

The veteran civil rights campaigner and former Progressive Federal Party MP is on a list of commissioners from sharply divergent political backgrounds announced in parliament yesterday.

Those nominated are:
- Brigalia Bam, general secretary of the SC Council of Churches,
- African National Congress MP Max Coleman, a founder member of the Detainees' Parents Support Committee and in 1988 of the previous Human Rights Commission, will have to resign as an MP to take up the appointment,
- Chris de Jager, a former judge and Conservative Party MP,
- Charles Dlamini, rector of the University of Zululand,
- Karthigasen Govender, a legal consultant at Natal University's community law centre and an Independent Mediation Services of SA mediator,
- Rhoda Kadahe, gender equity officer at the University of the Western Cape,
- S Mabusele,
- Barney Pityana, theologian at the University of Cape Town and a long-time campaigner against racism,
- Anne Routier, a National Party delegate to Codesa and spokeswoman for its gender advisory committee, and
- Pansy Tlakula, acting director of the Black Lawyers Association.

The constitution requires the commission to promote the observance of and respect for human rights.

The commission will make recommendations to all levels of government on "progressive measures" to promote human rights.

It will be able to ask any organ of state to supply it with information on any legislative or executive measures adopted by it relating to fundamental rights.

The commission will investigate alleged violations of human rights, on its own initiative or after a complaint.

It will help complainants "in so far as it is able" to get redress.

The nominations will have to be approved by a 75 percent majority at a joint sitting of the national assembly and senate.

Secrecy clause to be ditched

Cabinet rules on disputed truth Bill

CAPE TOWN — Cabinet gave vital impetus to establishing SA's truth commission yesterday by ruling on controversial aspects of draft legislation which had divided the parties and threatened to bog down the process.

After an emotive appeal from President Nelson Mandela to speed up finalisation of the Promotion of National Unity and Reconciliation Bill, Cabinet took decisions on measures ranging from the secrecy clause and cut-off date to the appointment of the truth Commissioners.

The secrecy clause, which was initially appended to the Bill by Cabinet, was ditched by the executive yesterday.

Cabinet spokesman Jakes Gerwel said all hearings of the committees making up the truth commission — the amnesty committee, the reparations and rehabilitation committee and the human rights violations committee — would be held in public.

Cabinet agreed that if the perpetrators of human rights violations applied to have hearings conducted in private, this request would be considered at a pre-hearing.

If the amnesty committee concurred that testimony given in public would be contrary to the administration of justice or constituted a threat to life, provisions would be made to hear evidence in camera. This would apply to cases where "gross" violations had occurred and would also apply to hearings of the human rights violations committee where a clause was required to prevail, Gerwel said.

Cabinet in the form of a bipartisan committee made up of Justice Minister Dullah Omar, General Affairs Minister Chris Fismer, Constitutional Affairs Minister

ADRIAN HADLAND

Roelf Meyer and Water Affairs Minister Kader Asmal, also agreed not to move the cut-off date for amnesty applications beyond December 5 1993.

This means all political crimes committed after that date, including the PAC's attack on the Heidelberg Tavern, the Shell House shootings, the right-wing, pre-election bombing campaign and various acts of violence in KwaZulu/Natal, will not be entitled to amnesty.

Despite arguments that Parliament, a special committee or the leaders of all political parties should appoint the 12 to 15 truth commissioners, Cabinet agreed the President would undertake this "in consultation" with Cabinet, Gerwel said.

The Norgaard principles would also be kept in the Bill. The principles, which dictate that serious crimes such as murder should not receive amnesty, had been a particular sticking point within the justice committee, Cabinet and the ANC.

A compromise was fashioned, however, so that applicants who had committed serious crimes could ask for previous indemnity legislation — which was passed in 1990 and 1992 — to be taken into account. This means it is unlikely the principles will be applied to their "gross" violations.

Meanwhile, the national assembly's justice committee continued to work on the Bill's fourth draft yesterday. However, Cabinet's resolution of the controversial elements will speed up the process. The Bill is expected to be tabled in late April or early May with the truth commission coming into full operation around July.
Nominations for human rights body

CAPE TOWN — A multiparty parliamentary committee yesterday released the names of 11 people, including former MP Helen Suzman and serving ANC MP Max Coleman, it would recommend for SA’s new human rights commission.

The commission, which is being established in accordance with the interim constitution, is essentially a watchdog body charged with investigating complaints of human rights abuses and promoting the observance of, respect for and protection of fundamental rights in SA.

The 11 candidates must be approved by two-thirds of a joint sitting of the National Assembly and Senate before being formally appointed by the President.

The other candidates are the SA Council of Churches’ and women’s rights campaigner Brigitte Bam, University of Zululand rector Charles Dlamini, Natal University law lecturer Kartay Govender, National Council for Children’s Rights director Shirley Malbusa, University of the Western Cape gender equality unit director Rhoda Kadalle, University of Cape Town Christianity institute senior researcher Barney Pityana, Black Lawyers’ Association acting director Pansy Tshakala, former President’s Council member Anne Routier and former CP negotiator and MP Chris de Jager.

The commission will elect its own chairman.

According to the constitution, the commission will be responsible for developing an awareness of fundamental rights in SA and will examine legislation to ensure it is consistent with international human rights law. It will be able to investigate complaints of alleged human rights violations and assist in the securing of redress.

It can make recommendations “to organs of state at all levels of government where it considers … action advisable for the adoption of progressive measures for the promotion of fundamental rights”.

Parliament is expected to vote on the nominations during its next session beginning later this month.

Report crackdown bears fruit

CAPE TOWN — A crackdown on the late delivery of government institutions’ financial reports had resulted in significant progress in tighter monitoring of bodies ranging from local authorities to agricultural control boards. Auditor-General Hein Kluver said yesterday.

In his special report on outstanding financial statements and incomplete audit reports, which was tabled in Parliament, Kluver said these had declined by 26% from 978 in the year ending 1 July 1992 to 414 in the year to 30 June 1994.

Of the 414, 157 represented financial statements still not received more than 9 months after they were due while 257 had been received with audits incomplete.

Institutions contributing to the figures included almost 300 local authorities, 17 regional services councils, 4 hospital boards and 30 local councils.

Kluver said pressure was being continually applied at a high level to ensure the institutions compiled with deadlines. This included the empowering of directors-general to act against the CEOs of local authorities.

Adrian Hadland

Auditing staff had also been exchanged among centres to ensure their optimal utilisation and to dispose of backlogs.

All possible efforts would be made to ensure the backlog of 414 institutions was substantially eliminated in the current financial year, Kluver said.

The inability of smaller institutions to submit statements, the deficiency of these statements when they were submitted and “strikes, labour unrest and the general indifference of staff in the former self-governing territories and TBVC-states” complicated the situation.

In a second report on the Multilateral Motor Vehicle Accidents Fund, which was also tabled in Parliament yesterday, Kluver confirmed the findings of the fund’s annual report for 1993/94 which indicated an operating loss for the year of R84.6m.

Although the fund could meet its current expenses on a cash basis, the actuarial deficit by April 30 1994 had risen to R4.4m.

Earlier this year, the fund’s board called for a more regular review of fuel levies.
Accord will enable township in

Whites in favour of death penalty

MOST white South Africans want the death penalty to be retained while blacks are divided on the issue, a nationwide poll by the Research Surveys group shows.

The group said yesterday that 80 percent of whites interviewed felt the death penalty should be retained, 12 percent felt it should be abolished while eight percent abstained.

The survey also showed that 49 percent of blacks felt it should be retained, 34 percent thought it should be abolished and 17 percent abstained.

Thousands of respondents were drawn from major metropolitan areas across the country for the survey.

The poll also showed that Afrikaans-speaking white men wanted to retain the death penalty more so than their English-speaking counterparts.

There has been a moratorium on the death penalty since 1990, when political negotiations between the then white minority government and black liberation movements started. Since all-race elections in April last year ushered in a power-sharing government and an interim constitution, the prickly issue of capital punishment has been referred to a newly-created constitutional court for debate.

The court is expected to rule in May on whether the death penalty is constitutional or not. A dramatic increase in crime and violence in South Africa has frightened a number of white lobby groups into calling for the gallows in Pretoria to be utilised once again. — Sapa-APP
Nominees for HRC named

A FINAL list of 11 candidates for the Human Rights Commission, including former MP Mrs Helen Suzman and women's rights activist Ms Bongatla Bam, was released yesterday.

The list, drawn up by a multi-party parliamentary committee after several weeks of hearings, has to be approved by at least 75 percent of MPs in a joint sitting of the National Assembly and Senate.

Formally appointed

The commissioners will then be formally appointed by President Nelson Mandela.

The full list is: Ms Bongatla Bam, deputy head secretary of the South African Council of Churches and a women's rights activist; Dr Max Coleman, ANC MP; Mr Chris de Jager, former MP and chief negotiator for the Conservative Party before his resignation from the party; Professor Charles Dlamini, Rector of the University of Zululand; Mr Karthay Govender, senior public law lecturer at the University of Natal; Ms Rhoda Kadane, Director of the University of the Western Cape gender equality unit; Ms Shirley Mabusela, Director of the National Council for Children's Rights; Mr Barney Pityana, senior researcher at the University of Cape Town's Research Institute on Christianity in South Africa; Ms Anne Routte, former member of the President's Council; Suzman, former MP and veteran human rights activist; and Ms Pansy Tlakula, acting director of the Association of Black Lawyers.

The multi-party committee did not suggest a chairman for the Commission.

If Parliament does not approve a nominee, the committee will put forward another candidate. — Sapa
Admissibility denied by Constitutional Court

Landmark ruling on written confessions

The Constitutional Court yesterday handed down its first decision when it invalidated a section of the Criminal Procedure Act dealing with the admissibility of confessions at a trial.

Mr Justice Sydney Kentridge said the ruling invalidated section 217(1)(b) of the Act in future cases and all cases outstanding from April 27 last year.

The effect of the ruling is that the court can no longer presume a written confession to be a crime by an accused was made freely and voluntarily before a magistrate and admit it as evidence.

"The State must now prove that such a confession was indeed made freely and voluntarily. "The presumption factor has been knocked out," a legal expert commented.

Yesterday's decision applies to outstanding trials begun on or after April 24 last year.

"The interests of individuals must be weighed against the interest of avoiding disclosure to the administration of justice and the desirability of a smooth transition from the old to the new," Mr Justice Kentridge said.

Accused's rights

The Criminal Procedure Act subsection states that a confession is presumed admissible and to have been made voluntarily in sound and sober mind unless the contrary is proved. An accused who before trial admits guilt bears the onus of proving his innocence; and if the accused claims the confession was forced, must prove this.

ONUS of proof that statements were made freely and voluntarily now rests with the State

The subsection was introduced after the 1977 Botha Commission of Inquiry into criminal procedure and evidence.

Mr Justice Kentridge said the provision, intended to speed up trials and make it more difficult for an accused to make false allegations of duress, ignored an accused's rights if a confession had indeed been forced. It had not succeeded in shortening trials.

Incompetent

In the case before the court, two men were accused of killing a farmer and a domestic worker in the Umkomaas Valley in KwaZulu-Natal.

They made confessions before their trial in the Supreme Court, but contested the admissibility of the confessions on the grounds they were assaulted by police.

The trial court unanimously concluded the accused had failed to prove that the confessions were not made freely and voluntarily. The case was referred to the Constitutional Court on August 18 last year.

Mr Justice Kentridge said the referral was incompetent because Supreme Court judges were able and duty bound to make their own decisions.

However, the matter needed to be resolved because prolonged uncertainty hindered the administration of justice in the country's courts.

He said section 25 of the interim constitution embodied provisions which were not, new to South African law. They had existed for 150 years but were eroded by statutes and, in some cases, judicial decisions.

The common law, requiring the State to prove a confession was made voluntarily, was an integral part of SA law.

This included the right to remain silent after arrest and not to make a confession or give evidence against oneself. The judge said the "reverse burden of proof", meaning the accused had to prove innocence, was seriously compromised and undermined all these rights.

Discretion

He rejected the State's submission that judges could use their discretion to rule a confession inadmissible.

"The presumption of innocence cannot depend on the exercise of discretion," he found.

"I believe this interpretation promotes the values which underlie an open and democratic society and is entirely consistent with the language of section 25 of the interim constitution.

Yesterday's judgment does not apply to other "reverse burden of proof" provisions, such as marriage registration in Bigamy cases — Sapa.
Controversial commission approved by Cabinet despite opposition

Truth in, secrecy out

(252) `SAW 6/14/95

DECISION to retain the December 5 1998 amnesty cut-off date has been endorsed.

Politico: Commission proposal

The Cabinet yesterday approved legislation to establish a Truth Commission. The proposal would include an amnesty clause in the Bill. The NP and other parties have been seeking an amnesty clause in the Bill for months. The proposal would also provide for the establishment of a Truth Commission to investigate human rights violations.

The proposal was initially rejected by the Cabinet, but was later endorsed by Cabinet at a meeting on January 15, 1999. The proposal was prepared by the Truth Commission, which was established in December 1998.

The proposal includes a clause that would provide for the granting of amnesty to those who confess to their involvement in human rights violations.

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ANC, NP resolve their truth differences

CLIVE SAWYER
Political Correspondent

AFRICAN National Congress and National Party cabinet ministers have resolved their differences over the truth and reconciliation commission.

A bipartisan cabinet committee yesterday announced it had reached agreement on key issues.

President Nelson Mandela told a cabinet meeting the agreement was proof that the government of national unity was not just an arrangement where minority parties were no more than rubber stamps.

The issues agreed on by the cabinet committee were referred to it by the parliamentary justice committee, which is scheduled to continue its discussion of less contentious clauses.

The cabinet committee, consisting of Dullah Omar and Kader Asmal from the ANC, and Roelf Meyer and Chris Framer from the NP, agreed:

- The appointment mechanism for the president to choose the commission in consultation with the cabinet should stay as set out in the bill.
- The cut-off date for amnesty should remain December 5, 1993, as specified in the constitution.
- The amnesty committee would have the option of holding hearings behind closed doors, if this was in the interests of justice, except when dealing with evidence on gross violations of human rights.
- The committee on human rights violations would have a procedural protection against intimidation of witnesses.
- The Norgaard principles, which defined whether an act was committed with a political objective, would be used, the committee agreed.
Watershed ruling by Constitutional Court on confession

□ Onus on state to prove no duress

JOHANNESBURG — South Africa's most powerful court has ruled invalid a law which put the burden of proof on suspects who said they made confessions under duress.

The 11 judges of the Constitutional Court, in their first ruling since the court was opened by President Nelson Mandela in February, said it was unconstitutional for the onus to be on suspects wanting confessions ruled invalid, while common law ordered the prosecution to prove guilt.

"It is declared that section 217 (1) (b) (vi) of the Criminal Procedure Act of 1977 is invalid," Mr Acting-Justice Sydney Kentridge said in a brief judgment read with the agreement of the judges.

Judge Kentridge said the decision would be effective from the time of the elections last year to make it fair to suspects whose trials had not yet been finalised.

"This declaration shall invalidate any application in any criminal trial which commenced on or after April 27, 1994 and in which the verdict has not been given."

The ruling arose from a case brought by Durban lawyer Archibald Findlay on behalf of two men charged with killing a farmer and a worker in the Umsimkana valley in KwaZulu Natal.

In his argument to the court, Mr Findlay said the law "violates their constitutionally entrenched right to be presumed innocent and to remain silent during plea proceedings or trial."

"It also undermines the right of an accused person not to incriminate himself," he added.

Mr Findlay said the problem with the rule could be overcome easily if the burden of proof rested with the state.

"There is no difficulty for the state calling the evidence it needs to establish if a confession is freely and voluntarily made, nor is there any pressing social need which justifies the reversal of the onus of proof," Mr Findlay said.

Judge Kentridge said the court agreed that the section which read that a confession should be accepted to have been made freely "unless the contrary is proved" was unconstitutional.

"The rights interfered with are fundamental to our concepts of justice and forensic fairness."

"Even if it did release the police or prosecution from the inconvenience of marshalling and calling their witnesses ... I cannot regard those inconveniences as outweighing and justifying the substantial infringement of a suspect's rights."
Court Rules on Confessions

William Seltman, P.S.

The constitutional Court in its
recent Spier case said in its
judgment:

1. The admission of a suspect's

2. The decision was welcomed.

3. The decision was welcomed.

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19. The decision was welcomed.

20. The decision was welcomed.
After a dash

Shacks moved

Grobouw

Parliament's approved

Truth Bill Ready for

Swift acceptance expected after Easter

Draft legislation to establish the Truth Commission has
Constitution ‘must entrench property rights’

CAPE TOWN — Property rights needed to be unambiguously entrenched in SA's new constitution, the SA Chamber of Business said in a consolidated submission presented to the Constitutional Assembly yesterday.

Entitled A Business Perspective on a Final Constitution for SA, SAB said property rights were widely recognised as an essential element of an effectively operating economy.

The primary economic freedoms, including rights of ownership and freedom to engage in business activity, represented the “basic chemistry” required for wealth generation and material upliftment.

The document outlined SAB's position on a wide range of constitutional issues and more specific submissions made earlier to individual theme committees.

“We dined a la carte on the constitution and picked out issues which are relevant to the business community,” SAB director-general Raymond Parsons told a media briefing.

SAB, which represents about 50 000 businesses across the economy, said it fully supported the separation of the powers of the legislature, executive and judiciary.

It reiterated its stance on federalism, saying maximum powers should be devolved to provincial and local government while remaining under the umbrella of national unity.

Constitutional provisions for local government were inadequate.

Financial institutions such as the Reserve Bank and the auditor-general's office should be kept independent “within, but not of the system.”
Court scraps Act used
to extract confessions

By Mzimasi Ngudle

THE Constitutional Court yesterday struck down section 217 of the Criminal Procedure Act — the section that police have used extensively since 1944 to extract confessions of guilt from crime suspects.

Delivering the court’s first judgment since its first sitting on February 15, Mr Justice Sydney Kentridge, sitting with Judge President Arthur Chaskalson and Judges Pius Langa, Yvonne Mokgoro, Catherine O’Regan and Johann Kriegler, declared the section invalid.

Kentridge ordered that such a declaration would invalidate the application of the section in any criminal trial which commenced on or after April 27 1994 and in which a verdict had not been given before yesterday’s order.

**Cause Injustice to accused**

Conceding that the application of the section might “well have caused injustice to accused persons”, Kentridge said the court could “not repair all past injustices by a simple stroke of the pen”.

He added “Weighing all relevant considerations, it seems that proper balance can be struck by invalidating the admission of any confession in reliance of the section before this order only in respect of trials begun on or after April 27 1994.”

The judge said the section, which places the onus on the accused to rebut a presumption that a confession was freely and voluntarily made, seriously compromised the right to a fair trial that is entrenched in the constitution.

**Concepts of Justice**

“The rights interfered with are fundamental to our concepts of justice and have existed in this country for over 150 years until the drastic alteration brought about by the section,” Kentridge said, adding that there was nothing in the Act which compelled a magistrate to inquire into the voluntariness of the confession.”
Dispute over role of new ombudsman

CLIVE SWYER
Political Correspondent

CONSTITUTIONAL negotiators are at loggerheads about several aspects of a future office of the public protector — including the official's title.

A minority viewpoint is that the traditional title of ombudsman be used.

The public protector will be the watchdog on the government and the public sector, including the administrative functions of the Department of Justice.

A theme committee report said some disagreements referred to matters which did not have to be included in the constitution and could be dealt with in ordinary legislation.

The report, tabled at a constitutional assembly management committee meeting, said points of disagreement included the extent to which the constitution should govern the workings of the protector.

While there was agreement that the protector should be appointed by a parliamentary process, parties did not agree on exactly how this should work.

On the issue of term of office, some felt the protector should be appointed for a seven-year non-renewable term, others that reappointment should be allowed and others that appointment should be until retirement.

There was significant disagreement over the relationship between national and provincial public protectors.

The African National Congress said the national protector should be able to operate at all levels of government.

While there could be provincial protectors, provincial legislation should not derogate from the powers of the national protector.

The Inkatha Freedom Party said national and provincial protectors should have separate spheres of influence and jurisdiction. The national constitution should not dictate the role and scope of the provincial protector, the IFP said.

The Democratic Party said a way of resolving potential conflict between national and provincial protectors would be to spell out areas of exclusive and concurrent responsibilities.

Another issue was whether traditional leaders should be subject to the protector.

While there seemed to be general agreement in the various submissions and public hearings that traditional leaders should be subject to the public protector, the concern was raised by the IFP that traditional leaders may perceive the public protector as a threat to their traditional role as mediators in the community.

Points of agreement included that the protector should be independent, but should be accountable and report annually to parliament.
No secrecy, only the truth

Draft legislation on the truth and reconciliation commission has been set down for debate in parliament on April 25 and 26, Constitutional Development Minister Mr Roelf Meyer said yesterday.

He told a meeting of the Constitutional Assembly's management committee that parliamentary whips had decided on the dates.

A bipartisan cabinet committee reached agreement on Thursday on contentious clauses in the Promotion of National Unity and Reconciliation Bill.

The committee agreed on the retention of the Norgaard principles, which define political acts for which amnesty may be sought, and said amnesty hearings would be open unless the interests of justice dictated otherwise.

It ruled out calls for the cut-off date for amnesty to be extended beyond December 5, 1993.

Meanwhile, Democratic Party human rights spokesperson Ms Jane Smuts said a DP proposal to alter the appointment procedure for commissioners was defeated in the parliamentary committee on Wednesday night.

The DP had recommended that commissioners be nominated by a joint committee of both Houses of Parliament and approved by a 75 percent majority at a joint sitting of the National Assembly and Senate.

The Bill provides for the commissioners to be appointed by the President in consultation with the cabinet.

Smuts said appointment of commissioners by the legislature would have been preferable to appointment by "the same people responsible for the previous indemnity process and for the conflicts of the past." — Sapa
First appointments to Rights Commission

BY BARRY STREEK
POLITICAL STAFF

PARLIAMENT yesterday approved the nominations of the first 11 members of the Human Rights Commission by an overwhelming majority of 329 votes to two, with three abstentions.

The new commission, which will include at least five full-time members, has been empowered in the constitution to "promote the observance of, respect for and protection of fundamental human rights."

As a permanent watchdog it will be able to intervene wherever human rights have been contravened or threatened.

The new commission, nominated by an all-party committee after extensive public interviews, contains a wide cross-section of political and legal experts, ranging from a former Conservative Party MP to an Africanist lawyer.

They also include two Cape Town academics, the Rev Barney Pityana and Ms Rhoda Kadali, and two Natal academics, Professor Charles Dlamini and Mr Karthy Govender.

Nominees

One of the nominated members of the commission, Mr Max Coleman, is an ANC MP but he will have to resign from Parliament to serve on the commission.

The other nominees are Ms Bongiwa Bam, the secretary-general of the SA Council of Churches; Mr Chris de Jager, an advocate and former Conservative Party MP; Ms Shirley Mabuseala, a children's rights advocate, Mrs Anne Rooter, a former National Party member of the President's Council, Mrs Helen Suzman, the former Democratic Party MP for Houghton, and Ms Pansy Tlakula, a well-known Africanist who is the acting director of the Black Lawyers' Association.

Mr Pityana, who lectures in religious studies at UCT, is a former president of the black consciousness-supporting South African Students' Organisation and close associate of the late Steve Biko.

Ms Kadali is head of the Gender Equity Unit at the University of the Western Cape and a trustee of the Open Society Foundation.

Professor Dlamini is the rector of the University of Zululand, while Mr Govender is the acting director of the Institute of Socio-Legal Studies and a lecturer in public law at the University of Natal.
It's jungle justice, say many - but others praise, 'notorious', Imbizo

In grip of kangaroo court

BOIPATONG residents claim they are being terrorised by a kangaroo court known as the "notorious Imbizo (hearing)", and say some leading members of the local civic association are behind this "jungle justice".

These startling allegations were made by local businessman and community leader Jonas Motsele. He said he narrowly escaped death during an attack by heavily armed people "led by the leadership of the association".

Atrocities allegedly committed by the Imbizo were retold to WeekendStar by many residents interviewed at random this week.

Civic association chairman David Mthimkhulu said: "The Imbizo operations have the full blessing of the community and they have consistently quashed any suggestions of its disbandment."

Mthimkhulu has denied the direct involvement of civic association members in Imbizo. "The Imbizo Community Forum Against Crime (Imbizo) was formed after a public meeting called by the civic association as a measure to combat and prevent crime." Mthimkhulu claimed the Imbizo was co-operating with the police as part of the Boipatong Community Policing Forum.

Asked about the R50 000 donation, he said: "The purpose of that money was for a gardening project and job creation. I am happy to say it has served its purpose."

It is said the activities of the Imbizo resulted in the suicide last week of a resident of Boipatong's Lucasia 2 squatter camp.

The deceased (known to the WeekendStar) apparently hanged himself after receiving an invitation to a "people's court trial" or his martial problems. He will be buried today.

Some residents expressed disapproval of the Imbizo mediating on family affairs. Puleng Madondela said: "This Imbizo is now overriding our value systems. Who are they and what right do they have to involve themselves in other people's affairs? Traditionally only elders from the two families are best qualified to mediate — not just anybody who is power drunk like that brutal Imbizo."

SASCRED: "Court" victim Sydney Twala PHOTOGRAPH T.J. LEMON

TEFO MOITHIBELI reports from the Vaal town of Boipatong where there are reports of beatings and 'atrocities' committed by a vigilante court backed by the local civic association.
Deep rift in NPP reveals tension among caucus MPs over truth bill
CAPE TOWN — Sharp cracks appeared in National Party parliamentary ranks this week over the proposed truth commission, leading to an extraordinary adjournment of the party's caucus meeting.

The meeting, described by sources as unusually heated, adjourned at 12.30pm on Thursday, but resumed later in the day after Parliament completed its session.

The caucus row followed Wednesday's cabinet meeting, in which the ANC and NP reached a compromise agreement on the controversial issue of the truth commission. This followed several meetings of a cabinet committee comprising Justice Minister Dullah Omar, Water Affairs and Forestry Minister Kader Asmal, Constitutional Development Minister Roelf Meyer and General Services Minister Chris Finnis.

A source reportedly briefed the NP caucus on the Cabinet's deliberations. Sources told the Weekend Star some members felt the NP representatives on the parliamentary justice committee, which has been discussing the truth commission Bill since the start of the session, had argued for a better deal than had been secured in the Cabinet.

In an apparent attempt to heal the rift, the caucus resolved that the NP members on the Justice committee could make proposals to the caucus after the recess, which began yesterday.

The Cabinet compromise involved an agreement on the cut-off date, the inclusion of international principles on amnesty, and the confidentiality of amnesty hearings.

The caucus meeting was chaired by Environment Affairs and Tourism Minister De weave Villiers, in the absence of Deputy President F W de Klerk. The truth commission Bill was discussed from 11am until 12.30pm.

The NP dissidents believed that the proposed test for indemnity was stricter than in previous legislation drafted under the former government, and which was applied to ANC members.

The dispute set NP MPs up against the party's ministers.

The MPs felt it was unacceptable that the ANC had been "favoured" by the old legislation and this would be compounded in the proposed new legislation.

Another contentious aspect of the Bill was the

◆ Truth Bill splits NP

The wording of the clause requiring that the chairman and members of the truth commission be appointed by the president in consultation with the Cabinet.

In terms of the draft legislation, only the members of the truth commission will be appointed in this way.

When the caucus meeting had to be closed because of time pressures, De Vleiers reportedly said he assumed there was consensus over the draft legislation. This was not forthcoming, however, and the second meeting had to be convened.

The evening meeting was apparently attended by about 50 MPs, as many had already booked early flights out of Cape Town.

NP MP and spokesman on justice Dulle Schutte yesterday told a media conference that his party was "grateful for the breakthrough in cabinet".

 Asked whether there had been conflict between the NP ministers and the party's MPs on the justice committee, Schutte replied: "Not as far as I know."

On the NP's insistence that the cut-off date for amnesty be moved from December 31 last year to May 10 1994, Schutte said the December date — set in the Cabinet — had not been fully agreed to.

Real reconciliation could not take place without the involvement of all parties, he said.

Schutte said the truth commission Bill was scheduled to be debated in Parliament on April 25 and 26, allowing time for "formative processes in this regard."

The cut-off date could not be moved without amending the interim constitution.

Schutte said the party had agreed to the December date in the Cabinet as part of the compromise. He added that the NP was still in favour of changing the date: "But we can't move it on our own, it is part of negotiations."

Schutte reiterated the NP's commitment to the truth commission as a real instrument of reconciliation.

After the Cabinet agreed that the amnesty hearings would be public, with provision for in-camera hearings, Schutte said it had been dealt with in a "fair way". The NP had wanted these hearings to be closed.

Differences between the NP ranks over the amnesty process emerged earlier this year when the ANC refused to recognise 3,500 indemnity applications made shortly before last April's election.

Reuter reports that the parliamentary justice committee last night finalised the Truth and Reconciliation Bill but left the issue of a cut-off date for applications to the Constitutional Assembly.
NP is split over proposals for the Truth Bill

Political Correspondent
CAPE TOWN — A heated National Party parliamentary caucus meeting has thrown in sharp relief serious differences within party ranks over the proposed Truth Commission.

In an extraordinary move, the NP caucus adjourned its meeting at 12.30 pm on Thursday, but resumed the meeting later that day after the parliamentary session.

In an apparent attempt to paper over the cracks, the caucus resolved that the NP members on the parliamentary justice committee could make proposals to the caucus on the Truth Commission Bill after the recess, which began yesterday.

The row in the caucus followed Wednesday's Cabinet meeting where the ANC and NP reached a compromise agreement after several meetings comprising Justice Minister Dullah Omar, Water Affairs and Forestry Minister Kader Asmal, Constitutional Development Minister Roelf Meyer and General Services Minister Chris Fismer.

The IFP reserved its position on the bill in Cabinet.

The compromise involved an agreement over the cut-off date, the inclusion of the Norvald principle and the confidentiality of amnesty hearings.

It is understood that Mr Fismer gave the caucus a report on the Cabinet deliberations.

The meeting, chaired by Environmental Affairs and Tourism Minister Dr Dawie de Villiers in the absence of Deputy President F W de Klerk, discussed the Truth Commission Bill from 11 am until 12.30 pm.

Sources told the Weekend Argus that some members felt the NP members on the parliamentary justice committee had negotiated a better deal than had been the case in Cabinet.

It was further believed that the test for indemnity was higher than in the previous legislation. It was unacceptable that the ANC had been 'favoured' by the old legislation and that this was still the case in the proposed draft legislation.

A aspect of the bill which was unacceptable for some NP members was that its insistence that the chairman as well as the members of the Truth Commission be appointed by the President in consultation with the Cabinet, had been overruled. In terms of the draft legislation, only the members of the truth commission are to be appointed in consultation with Cabinet.

When the meeting had to be closed at 12.30 pm due to pressure of time, Dr de Villiers apparently said he assumed there was consensus over the draft legislation.

But, in the face of no consensus, a second meeting had to be convened.

NP MP and spokesman on justice Dame Schutte told a press conference yesterday his party was "grateful for the breakthroughs in Cabinet." On the NP's insistence that the cut-off date for amnesty be moved from December 5, 1998 until May 10 last year, Mr Schutte said the December date — which was what the Cabinet agreed upon — was not inclusive. Real reconciliation could not take place without the involvement of all parties, he said.

But Mr Schutte noted that the Truth Commission Bill was scheduled to be debated in parliament on April 26 and 27, which would allow time for "dynamic processes in this regard."

The cut-off date would not be moved without amending the Interim Constitution, he added.

"But, we can't move it on our own, it is part of negotiations," he said.

Mr Schutte reiterated the NP's commitment to the Truth Commission as a real instrument of reconciliation.
NP dismay at amnesty cut-off date in truth bill

THE Parliamentary Justice Commission yesterday finalised the Truth and Reconciliation Bill, but left the contentious issue of a cut-off date for amnesties to the Constitutional Assembly.

Earlier yesterday, National Party (NP) justice spokesman Dave Schutte outlined his party's unhappiness with the December 5 1993 amnesty cut-off date.

Several NP Members of Parliament said they believed their cabinet members could have fought harder for the cut-off point to be pushed forward to May 10 1994.

The committee left the issue open by not giving a specific cut-off date in the final draft of the bill. Instead, it said the cut-off date would be set down in the constitution.

Yesterday, the main bones of contention were criteria for deciding who should be granted amnesty and the confidentiality of evidence gathered by the commission.

The last few committee meetings have been boycotted by the Inkatha Freedom Party, which has rejected the bill. The Freedom Front (FF) has also not attended. Several sources said yesterday the FF had decided to vote against the bill.

Committee chairman Johnny de Lange said at the end of the last meeting that completing the bill had been "a tremendous achievement on everybody's behalf ... it has been tense at times, but never divisive or destructive".

"We have tried to accommodate all views without making it not workable," said Mr De Lange — Reuter
NATURAL PARTY back-benchers, who rebelled in the party caucus against an agreement concluded by their ministers, have succeeded in forcing a change in the criteria for receiving indemnity.

NP members raised their concerns about compromises reached by a cabinet committee this week in a stormy caucus meeting which reflected the tensions between NP backbenchers and ministers.

The compromises reached by a committee comprising Justice Minister Dullah Omar, Water Affairs Minister Kader Asmal, General Services Minister Chris Fosset and Constitutional Affairs Minister Rosell Meyer were ratified by cabinet on Wednesday.

Among the key agreements which will establish a Truth Commission was consensus that:

1. The “Norgaard principles” — international standards defining what constitutes a political act — would apply when the commission makes a decision on indemnity.

But commissioners could use their discretion to consider past indemnity legislation in certain cases where an applicant admitted to an offence similar to that committed by people granted indemnity under the previous laws.

Indemnity hearings would be open unless application was made for in-camera status and this was agreed to by a closed hearing of the commission.

The cut-off date for political crimes would remain December 3, 1993.

Following the caucus row, the Justice Committee met on Friday and changed the wording of the agreement relating to the Norgaard clause to say:

“In applying the criteria contemplated in subsection 2 (the Norgaard principles) the Committee shall take into account the criteria in the Acts repealed (Indemnity Acts).”

The wording of the cabinet compromise had said that the “committee shall have the right to take into account the criteria applied under the Indemnity Act 1990 and the Further Indemnity Act of 1992.”

NP justice spokesman Danie Schutte said yesterday that this change meant that applicants would be subject to the same criteria applied to people who obtained indemnity in terms of the existing indemnity procedure.

“We welcome this because it will ensure there are no double standards for the granting of indemnity or amnesty,” he said.

He believed the changes were in line with the cabinet decision but that it was “definitely not cleared with my people. I don’t know if the ANC cleared it with theirs.”

However, ANC Justice Committee member Willie Hofmeyr said yesterday: “Our understanding is that the Norgaard principles should be applied broadly. They must take into account the two previous indemnity laws, but there’s nothing that forces them to apply them.”

Mr Schutte said that the concerns raised by NP caucus members had been premature as the Justice Committee had still to translate the cabinet compromises into legal language after the caucus had met.

Mr Schutte said it was further decided at the Justice Committee that applications for amnesty could in certain circumstances be decided on the papers alone without hearings.

NP management committee chairman Dawie de Vilhers said in a statement yesterday that the impression created in various newspapers that there was a division in the NP caucus about the legislation concerning the Truth Commission was “incorrect.”
Rebellion on amnesty date
(29.2)
Anthony Johnson
ct 10/4/75
MPs approve confidentiality clauses for draft legislation on truth body probe

SECRET AGREEMENT

Policy Correspondent

COURT SAVOUR

WASHINGTON D.C. (272) THACI 1449

on truth body probe

CONFIDENTIALITY

"If true, it will be omitted."
FW gets Nats behind Truth Bill

BY JO-ANNE COLLINGE

Deputy President F W de Klerk moved speedily yesterday to contain the damage of press reports that the National Party has been bitterly divided by the Truth and Reconciliation Commission Bill.

Although Parliament is in recess, De Klerk called an urgent meeting of members of the NP caucus, the party's cabinet members and its representatives on the justice portfolio committee.

After the meeting, he declared: "The NP is united in going forward with the Bill."

In fact, he said, unity had already been achieved by the end of last week's turbulent caucus meeting which gave rise to reports of a split.

De Klerk said that nobody in the NP was entirely satisfied with the Bill. "But there is acceptance by those who feel more unhappy that we will go forward with it as it is."

The deputy president did stress, however, that the thorny issue of the cut-off date for amnesty would not be dealt with in the Bill. The cut-off date could be extended only from December 5 1993 to May 10 1994 by an amendment to the interim constitution, he pointed out.

It was the ANC and not the NP which stood in the way of such a constitutional change, De Klerk stated more than once.

"The NP was and remains of the opinion that, should the moving of the date to May 10 1994 result in more parties supporting the (truth commission) legislation, thereby leading to true national reconciliation, then the moving of the date is the smallest sacrifice that can be made and the NP will then support such a move."

He said the NP had not taken this stance in its own interests as "our support base has not been involved in political violence."
Truth commission has full NP support

STEPHANIE BOWMA

PRETORIA — The NP's parliamentary caucus was unanimous in its support for the establishment of a truth commission although the support was not unconditional, NP leader FW de Klerk said yesterday.

The deputy president denied that the NP was divided on the issue of such a commission.

"Even those in the NP more opposed to certain aspects of the Bill have now accepted the compromises which had to be made."

The NP, however, demanded that the commission be based on fairness and equal treatment for all, regardless of political beliefs and that it engaged as wide support as possible on a voluntary basis.

He said the lively debate on the envisaged legislation had led to considerable progress being made to improve the Truth Commission Act, including that it was now compulsory that the criteria of the earlier indemnity Acts would apply in the application for amnesty and that applicants would now, under certain conditions, be granted amnesty through written application only, without a hearing.

He said the changing of the cut-off date from December 5 1993 to May 10 1994 had never been a problem for the NP. The moving of the date was a constitutional matter.
Inkatha raps members after ‘irregularities’

DURBAN – An Inkatha Freedom Party disciplinary committee had recommended that seven of its leaders — including Gauteng strongman Themba Khosa and parliamentary chief whip Koos van der Merwe — be “publicly censured” for alleged financial irregularities in Gauteng during last April’s election.

The other five are: Humphrey Ndlovu, Henner Bekker, Peter Magwaza, Anthony Lamula and Angelina Dhlomo.

The report, dated April 7 1995 and leaked to Business Day yesterday, also instructed the seven to repay Inkatha R41 889,50 as no proper accounting records could be found for an account with First National Bank’s Risik Street South branch in Johannesburg.

The report recommended that if the seven refused to repay the money, their suspension be announced publicly at Inkatha’s annual conference in July.

The report also proposed that Inkatha treasurer-general Arthur Konigkramer be censured as he was ultimately responsible for the management of funds.

Inkatha secretary-general Ziba Jiyane refused to comment as the “sensitive” matter was being dealt with “internally”.

The disciplinary committee made its recommendations after receiving a report from a commission appointed to investigate the disappearance of election funds in the Gauteng region.

The commission report said withdrawals from the Risik Street South account with an overdraft amount of R35 537,63, resulting in FNB taking legal action against Inkatha and obtaining judgment.

Inkatha was also listed with the Credit Bureau and needed to settle interest accrued on the debt.

Among the alleged irregularities were the fact that Van der Merwe lent R3 000 in election funds to Khosa, while Khosa instructed that R13 480,50 be used to purchase food.

The amount is said to be excessive.

The commission also investigated the whereabouts of R250 000 deposited at United Bank in Johannesburg in May last year, saying the possibility of large-scale fraud and theft could not be ruled out.

“The commission recommends that the matter be handed to the commercial branch of the SA Police Service for investigation,” the report said.

However, the disciplinary committee recommended that another committee be appointed to investigate this issue.
Dullah Omar misquoted in report, admits SABC

Staff Reporter

SABC radio news has admitted misquoting Justice Minister Dullah Omar and has said one of their reporters made the wrong assumption.

Johannesburg SABC radio news editor Johan Kriek said the report incorrectly quoted Mr Omar as saying the African National Congress opposed the death penalty because of the racial bias of white judges.

Mr Omar was reported to have made the remark at a meeting in Lenasia on Wednesday last week.

Mr Omar categorically denied making the remark, saying the SABC report was "grossly inaccurate."

It became clear when the reporter returned from holiday in the Trans-

Mr Kriek said the reporter had been warned to be more careful.

Justice Ministry spokeswoman Sue de Villiers said "We're taking up the issue formally and directly with the SABC."
A return to fair trial

Justice returns to South Africa as a Constitutional Court ruling ends 17 years of unjust convictions made on the basis of confessions exacted under threat of torture, reports Mzimasi Ngudle.

acting constitutional court judge mr sydney kenridge. weaving back into the pre-1977 legislation the thread placing the onus on the state to prove the guilt of the accused beyond reasonable doubt. But sadly, the thread stretches back only to April 27 1994, leaving out 17 years of the section's application.

Without foreclosing the fate of those who bore the brunt of this section during this period, Mr Justice Kentridge said: "But if we were to give our declaration full retrospective effect - as to invalidate such earlier rulings on admissibility the likely result would be numerous appeals with the possibility of proceedings de novo."

"In proceedings de novo, the necessary evidence of voluntariness may no longer be available."

The judge cited section 98(6) as constraining the court in extending the date further backwards. The section provides that any court's declaration of the invalidity of a law existing at the commencement of the Constitution, shall not invalidate anything done or permitted in terms of such law before the coming into effect of such declaration or invalidity.

invalidate the application
Exercising the court's discretionary powers in the interests of good government according to the section, Mr Justice Sydney Kentridge said, the judgment would invalidate the application of the section back to April. That is in cases where the verdict had not been given at the time of the court's judgment.

Kentridge went on: "The application of the section may well have caused injustice to accused persons, but we cannot repair all past injustice by a simple stroke of the pen."

At least the door should not be closed to those who still have a gripe about their convictions secured through evidence marshalled under the section.

The Constitution can be amended to alleviate harmful injustices meted out under this section.

In any event, how does one justify the redemption of political atrocities back to March 1960, as with cases that may be brought before the Truth Commission, while denying the same to monstrous acts of legislation during the same period?

Perhaps it's high time that the legislature intervened to remove the disability once and for all.
Supreme Court candidates

HUMAN rights attorney Kathy Satchwell and tax specialist attorney Baul Wunsh are among the nine legal practitioners who will be interviewed by the Judicial Services Commission next month as candidates for appointment to the Supreme Court bench.

This is the first time the commission will interview candidates in public since it did an about-face last month on a decision to conduct proceedings behind closed doors.

The commission, chaired by Chief Justice Michael Corbett, initially bowed to pressure to hold proceedings in the open when it interviewed short-listed Constitutional Court candidates publicly last year. However, the public was subsequently barred from interviews with Supreme and Appeal Court candidates.

The commission changed its mind last month after Industrial Court vice-president Mohamed Bulbulia, after an unsuccessful bid for a Supreme Court post, accused the commission of racism.

Candidates short-listed for the four vacancies in the Transvaal and Cape Provincial Supreme Court divisions will be interviewed at a Midrand hotel on May 29 and 30. There are two attorneys among the candidates. The rest are advocates, four of them senior counsel.

It is only recently that attorneys have been permitted to serve on the Supreme Court bench, which had been restricted to senior members of the Bar.

Wunsh, a Johannesburg attorney, has an honorary professorship in mercantile law from Stellenbosch University and, according to Butterworths 1992 SA Legal Who's Who, is a director of several companies, including Cosel, Standard Bank and Transnet. Satchwell, also a Johannesburg attorney, is one of several legal practitioners on the short list known for their human rights work.

Mahmoud Navaa is a senior member of the Legal Resources Centre's constitutional litigation unit. Pretoria advocate Bernard Ngobe, who was interviewed for the Constitutional Court, has experience in human rights work and political trials as an attorney and as an advocate, and helped draft the interim constitution.

Senior advocates Johannes Wynand Louw, who took silk in 1989, and Barend Christiaan van den Heever, both from the Pretoria Bar, will be interviewed, as will Cape Town advocate Siraj Desai, who has human rights experience.

Others on the short list are Johannesburg advocate Lucy Mailula and Johannesburg Bar member Desmond Duke.
CONSTITUTIONAL COURT

Finding a niche

Among the multitude of problems besetting the transition to democracy is disrespect for authority. While it's most apparent in fractiousness over federalism, a comparable headache lies in the all-embracing sphere of law and order. A frequent contempt for legal institutions contributes to high crime rates and services boycotts and a seedy moral climate in which corruption can flourish.

The Constitutional Court has yet to establish its power as the ultimate arbiter on personal freedom and its legal limitation. But there is little doubt that the Court has become the focus of high hopes that the rule of law can be re-established. This would be an excellent guarantee of a stable shift to a human rights culture, with concomitant assurances of personal security.

The difficulty facing the Court is how to fit in with the existing judicial system, with various divisions of the Supreme Court and the hitherto all-powerful Appellate Division. A committee of the Constitutional Assembly has considered the matter and outlined certain options.

The Constitutional Court cannot be isolated from the legal procedures of other courts — even though its establishment by the interim constitution appears to mandate precisely that. Its brief is to determine the constitutionality of existing laws in relation to the fundamental rights negotiated at Kepnton Park, to examine new legislation in the light of its guiding principles, and to inquire into executive actions that might contravene those principles.

The Court is on firm ground in determining the constitutionality of the death penalty, imprisonment for debt, the legality of gay marriages and so on. These judgments will form a broad framework for the other courts, including the Supreme Court.

In reality, as the CA committee found, there is one huge grey area relating to cases in other courts where the defence claims a constitutional right as justification for an act, and a "factual dispute" arises. Those judgments will form a broad framework for the other courts, including the Supreme Court.

Even in a magistrate's court — yet the procedure by which a constitutional matter can be raised and taken to the Constitutional Court appears to nearly all concerned to be uncertain, cumbersome and ineffective.

If a constitutional issue has to be decided in a normal trial, it seems that it would have to be done by referral to the Constitutional Court (overburdened as it is likely to become). The issue would not simply be a "trial within a trial", but a major disruption of the civil and criminal roll, effectively putting the case on ice while the bigger issue is decided.

The time wasted would impede justice and only once the Constitutional Court had given judgment could the trial resume, assuming it still had a place in the rolls.

Some options assembled by the CA committee, what is termed the Chaskalson Proposal (Arthur Chaskalson is president of the Constitutional Court) offers some of the most practical suggestions. Excluding the validity of legislation — on which the Constitutional Court would retain sole right to judge — the essential proposed reform is that all courts could deal with constitutional issues. The system of appeals would remain — from magistrate's to Supreme Court to Appellate Division and the Constitutional Court would remain final arbiter.

The logic is that constitutional matters cannot be artifically segregated from the overall application of the law, but formal processes of review should ensure that the development of a growing body of constitutional jurisprudence is not compromised by local miscarriages of justice.

The Association of Law Societies takes the process of spreading constitutional jurisprudence throughout the system further by suggesting that the Constitutional Court should "preferably be a chamber of the Appellate Division". The ANC, for its part, believes that the Supreme Court can be given jurisdiction to hear cases dealing with the constitutionality of parliamentary legislation, easing the burden on the Constitutional Court.

"The Appellate Division could become a second tier for constitutional review, with the possibility of appeal to the Constitutional Court".

The CA committee found consensus that the Constitutional Court should continue to sit as a separate entity for its present term (seven years). Clearly, before that expires, constitutional issues will materialise in courtrooms across the land and a way will have to be found to deal with them.

Speculators beware

Though government favours demand-driven land reform, property owners who inflate the value of land to "realistic" levels in the hope of making a "quick buck" out of the recently launched land reform programme, face tough action, says Land Affairs Minister Derek Hanekom.

The reform programme is a cornerstone of government policy and an important cog in the RDP machine. It provides mechanisms to restore the rights of people who were forcibly removed and demed land by previous governments.

Restriction of rights will be considered within a claims procedure set out in the Restitution of Land Rights Act, which was arguably the most significant legislation approved by parliament last year.

Essentially, the programme will redistribute land to those who need it to improve their quality of life. New owners will be supported by government as they become established.

However, says Hanekom, government recognises the rights of both current and future land owners. There is no intention to disrupt the forces of supply and demand in an open market or to confiscate land. The programme will be "needs driven" and based on the assumption that where private land becomes available and there is a willing buyer and a willing seller, the buyer will be assisted.

But "unsatidactory practices" such as artificially inflating land values will not be tolerated. "If reasonable measures are frustrated and do not succeed, government will..."
Irate justice staff pack their bags

BY SUE BLAINE

MORE than 50 top state advocates, registrars and masters of the Supreme Court and top managerial staff members in the Justice Department have applied for early retirement this year.

The staff were called in, one by one, and asked to reconsider their applications, but refused to do so, said a top legal source who declined to be named.

The source said he had heard "around 50" top state legal staff had become disgruntled after a "management team" was inserted between the Justice Department's director-general, Advocate Jasper Neeth, SC, and his deputies, Advocates André Bosch, Dave Swartz, and Johan Gysel, to oversee the department.

He said the stipulation that "everything" the staff did had to be authorized by the management team, which comprises staff from the former homelands' justice departments, had apparently caused a sense of demoralisation among the staff.

Justice Ministry spokesman Sue de Villiers confirmed the existence of a management team placed "directly below" Mr Neeth, but said Justice Minister Dullah Omar had said there was no connection between the new management team and the early retirements. They applied for early retirement long before the team was appointed in early March," she said.

She confirmed that the team's members were justice department officials from the former homelands.

The source said it seemed that the predominantly white staff were objecting to having to submit the work they had always done to blacks. The criminal justice system is further beleaguered by the exodus of state advocates leaving for better salaries in the private sector, especially in the Witwatersrand Division, and the recent "go-slow" threat from magistrates.

The go-slow was averted at a meeting on April 7, where magistrates agreed to continue working at their usual pace because it was clear that Mr Omar was concerned about their poor salaries, said Marius du Preez, the Magistrates' Commission secretary.

Witwatersrand Attorney-General Klaus von Lieres and Wilkau, who has had to contend with a 30 percent vacancy in his office for more than a year, said the state's efficiency in catching and prosecuting criminals was weakened by the poor salaries staff were paid.
Death penalty does not prevent crime

STAFF REPORTER

MANY studies had shown there was no clear relationship between the number of executions and the level of crime, Professor Denis Davis said last night.

He was speaking during a debate on capital punishment with Rabb David Hoffman attended by about 200 people.

The death penalty was not a deterrent and merely served to brutalise society, and there could be no rational justification for its retention, he said.

Rabb Hoffman, reading a letter from the parents of Mr Robert Perlmutt, who was murdered in the Knysna forest, said he advocated the death penalty for proven premeditated murder. It was not fair that someone should kill and then be allowed to enjoy life.

Capital punishment was also the compassionate thing to do if you cared about the family of the victim and was the only way society could mete out punishment.

The only argument against the death penalty was if an innocent person was executed, he said.

The ANC and the Constitutional Court still retained a moratorium on the death penalty because they knew the vast majority of people supported it. That was undemocratic and sent the wrong message to gang bosses, he added.

Asked during question time what punishment should be meted out to the Oklahoma bombers, Prof Davis said they should be hanged for life because they were not deterred by death and believed they were saving the world.
15,000 convicts to go free

Rightwingers benefit from Freedom Day remission
Aimed mostly at right-wing "political offenders," Gerber said all prisoners would be affected by the retransmission but those with six months or less to serve would be freed immediately.

"About 15,000 will be released as from today. The releases will be carried on until the process has been finalised," Gerber said.

Those released would be subject to the usual parole conditions and correctional supervision applicable to prisoners released under normal circumstances.

Both the bonus for prisoners and the exclusion of child abuse are special concerns.

Happy day . . . President Mandela and Education Minister Sibusiso Bengu celebrate.

PICTURE: DEBBIE YAZBEC
Indemnity breather is set to expire

Political Staff

As South Africa celebrates its first year of democracy, many MPs and some cabinet ministers have another, less festive, anniversary approaching.

May 17 is the expiry date for the temporary immunity or indemnity granted to some cabinet ministers who were instrumental in negotiations that flowed immediately from the unbanning in February 1990 of the African National Congress.

In a note to the parliamentary select committee on justice yesterday, the Department of Justice said both the 1990 Indemnity Act and temporary indemnities granted in terms of this legislation would expire on May 17 unless extended for another year.

This was particularly necessary in the light of delays in finalising the Truth Commission bill, the justice department note said.

Last year, the Act was extended for a year when the government of national unity took office.

The department said a provision in the Promotion of National Unity and Reconciliation Bill that temporary immunity or indemnity would remain for six months after the repeal of existing legislation might not be long enough.

If the Truth Commission did not finalise all the cases of people enjoying temporary immunity within the six-month period, those whose cases had not been finalised would run the risk of civil and criminal action against them.

Yesterday, the Democratic Party said a clause in the Truth Commission Bill requiring that criteria used in the Further Indemnity Act also be taken into account in granting amnesty was unconstitutional.

The clause, the result of objections by the National Party, was inserted as a result of a cabinet compromise on controversial aspects of the bill.

DP human rights spokesperson Dene Smuts proposed an amendment to bring the clause into line with the constitutional criteria for amnesty — that acts should have been committed with a political motive during the conflicts of the past.

"It will prevent perpetrators of gratuitous acts of violence which bear no objective relation to the conflicts of the past from receiving amnesty," she said.
Commission ‘would be a model for Africa’

CAPE TOWN — The establishment and successful operation of SA’s truth commission would provide an important model for other African countries, UN Human Rights Commission president Carl Norgaard said this week.

Norgaard, who assisted in framing the original draft of the Promotion of National Unity and Reconciliation Bill, said the international community was watching events in SA with “great hope and excitement.”

SA had the opportunity to create a model that could help many other African countries deal with their pasts, he said.

The Bill, which includes the Norgaard principles, had been substantially improved since the first draft and had a real chance of being successful and bringing reconciliation to SA, Norgaard said.

The principles, framed in 1989 by Norgaard during the Namibian transition, state that a political crime must be proportionately linked to the political objective in order to qualify for amnesty.

As a result, a person who planted a bomb in a bank in Namibia which killed 30 people had remained in jail, he said yesterday.

The inclusion of the principles caused considerable controversy within the NP, the ANC and Cabinet.

On the political compromise the Bill now contains, which includes the principles but allows commissioners to “take into account” previous amnesty legislation, Norgaard said pragmatism and realism were needed to get a process such as the truth commission up and running.

“What really matters is reconciliation and a situation where the past is finished and doesn’t go on for years and years.”

Norgaard said he was pleased the essential elements of his principles, the proportionality and motive of political crimes, were retained within the Bill.

He added he was “positively surprised” by the good spirit and high level of debate within the parliamentary committee considering the Bill.

“Reconciliation has already been reached within the committee.”

Norgaard lectures for half the year at Aarhus University in Denmark and chairs the EU’s Human Rights Commission in Strasbourg for the remaining period.

About 3,000 cases are heard a year at the commission, mostly dealing with fair trials, freedom of expression, expulsion and extradition.

The Justice committee is expected to finalise the Bill on Tuesday next week, while Parliament is scheduled to debate the Bill on May 17.

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Inquiry seeks misappropriated funds

CAPE TOWN — A public inquiry to find out what happened to about R750,000 misappropriated from Allan Boesak’s Foundation for Peace and Justice would be convened in Bellville on July 21.

The inquiry — being convened by the trustees of the insolvent estate of former foundation financial director Freddie Steenkamp — was not normal procedure in insolvent estates, but could be convened when “trustees were of the opinion that something was missing,” trustee Bernard Gutman said yesterday.

Steenkamp has admitted to the law firm Bell, Dewar and Hall — which acts for Danish aid agency DanChurch — that he misappropriated funds from the foundation. The government legal adviser who investigated allegations of misappropriation against Boesak, Mojanka Gumbl, has reportedly noted that DanChurch’s allegations appeared to have been drawn mainly from Steenkamp.

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Getman said at least R750,000 was involved and witnesses would be subpoenaed to the inquiry.

He said that depending on the outcome of the inquiry, litigation or civil proceedings could follow.

Meanwhile, Office of Serious Economic Offences executive director Jan Swanepoel said the office’s investigation into Boesak was expected to last until the end of the year — barring any unexpected delays.

Unexpected factors which have held up past investigations were bureaucratic delays overseas because SA had not yet signed mutual legal and criminal assistance treaties, and legal actions which might arise from an investigation, such as a recent objection to a subpoena by the Office of Serious Economic Offences on constitutional grounds.
Government makes it tough to get bail

BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — The Cabinet has approved legislation to make it more difficult for criminal suspects to be allowed bail.

The Criminal Procedure Amendment Bill contains most of the provisions outlined in a recent South African Law Commission report on bail.

The amendment, which will come before Parliament shortly for approval, introduces a range of criteria to help magistrates decide whether bail should be withheld.

The 1993 constitution, in terms of which criminals have often been granted bail as a mere formality, stipulates that bail can be withheld only if it is "in the interests of justice".

The new criteria makes the judicial officer responsible for investigating the precise circumstances of each bail application.

Evade trial

Factors such as the likelihood of an accused attempting to evade trial, the means and travel documents held by an accused, the extent to which an accused person can forfeit bail, and the gravity of the charge must all be taken into account.

The bail Bill was one of two crime measures considered by the Cabinet.

Also agreed was the establishment of an interdepartmental ministerial committee to develop a national crime combating strategy.

The Cabinet also made a number of decisions on a wide range of issues.
NEW LEGISLATION will enable the establishment of an Independent Complaints Directorate to deal with police abuses. Our SPECIAL CORRESPONDENT reports.

JOHANNESBURG: The new Police Act expected to be passed later this year would enable the government to create an independent body to investigate complaints against the police, Safety and Security Minister Mr Sydney Mufamadi said at the weekend.

He was responding to a report compiled by human rights organisations which alleges gross human rights abuses by the police in the past four years.

Mr Mufamadi said he was "deeply concerned" about the report by the Network of Independent Monitors, the Trauma Centre for Victims of Violence and Torture and the Independent Board of Inquiry.

"When the Police Act is passed, it will be possible to establish the Independent Complaints Directorate envisaged in the constitution."

This Directorate will be responsible for investigating complaints (of) police misconduct.

The structure and operation of the Directorate will be debated by the Standing Committees of Parliament and the Senate, and will therefore carry the confidence of the broad public," said Mr Mufamadi.

He said current channels for processing complaints of human rights violations by the police were inadequate and his ministry, with the authors of the report, would be looking at interim measures.

At the same time, however, Mr Mufamadi said the new generation of police managers should tackle the problem firmly.

He said a culture had to be encouraged which did not tolerate abusive and violent behaviour and in which transparency and honesty were valued more highly than covering up for colleagues.

He said the change-management and restructuring processes already underway would address many of the concerns raised by the authors of the Breaking With The Past report.

A new approach to organisational structure, intended to alleviate some of the problems related to specialised units, had already been adopted.

The approach emphasised the role of station and area commanders responsible for all policing matters in their area.

He added new disciplinary regulations were being finalised and training in human rights had been integrated into new curricula.
New regulations ‘to improve accessibility’ of SA’s courts

CAPE TOWN — Many new attorneys will begin to practise in SA following the announcement of new regulations at the weekend by Justice Minister Dullah Omar.

The regulations define the “appropriate legal experience” required for admission according to the Attorneys Amendment Act of 1993.

Omar said if any person had served for five years as a magistrate, a public prosecutor in a regional court or as a director-general or deputy director-general in the Justice Department, they would be admitted as attorneys.

Candidates would, however, have to take the appropriate examinations.

The new regulations would make it easier for those who had failed to secure articles or clerkships to enter the profession. Omar said the Act and regulations were aimed at improving accessibility.

He said draft legislation governing bail would be tabled in Parliament shortly.

The Criminal Procedure Amendment Bill was approved by the Cabinet last week following recommendations by the SA Law Commission.

The Bill would lay down guidelines which the court must consider, Omar said.

— ADRIAN HADLAND

The Promotion of National Unity and Reconciliation Bill, which establishes SA’s truth commission, would be finalised tomorrow, ANC justice committee member Willie Hofmeyr said.

The Bill, which must also be considered by the Senate, will be debated in Parliament later this month.

SUSAN RUSSELL reports that Lawyers For Human Rights on Friday welcomed the proposed amendments to bail legislation, which it said would now conform with the right to bail in the Constitution.

LHR’s national director: litigations Ahmed Motala said they were especially pleased police were now obliged to inform an arrested person of their right to bail.

The LHR was also pleased the courts would be obliged to consider bail even if not raised by an accused person.

Motala said the detailed guidelines to the courts setting out criteria they would have to consider in a bail request would allow the courts to exercise discretion.

“At the same time it grants the courts the authority to refuse bail when it is in the interests of justice.”
Magistrates lash out at Omar

Magistrates in Natal have accused Minister of Justice Mr Dullah Omar of "a distortion of half truths" when he disclosed what judges and magistrates earned about a week and a half ago.

The minister released the average salary figures, inclusive of benefits for magistrates, judges and assessors, in reply to a question from Mr Douglas Gibson in the national assembly.

Recently Durban magistrates had threatened a go-slow for better pay and working conditions.

However, Mr Wynand Bezuidenhout of the Natal Regional Committee of the Magistrates Association of South Africa was angry at the figures which he believed were inflated. He could not understand how they arrived at the amounts.

He said Omar revealed that a regional magistrate earned R176 867 but in reality the minimum salary for a regional magistrate was R111 867 and the maximum was R126 411.

For a senior magistrate the maximum salary was R116 715 but Omar's figure was R157 126. The salaries released by the minister for first- to third-leg magistrates were also not accurate, according to Bezuidenhout.

Even if benefits were included in the salary, Bezuidenhout said it was inexplicable how the final figures were attained.

"They are weakening our bargaining position. It's a transparent attempt by the minister to get public opinion on his side.

"He printed the inflated figures so that when people read it they will wonder what the magistrates are complaining about.

"Until he released it, people in the private sector agreed that we were being paid less," he said. According to Bezuidenhout, magistrates were "livid" when they read the report in the newspaper.

He said "The salary figures for members of the Industrial Courts and for magistrates in the former TBVC states were deliberately not released as they are paid substantially more than us."

Bezuidenhout showed us a copy of the pay slip of a magistrate who was at the bottom of the salary scale.

In 1993 the magistrate took home R6 091 after deductions but in 1995 his net salary was R6 071 which was R20 less.

He said if the salary the minister had revealed was valid, then the magistrate would earn a great deal more. — Sowetan Correspondent
'Truth Commission to start healing process'

TYRONÉ SEALE
Political Staff

The Truth and Reconciliation Commission will never provide the whole truth about past abuses of human rights, but will help the nation come to terms with its past and begin the healing process.

This is the view of African National Congress MP Willie Hofmeyr, who chaired yesterday's landmark meeting of the parliamentary portfolio committee on justice, which passed the Promotion of National Unity and Reconciliation Bill. The bill establishes the Truth Commission.

At the meeting, which followed at least 130 hours of debate spread over several months, the Freedom Front voted against all the provisions of the bill, while the Inkatha Freedom Party abstained from voting on various clauses.

Still, the bill was passed as fit for scrutiny by the national assembly and the senate.

The Freedom Front's Corne Mulder said his party's major objection was the retention of the December 5, 1993, cut-off date for amnesties.

In a clear reference to right-wingers who had violated human rights in pre-election violence, Dr Mulder said moving the date to May 10, 1994, the day on which President Mandela was sworn in, would allow "a group of our supporters" to be included in the reconciliation process.

Mr. Hofmeyr, leader of the ANC caucus in the committee, said the Freedom Front's concerns were noted, but he pointed out that instead of specifically referring to the 1993 date, the bill referred to "the latest date allowed as the cut-off date by the provisions of the constitution under the heading National Unity and Reconciliation."

Dane Schutte (NP) said his party also supported an extension of the cut-off date as it would make the process more inclusive, but he acknowledged that the bill in its present form linked the cut-off date to the constitution and a constitutional amendment would have to be addressed elsewhere.
DRAFT legislation providing for a Truth and Reconciliation Commission to investigate past human rights abuses was approved by the parliamentary justice committee yesterday.

The Promotion of National Unity and Reconciliation Bill was finalised after about 150 hours of deliberation, and "literally hundreds of amendments", said acting chairman Mr Willie Hofmeyr.

The IFP abstained and the Freedom Front opposed the bill. Dr Corne Mulder said failure to extend the December 5, 1993 cut-off date for amnesty meant that Front supporters would not qualify. The Front wanted the cut-off date extended to May 10, 1994.

Mr Hofmeyr said a decision on the cut-off date fell outside the committee's competence as any change would require a constitutional amendment.

He said Parliament could finalise its deliberations on the bill by the end of May and the commission could be operational by the end of July or early August.

A further month would be required for President Nelson Mandela to appoint commissioners.

"We have gone out of our way to make the amnesty process an even-handed one and ensure that we do not undo all the good we have achieved," Mr Hofmeyr said.

The NP welcomed the agreement on the Truth Bill, but warned that great care was needed in the appointment of the commissioners, who should not be perceived to be politically biased.

"This was the first test of our new constitution. We have been able to reach a compromise," it said. — Sapa
Assembly approves truth Bill

CAPE TOWN — Heavily amended draft legislation was approved by the National Assembly's justice committee yesterday in a major step towards establishing a truth commission.

Committee members predicted that the commission could be fully functional by August or September.

However, Cabinet would be asked to investigate whether the Promotion of National Unity and Reconciliation Bill should be passed on to the Constitutional Court for verification while a political initiative to change the cut-off date for amnesty applications gained momentum.

The Freedom Front voted against every clause of the Bill yesterday in protest against the December 5, 1993 cut-off date for amnesty on politically motivated crimes. Freedom Front supporters would be excluded from the reconciliation process if the deadline was not moved to a more appropriate date such as May 1994, the day of the presidential inauguration. Freedom Front MP Corne Mulder told the committee. Such a change would affect right-wingers now on trial in connection with a spate of pre-election bombings.

NP and ANC sources confirmed high-level discussions were underway on adding a clause to the Constitution Amendment Bill being considered by the constitutional committee, to permit a change in the cut-off date.

Truth Bill

As the cut-off date is specified in the constitution, only a constitutional amendment can alter it. The ANC has argued that changing the date would be like granting a “licence to kill” by encouraging the notion that amnesty for serious crimes could be expected in perpetuity. “It would undermine the whole basis for the rule of law,” said ANC MP Willie Hofmeyr.

After 180 hours of committee deliberations, months of public hearings and submissions, the creation of a special Cabinet committee to iron out controversialities, the drawing up of seven draft Bills and the acceptance of more than 500 amendments, most members of the committee were euphoric yesterday that the Bill had finally been approved. “It is a source of great satisfaction and relief that we have managed to reach such a consensus on contentious issues,” Hofmeyr said.

ANC spokesman Dante Schlitte described the passage of the Bill as the first real test of the government of national unity as envisaged in the constitution. He warned, however, that danger lurked if the Bill was not implemented correctly by responsible and credible commissioners.

The DP expressed satisfaction that some of its suggested amendments had been incorporated in the Bill. The Inkatha Freedom Party abstained from voting.

ANC MP Priscilla Jana said Cabinet would be asked to judge whether aspects of the Bill, or the Bill in its entirety, should be passed on to the Constitutional Court for verification. The truth commission process, limited to an 18-month investigation period, could not afford to become snagged by protracted legal arguments. While the committee was confident the Bill was constitutional, the concerns of some legal experts — about matters such as extinguishing a victim’s rights to civil restitution — needed to be clarified, she said.

The Bill will be debated in the National Assembly next week before being passed to the Senate. Hofmeyr predicted that a tribunal would be appointed in June, the commission would begin operating by July and would be functioning at “full steam” by August or September.
Battle over cut-off date for amnesty

BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — Legislation to establish a Truth and Reconciliation Commission to investigate past human rights abuses was approved in Parliament yesterday, but a new battle is looming over the cut-off date for amnesty.

ANC and NP members indicated there were moves to shift the cut-off date from December 5, 1993, as prescribed by the interim constitution, to May 10, 1994, the day of the president's inauguration.

The Freedom Front, the only party to oppose the Bill (the FFP abstained), indicated it would seek an amendment to the constitution to change the cut-off date.

The portfolio committee on justice, which yesterday finalised the Bill for its approval by the National Assembly next week, agreed on a new date.

The FF, the NP and the PAC said that the date be changed to May 10, 1994. If the constitution is changed, the Truth and Reconciliation Bill legislation will automatically recognise the new date.

The acting chairman of the justice committee, the ANC's Willie Hofmeyr, confirmed that discussions were taking place on the date and that the Cabinet could decide to alter it.

Hofmeyr warned, however, that shifting the cut-off date was "like a licence to kill".

The NP's chief negotiator, justice spokesman Danie Schutte, said the NP supported shifting the cut-off date if it led to a more inclusive agreement. He said he sensed that the ANC was "uncomfortable in opposing an extension".

Terror

The FF said the retention of the "disputed and arbitrary date means that no members or supporters of parties like the FF and the FFP and others involved in acts of terror after December 5, 1993 would get amnesty".

Victims of the Shelf House massacre, the Heidelberg Tavern killings and the families of the AWB members killed in the putsch in Bophuthatswana would not receive reparations.
Thumbs up for Truth Bill

By Vuyo Bavuma
Political Reporter

THE investigation of gross human rights abuses of the apartheid era came a step closer when draft legislation for a Truth and Reconciliation Bill was yesterday approved by a parliamentary select committee on justice.

The Bill, which was sometimes debated in acrimonous exchanges between the National Party and African National Congress, is to be tabled in Parliament next Wednesday.

After that it will be sent to the Senate before it can be promulgated as law.

It is expected that the commission will be operational by early August.

Yesterday three parties — the ANC, Democratic Party and National Party — supported the Bill. The Freedom Front opposed it, while the Inkatha Freedom Party abstained.

The rightwingers objected to the Bill because the committee refused to extend the December 5 1993 cut-off date for amnesty, saying this would exclude many of their supporters.

The FF also said it wanted the date to be extended to May 10 1994, the date of President Nelson Mandela’s inauguration.

An elated Mr Willie Hofmeyr, ANC acting chairman of the justice committee, said it was a great relief that consensus had finally been reached on such a contentious bill.

On the issue of the cut-off date, Hofmeyr said the committee could not change the December 5 1993 date because it was prescribed by the Constitution.
Witwatersrand attorney-general Klaus von Lieres and Wilkau shocked personnel on Tuesday morning when he announced that he was resigning with immediate effect. He then cleared his office and left the AG's offices on the top floor of the Supreme Court building.

Von Lieres's sudden departure is due to ill-health. In a statement on behalf of Justice Minister Dullah Omar, Von Lieres was thanked for his valuable service to the department since he took office in 1981. Omar also wished him a speedy recovery.

Advocate Kevin Attwell will meanwhile deputise until a permanent appointment is announced.

While Von Lieres's medical history has not been public knowledge, many in the legal profession expected him to leave sooner rather than later — but not as suddenly.

A long battle with the Department of Justice over what Von Lieres saw as an unfair obstacle to promotion, must also have taken its toll. He took the department and Justice Director-General Jasper Noeth to the Industrial Court, claiming that he had been promised the position of deputy DG. He lost the case — and the decision was upheld by the Supreme Court, which refused an appeal to Bloemfontein.

It is also known that Von Lieres, like all other attorneys-general, totally rejected moves by Omar to appoint a "super AG" to oversee the various offices in the provinces. At the same time colleagues say that a lack of funds and a continuous spate of resignations frustrated Von Lieres.

Recently Von Lieres led the legal team in argument before the Constitutional Court to debate the retention of the death penalty, of which he is a strong supporter. It was Von Lieres who argued successfully in the Supreme Court to have the ultimate penalty imposed on Chris Hani's murderers, Janus Waluz and Clive Derby-Lewis.
TRUTH & RECONCILIATION

A compromise is reached

The Promotion of National Unity & Reconciliation Bill is likely to pass into law soon — and SA will then be set to learn at least some of the truth about the political excesses of its past. But there are strong safeguards on confidentiality. The fear of a witch-hunt that some have expressed seems to have been allayed.

The Democratic Party was concerned that political crimes should be proportional to the political objective and not just a ruse whereby criminals could claim a higher justification for their deeds. This has been accepted, as have the so-called Norgaard Principles, which seek to quantify the criteria whereby amnesty can be granted.

The Norgaard Principles — which take motive, circumstances, gravity of offence and the physical target of the act into account — were devised by the president of the European Commission on Human Rights to deal with a comparable situation in Namibia. In SA, entrenchment of the principles has been considered desirable by parties such as the DP since this would provide a reasonably objective measure for the conditions under which amnesty can be granted in exchange for information.

The National Party's Dame Schutte feels the tortuous process of negotiation to which the Bill has been subjected "was, perhaps, the first real test of the new constitution — and we've reached compromise."

A key provision of the Bill relates to what has been termed a "post-amble" to the constitution — a clause which states that 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. To this end, parliament under this constitution shall adopt a law determining a firm cut-off date, which shall be a date after October 8, 1990 and before December 6, 1993."

Part of the controversy that has surrounded the Bill has been due to the fact that the cut-off date would exclude the perpetrators of the Heidelberg Tavern shootings, the Shell House massacre and the bombings on the eve of the 1994 national election. However, to bring the date closer to the present would require an amendment to the constitution. It is possible that this will occur.

The balance the legislators are seeking is between left-wing and right-wing terror on the one hand and between information and silence on the other. Schutte feels that it is "crucial that the right people are appointed" as commissioners. Public perceptions of these figures will be all-important — and at this stage it has been agreed that their political profile should not be "too high."

Once constituted, an amnesty committee will begin hearings on politically motivated crimes, by way of applications for amnesty or demands for investigations of gross violations of human rights. Parallel committees are to assemble a comprehensive history of human rights violations and assess possible reparations.
Prosecutors ‘earn less than unskilled cleaners’

MICHAEL MORRIS
Weekend Argus
Political Correspondent

LAWSYERS, launching their careers as prosecutors, are earning nearly R10,000 a year less than unskilled cleaners and if this situation is not resolved, justice will suffer, outraged Western Cape Attorney-General Frank Kahn has warned.

"The government should be cautioned not to neglect prosecutors just because they do not resort to the strikes, like the police. They are professionals and should be remunerated as such," said Mr Kahn.

In a tough statement to coincide with the tabling of his annual report in parliament this week, Mr Kahn said: "If the government is serious about tackling crime and law and order, then this should become a high priority."

"It is a poor reflection on the government if the intelligentsia in the public service cannot even afford a home.

Citing a recent tobacco company pay offer to unskilled cleaners amounting to about R41,000 a year, Mr Kahn pointed out that "first level" prosecutors straight from university could expect to earn about R33,000, almost R10,000 less.

"It is no use addressing the salaries of the police if the salaries of the professionals who process their work are left unaddressed," he said.

"We are frustrated by the shortage of skilled resources, yet salaries are not being revised."
Western Cape Attorney-General Frank Kahn has made a stinging attack on the Constitutional Court for dragging its feet on the death-sentence issue, saying courts have become the laughing stock of criminals.

MICHAEL MORRIS
Weekend Argus Political Correspondent

WESTERN Cape Attorney-General Frank Kahn has lashed out at the Constitutional Court for taking its time in resolving uncertainty over the death sentence, warning that "criminals are laughing at the courts".

In hard-hitting comments yesterday — coinciding with the tabling of his annual report in parliament — Mr Kahn said: "We would have expected the Constitutional Court to move at a faster tempo, especially in view of the fact that delays are being caused in our court rolls while we await legal direction from them. You cannot put the whole legal system on hold."

"Criminals are laughing at the courts. This erodes the deterrent value of sentences. It erodes the public's confidence in the courts and it's causing delays, which are clogging the legal system."

Mr Kahn — who points out in his report that serious crime has assumed "alarming proportions" and is becoming more organised and sophisticated — added: "We are disappointed and would like to have a swifter response from the court."

Mr Kahn's comments — which come at a time of growing public anger at the absence of certainty about capital punishment — follow this week's sentencing to death five times of Stellenbosch axe-killer Sydney Andile Mkhosana for murdering the Orffer family and their domestic worker.

Mkhosana, 23, of Bloemfontein, hacked to death his employer, cabinet-maker Pieter Orffer, 32, Mr Orffer's school teacher wife Lida, 30, their children Jean, 6, and Eulalia, 4, and their domestic worker Sanette Jacobs, 30, in July last year.

Sentencing Mkhosana, Mr Justice Williamson said the massacre was "truly one of the foulest and most barbarous serial murders this court has ever seen."

However, Mkhosana's punishment is effectively suspended until the Constitutional Court decides if the death sentence is valid in terms of the new constitution.

This has been one of the key matters before the court.

But, Mr Kahn asked: "Do you mean to tell me that 11 learned people cannot tell us where we stand on the death penalty in three months?"

"The public, the people on Death Row and prosecutors deserve to know where they stand on this."

He said prosecutors, already under pressure as a result of increasing crime, "are becoming frustrated by the lack of certainty which should have been forthcoming from the court. The absence of certainty just adds to their woes."

Mr Kahn wondered if the Constitutional Court "is turning into another sacred cow unaccountable to the public or to legal opinion."

"They must learn to be accountable to public opinion," he said.

See page 3
Less legal jargon in new constitution

CLIVE SAWYER
Political Correspondent

SOUTH Africa could be spared from tortured legalese in its next constitution if last-minute editing plans go ahead.

A panel of linguistic experts should revise the yet-to-be-drafted constitution, it was recommended this week.

The proposal, by academic Johan van der Westhuizen — a member of the constitutional assembly (CA) panel of experts — was supported by the constitutional committee.

Professor Van der Westhuizen admitted the constitution would “never be so precise you could put the whole constitution on a T-shirt”.

There would always be the need for education about the constitution, he said.

African National Congress negotiator Wilhe Hofmeyr, who has spearheaded a campaign for plain language in law, welcomed the proposal.

The sooner linguistic advice was incorporated in the constitution-writing process the better, he said.

Constitutional committee chairman Cyril Ramaphosa said the proposal would be followed up by the constitutional assembly management committee.

The proposal was made during debate yesterday on guidelines drafted by the CA panel of experts, on which topics should be covered by the constitution.

The panel said the constitution should contain only those principles and institutions which would ensure that a constitutional state was provided for.

These principles should ensure the constitutional state worked properly and that the values underpinning it were enforced.

“Properly equipped institutions which will allow effective and democratic government must be in place.

“Flexible responses must be possible.”

The panel said control of the exercise of powers, including checks and balances, should be provided for.

History had to be taken into account.

Stability, effective government, legitimacy and socio-economic transformation had to be primary goals.

The panel said a constitution had a unique status and was not an ordinary statute.

It had to endure and provide a continuing framework of government for the entire nation.

It was the supreme law of the land.

It had to be a yardstick for determining the lawfulness of future government action.

It had to be justiciable and would be invoked by citizens claiming their rights.

The process of drafting the constitution was not open-ended.

Binding principles already agreed to included the constitutional principles and concept of a constitutional state.
Kahn: Bid to ease case load of sex offence court not working

Political Staff

SPECIAL arrangements to ease the workload of the sexual offences court in Wynberg may defeat the purpose of the court, Cape attorney-general Frank Kahn has warned.

In his annual report to parliament, Mr Kahn said there were a large number of cases outstanding on the court's roll.

At present, the total was 195. It was expected these would be disposed of in six months.

An attempt had been made to counter this problem by making an alternative regional court available two days a week to try sexual offences.

But the trials were not conducted by the court's prosecutors, and witnesses did not enjoy the benefit of a special waiting room, the smaller courtroom, and the privacy of the floor where the sexual offences court was accommodated.

"The result of this is that the purpose of the court is largely defeated."

Mr Kahn said the cooperation between the staff of the court in Wynberg and the police, especially the child protection unit, was excellent.

A good relationship had been established between the staff of the court and social workers, especially those from Red Cross Hospital, Safeline and Shawco.

"The prosecutors regularly lead the evidence of the social workers — especially before sentence — and a mutual understanding of each other's profession has been established between them."

Mr Kahn paid tribute to people who had helped ensure the courtrooms were not cold, impersonal and distressing for the victim.

- Mr Kahn's report, prepared before this week's controversy about the release of children from custody, said a programme had been started in October last year to ensure juveniles were not detained in police cells or prisons.

Juvenile offenders were assessed at the earliest opportunity to determine whether they could be released into the custody of their parents.

A court sat every week night at 9 pm to handle all cases that arose after normal court hours.

"The introduction of this project has placed prosecutors under considerable pressure not only because of the after-hours court sessions, but also due to the fact that guidelines and procedures have to be evolved."

There had been reasonable success, but problems remained.

"The sad fact is that during the year under review, in Cape Town alone, 537 juveniles failed to appear in court after they had been warned to do so, and 184 parents also failed to attend."

The only alternative was to find an acceptable place of detention, but little space was available.
Countries which want to retain membership of the International Labour Organization would have to prove their commitment to human and workers' rights, Department of Labour attaché Auret van Heerden said on Friday, 14/5/96.

Mr van Heerden was previewing the ILO conference scheduled for June 6 to 21 in Geneva.
MK ‘truth’ vow threatens ANC

By NORMAN WEST, Political Reporter

The Truth and Reconciliation Bill is due to be debated in Parliament on Wednesday next. The bill will lift the veil of secrecy on incidents at MK camps and increase the willingness to provide information.

The bill has been described as a key component in the national reconciliation process. It is expected to provide a mechanism for the investigation of human rights abuses committed by both the apartheid government and the ANC during the period of conflict.

The bill has been met with mixed reactions from various stakeholders. Some have welcomed it as a step towards justice, while others have expressed concern about its potential to undermine the memory of past atrocities.

The bill is expected to be debated and voted on in Parliament in the coming weeks. The ANC has stated that it will support the bill, while the opposition has called for improvements to the bill before it is passed into law.

The bill’s passage is seen as a significant step towards reconciliation and healing in South Africa. It is hoped that the bill will provide a platform for perpetrators to come forward and face justice, while also allowing survivors to have their voices heard and receive the truth about past abuses.

The bill is expected to have a significant impact on the way human rights abuses are addressed in South Africa. It is hoped that it will contribute to a more just and equitable society for all.

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Truth proposal might bring right wing on board

BY PATRICK BULGER  
POLITICAL CORRESPONDENT

Cape Town — Last-ditch attempts are being made to secure right-wing participation in the truth commission, legislation for which is being debated by Parliament this week.

The National Assembly is due to debate the Bill on National Unity and Reconciliation on Wednesday.

The Bill will be opposed by the Freedom Front and the Pan Africanist Congress unless the Government agrees to extend the cut-off date for amnesty from prosecution for politically related offences from December 5 1998 to May 10 1994.

An extension would free right-wing pre-election bombers and APLA’s Hostelberg Tavern killers.

The key to securing the right wing’s involvement is a Government proposal for a new multi-party committee that will consider certain cases before they come before the truth commission.

The committee could make it easier for the Freedom Front to come on board a process that will inevitably rely heavily on the co-operation of the FF’s constituency of serving and former security force personnel.

President Nelson Mandela first floated the idea of the committee in an interview last week when he said the committee would “prepare the evidence to be submitted to the truth commission to ensure that the proceedings in the truth commission have been properly structured so that there should be no idea that this is a witch-hunt.”

FF Senator General Pieter Groenewald would only say at the weekend that discussions with the ANC were continuing.

Ironically, the multi-party committee proposal could have the effect of helping the ANC, and indeed the NP, to draw emphasis from certain cases and even have them withdrawn.

The Cabinet might decide this week to extend the cut-off date, but only in exchange for a fundamental commitment to peaceful change from the right wing
WESTERN Cape Attorney-General, Frank Kahn, has criticised the government for granting police salary increases while ignoring the Justice Department's professional staff who process the work of the police.

"If they were not properly paid, the country would face increasing lawlessness," Mr Kahn also accused the Constitutional Court of 'dragging feet on the death penalty issue.

"He said four months of deliberation was enough time to come to a decision."

He said the Constitutional Court should be sensitive to the agony of those on death row and make its decision known as soon as possible — Sapa
Go-slow disrupts court proceedings

CAPE TOWN — Industrial action disrupted Western Cape prisons and court hearings yesterday. About 250 Pollsmoor Prison warders embarked on a go-slow early yesterday and threatened to take more serious action if a meeting scheduled for later in the day between themselves and presidential adviser Ahmed Kathrada, failed to "positively address" their problems.

The warders are all members of the Police and Prisons Civil Rights Union. Union spokesman Eddie Johnson said at Pollsmoor that members were frustrated because agreements between themselves and management were not being implemented by the Correctional Services Department.

"We are now demanding that an independent forum be established which must advise and monitor the department and oversee the transformation process." Although there was an agreement that there would be no promotions until the transformation had been completed, most of the white officers had already been promoted or given merit awards.

Johnson said the union's actions would in no way lead to the lowering of security at Pollsmoor, and prisoners would get their food and medicines as usual. — Sapa.
Constitutional Court debates jurisdictions

JOHANNESBURG: A full bench of the Constitutional Court yesterday reserved judgment on whether provincial or local Supreme Court divisions had jurisdiction to rule on the constitutionality of laws passed in South Africa and the former homelands before the adoption of the new constitution.

The question was referred to them by the Ciskei provincial division of the Supreme Court.

It arose out of a judgment by the Ciskei Supreme Court last year in the case of Zanomze Peter Zantsi versus the Ciskei Minister of Defence, its Council of State and the council’s chairman.

The Supreme Court had declared certain provisions of the Ciskei Defence Act to be unlawful because they were in conflict with the Bill of Fundamental Human Rights in the former Ciskei constitution.

While no reference was made to the SA constitution in that application, the court felt the Constitutional Court should rule on the jurisdiction of provincial and local Supreme Court divisions regarding the review of pre-constitution laws.

Most of yesterday’s proceedings were taken up by lively, but technical debate on the wording and interpretation of the law governing the exclusive jurisdiction of the Constitutional Court and that of provincial and local Supreme Court divisions.

Counsel for the Ciskei defence ministry, Mr Dawid de Villiers, QC, argued that laws passed by the former SA parliament had been applied in the former homelands and so constituted acts of Parliament.

Power

He contended that only the Constitutional Court had the power to declare such acts unlawful or unconstitutional.

Mr Wim Trengove, SC, presenting argument in support of the Ciskei Supreme Court’s finding, argued that the Supreme Court had an “inherent, common-law” jurisdiction to renew the constitutionality of acts of Parliament.

The new constitution did not state that only the Constitutional Court had the power to review acts of Parliament, he said. — Sapa
Inadequate resources hinder justice system, Omar warns

KEY STAFF BEING LOST TO PRIVATE SECTOR

SOUTH AFRICA cannot succeed without an efficient justice system — which was threatened by inadequate funding, Justice Minister Mr Dullah Omar warned yesterday.

The work of the Department of Justice was being seriously hampered by inadequate resources, Justice Minister Mr Dullah Omar said yesterday.

Introducing debate on his budget vote, he said the department was unable to allocate funds for new capital projects and was losing qualified and experienced personnel to the private sector because of poor salaries.

New court buildings could not be provided and areas which were discriminated against under the apartheid system had therefore remained disadvantaged.

The department had had four strikes this year, all as a result of payment, allowance or salary grievances.

"The question of salaries has proved a discouragement to many people we would like to attract to the civil service."

The justice department was "losing professionals because they are not treated as professionals", and their loss placed a greater burden on the remaining staff.

Magistrates faced "humiliation" because of their poor salaries. However, most remained loyal to the cause of justice and at their posts, often working overtime.

The question of salaries had to be addressed urgently if the twin goals of a more representative department and better administration of justice were to be met.

"Resources are scarce and there are many demands on the public purse, but there must be an appreciation that a well-oiled justice system is essential if the new constitutional order is to succeed."

Discipline

There were also productivity and discipline problems in a number of regions, but they were being addressed.

Mr Omar said the fight against crime was a major priority for his department, which was working closely with the department of safety and security.

Initiatives included the establishment of an inter-departmental coordinating group, conferences and seminars, proposed new bail legislation and attempts to win the trust and cooperation of communities.

The dream of a new social order was being undermined by escalating crime and violence, including serious economic offences, drug trafficking and corruption, Mr Omar said.

Reports by the various attorneys-general had warned that they were being "undemned" in their struggle against crime by inadequate resources and salaries, shabby treatment, heavy workloads, inadequate personnel and the loss of dedicated people to the private sector — Sapa.
Improvement of access to justice a priority — Omar

CAPE TOWN — Access to justice in SA was hopelessly inadequate and its improvement would be a prime objective for 1995/96, Justice Minister Dullah Omar said in Parliament yesterday.

During his budget debate, Omar said without the equal protection of the law, "the greater will be the tendency for people to take the law into their own hands".

A number of programmes had been implemented or were planned to boost the access of citizens to justice, Omar said. These included a budgetary allocation of R184m for legal aid, which constituted an increase of 170% over 1994/95, the provision of legal training, the effective management of courts and court rolls and the establishment of special courts.

Better witness protection, the appropriate recognition of paralegals, advice offices and aid clinics, the adoption of alternative dispute resolution mechanisms, adequate provision for community and traditional courts and the proposed simplification of the language used in courts and legislation were all geared to boosting access to SA's legal system.

Despite teething problems, a pilot project to appoint lay assessors in magistrates' courts had succeeded well.

The civil jurisdiction of magistrates' courts was also increased to R100,000, allowing more litigants to use less expensive magistrates' court procedures.

Various measures to fight crime, including the drawing up of a national plan of action, new bail legislation and the greater involvement of communities, were being implemented, he said.

There was commitment to co-operate closely with the Safety and Security Department to combat crime.

Omar said the work of the Justice Department was being seriously hampered by inadequate resources.

The department lacked funds for new capital projects, and was losing qualified and experienced personnel to the private sector because of poor salaries.

New court buildings could not be provided to ensure equal access to justice. Areas which were discriminated against under the apartheid system had therefore remained disadvantaged.

The lack of resources also led to other problems, such as unavailability of witnesses due to a shortage of police transport, and buildings and offices were "in a terrible state".

There were also productivity and discipline problems in a number of regions.

The fight against crime had to go hand-in-hand with the implementation and realisation of a new "justice vision". The Department's approach was to concentrate simultaneously on both aspects, Omar told Parliament.
ANC leaders' temporary immunities extended

POLITICAL CORRESPONDENT

Cape Town — The government has extended for a year the temporary immunities from prosecution granted by the previous government to former ANC members who were granted permanent immunities from prosecution by then state president FW de Klerk.

The immunities have been extended to apply to the current ANC leaders who are now holding senior public positions. This includes deputy president Thabo Mbeki, deputy president Kgalema Motlanthe, and deputy president Joe Modise, as well as Defence Minister Ronny Kasrils, Post, Telecommunications and Broadcasting Minister Dr M. Nkomo, and the minister of communications, Joel Netshitenza.

The immunities, which are to expire tomorrow, were granted to allow the negotiations era to allow ANC members to take part in discussions on the country's future.

Promotion of Nations, Unity and Reconciliation Bill, which is still to be debated in Parliament, will see the commission to investigate human rights abuses committed during the political conflicts.

The bill, which is expected to be passed by the National Assembly today and will become law only once both the Senate and the provincial councils have approved it, has to be sent back to the Senate for finalization in the Senate.

The new government has a goal of moving forward with the agenda of the Commission of Inquiry into the Truth and Reconciliation Commission Act.
Amnesty cut-off: Mandela leaves way for change

CLIVE SAWYER
Political Correspondent

PRESIDENT Mandela has left the way open for a change in the cut-off date for amnesty.

The national assembly yesterday approved the Promotion of National Unity and Reconciliation Bill, which sets the cut-off date as December 5, 1993, the date stipulated in the constitution.

The Inkatha Freedom Party abstained from voting and the bill was opposed by the Freedom Front, which warned that the goal of reconciliation would be undermined and violence could ensue.

Rightwing groups have demanded the date be changed to May 10 last year, the date of the presidential inauguration.

Mr Mandela, who has been criticised for poor attendance at parliament, yesterday made a surprise appearance during the debate.

He followed Justice Minister Dullah Omar, who introduced the bill.

Mr Omar said the African National Congress had resisted calls to change the cut-off date because there had to be certainty that perpetrators of violence would have to take responsibility for their deeds.

The fact that the country was plagued by politically motivated killings and violence ruled out a change in the date.

Mr Mandela said he had great sympathy for the demand to move the cut-off date to May 10, but levels of violence were too high.

"Those who want this date extended have a responsibility to help all of us bring the level of violence down."

When this had happened, all parties in the national assembly should have no problem in extending the date in the interests of national reconciliation.

Danie Schutte (NP) said the Truth and Reconciliation Commission could play a meaningful role in promoting a balanced picture of the past and completing the process of indemnity.

The party supported calls for the cut-off date to be moved to May 10.

"If that can lead to an inclusive settlement (it is the least sacrifice that can be made)."

For the effective combating of crime and lawlessness, it was essential to end the era of indemnities, releases and amnesties, Mr Schutte said.

Dene Smuts (DP) said the December 1993 attack on the Heidelberg Tavern was at the centre of the question of the cut-off date.

Shifting the cut-off date would create a "a sideway, on which you lose your moral footing."

Speaking in a television interview last night, national assembly justice committee chairman Johnny de Lange said it was hoped the commissioners would be appointed by July.
PRESIDENT Nelson Mandela opened the door for the extension of the amnesty cut-off date yesterday during a dramatic intervention in the Truth Commission debate in Parliament.

The National Truth and Reconciliation Bill was approved by the National Assembly after a five-hour debate, despite the opposition of the Freedom Front.

The legislation, which provides for a commission to probe past human rights abuses, still has to go before the Senate before being signed by Mr Mandela.

Mr Mandela said he had no doubt the National Assembly would eventually amend the constitution to allow for the pardoning of those responsible for gross violations of human rights in the six months preceding his May 10 inauguration — providing those wanting amnesty genuinely tried to reduce levels of violence.

The carrot dangled by the President was designed to appease the Freedom Front, the Inkatha Freedom Party and the PAC, whose supporters were involved in a spat of pre-election violence.

But when MPs voted on the bill the FF opposed it, noting there had been right-wing terror or sabotage in the past 12 months.

Unfair?

The FF said it was unfair to punish them because the ANC believed the IFP were responsible for violence in kwaZulu/Natal.

The IFP abstained but other parties, despite broad non-ANC objections to the December 5, 1993 cut-off date, backed the legislation, which should pave the way for the installation of the long-awaited Truth Commission in the next two months.

Introducing the legislation, Justice Minister Mr Dullah Omar said the cut-off date could be reconsidered once peace had been sufficiently restored to areas affected by high levels of political violence.

The government had up to now resisted proposals for extending amnesty from December 5, 1993 to May 10, 1994 because changing the date could send the wrong signal to perpetrators or potential perpetrators of violence.

But in his surprise entry into the debate immediately after Mr Omar, Mr Mandela made an impassioned plea for reconciliation and nation-building from all parties.

Co-operate

He told MPs in a 30-minute off-the-cuff address that those who wanted the cut-off date extended should actively co-operate in efforts to reduce levels of violence.

In a reference to FF leader General Constand Viljoen, he said those who had sacrificed part of their political constituency to become part of the democratic Parliament should be given something to take back to their supporters.

Mr Mandela said it was important for national reconciliation that majority parties did not abuse their position of power by stigmatising their views on minority parties.

But he emphasised that it would be poor timing to extend the amnesty cut-off date when innocent people continued to be slaughtered by hit-squads in certain areas.

Justice Committee chairman Mr Johnny de Lange said the "very consideration" of changing the cut-off date would be very strongly opposed by the ANC caucus.

But top ANC sources said last night that talks were continuing in a bid to forge a compromise on one of the most controversial and complex pieces of legislation ever to come before Parliament.
ANC softens stance on amnesty date

Adrian Hadland

CAPE TOWN — The ANC’s refusal to consider changing the December 31, 1993 amnesty cut-off date softened yesterday after an appeal by President Nelson Mandela addressing Parliament during a debate on the Promotion of National Unity and Reconciliation Bill, which was passed by the National Assembly yesterday. Mandela said he had “great sympathy” for those arguing that the date should be changed to May 10 last year.

The ANC’s parliamentary caucus stated last month it opposed the change but left it to Mandela’s discretion.

The Inkatha Freedom Party and PAC abstained from voting on the Bill yesterday, while the Freedom Front voted against it, mainly on grounds that the December date would exclude “all parties from the amnesty process.

Mandela urged his party to be as inclusive as possible in framing legislation and on important political decisions. “The majority party must have the understanding and humility to absorb its position but to ensure confidence in minority parties that their views will be fully incorporated.”

The added caveat that extending the amnesty date could be done only once the level of violence had been brought down.

Justice Minister, Dullah Omar, confirmed that “any proposal to change the date would be considered only when peace has been sufficiently restored in affected areas.”

Justice committee chairman, John Lange said the Bill’s passage, which paved the way for establishing SA’s Truth Commission, was a “demonstration of how democracy and tolerance had taken root and how the nation had come of age.”

For the first time in the history of our country, government has acknowledged the terrible things that have been done.

Continued on Page 2
Legal sector slams 'cautious' decision

NEWS FOCUS

SUSAN RUSSELL

The legal sector has slammed the government's decision to allow a judge's name to be revealed in a recent court case. The move, described as "cautious" by the government, has been met with widespread criticism from lawyers and legal experts.

"It's a step in the right direction," said one lawyer, who requested anonymity. "But it's clearly not enough. We need a stronger commitment to ensuring justice is served in a transparent and accountable manner."

The decision was made in response to a case where a judge was accused of financial misconduct. The government argued that releasing the judge's name would help to ensure accountability and transparency in the justice system.

However, legal experts have warned that the move could undermine the impartiality of the judiciary and could lead to retaliation against judges who speak out against corruption.

"We support the government's efforts to improve transparency," said another lawyer. "But we also urge them to go further and ensure that judges are protected from any form of retaliation."
President hints that support for Truth Bill could be rewarded

Amnesty carrot for

BY PATRICK BULGER

**By Page 1 (252)**

Cape Town — President Mandela has defused a tense situation in the National Assembly in Pretoria yesterday with his decision to announce that he would sign the Truth Bill into law.

"Although I have been under pressure from some quarters to delay the bill's implementation, I have taken the decision to sign it into law to ensure that it becomes a reality," Mandela said yesterday.

Mandela said the bill would provide a "humanitarian programme" for former political prisoners and would help to heal the wounds of the past.

The bill, which was passed by the National Assembly last week, provides for the establishment of a Truth and Reconciliation Commission to investigate human rights abuses during the apartheid era.

Mandela said he was aware of the concerns of some people who feared that the commission would not be effective in healing the country.

"I have sympathy for those concerns, but I believe that the commission will be effective in addressing the challenges of the past," he said.

"I am concerned that they fear the commission will not be able to deal with theproblems that have caused so much pain in the past," he added.

The Truth Bill has been met with mixed reactions, with some rights groups welcoming it as a step towards reconciliation and others expressing忧虑 that it would lead to the victimisation of those who committed human rights abuses during the apartheid era.

"I believe that the commission will be able to deal with the issues of the past in a fair and impartial manner," Mandela said.

"I am confident that the commission will be able to provide a framework for healing and reconciliation in the country," he added.

Mandela said he was determined to ensure that the Truth Bill became a reality, and that it would be implemented in a way that would be acceptable to all South Africans.

"I am committed to ensuring that the Truth Bill is implemented in a way that is fair and impartial," he said.

"I believe that the commission will be able to provide a framework for healing and reconciliation in the country," he added.

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"I believe that the commission will be able to provide a framework for healing and reconciliation in the country," he added.
The Truth Bill is approved
Rightwingers slam failure to extend amnesty cut-off date

BY MONDLI MAKHANYA
POLITICAL REPORTER

Right-wing parties yesterday condemned Parliament's failure to extend the amnesty deadline for political crimes.

The parties contend the date should be extended to May 10 1994 from December 5 1993 in order to include rightwingers in jail for their involvement in the pre-election bombing spree.

The Freedom Front also came in for harsh criticism for its failure to get the deadline extended.

Boersstaat Party leader Ro- bert van Tonder said the PF should have known that it would not make any impact in an ANC-dominated Parliament.

CP leader Dr Fred Hartz- enberg said the amnesty date had to be extended to ensure equal treatment for all. Failure to do so would be discriminatory.

Afrikaner Volksfront secre- tary-general Dr Harry Mostert slammed President Mandela for linking the extension of the amnesty cut-off date to a decline in violence levels, saying the violence of today had nothing to do with the pre-election violence.

The AWB took a more complimentary line, saying it welcomed Mandela's statement that the amnesty cut-off date might be extended.
Law officers say a pay disparity of 46% is decimating experienced staff

Brain drain in SA

Justice

PROSECUTORS AND their advocates are leaving for far more lucrative positions in the private sector.

At the Gauteng Magistrate's Court, six magistrates out of 24 have submitted a complaint of 124 grievances, including low wages, poor working conditions, and poor treatment. The grievances were sent to the Minister of Justice and the Provincial Premiers. The magistrates have recently formed a magistrates' association, and have threatened to strike if their demands are not met.

The Minister of Justice, Dali Matlhane, has already approached the Cabinet for a pay rise for magistrates. However, the Cabinet has not yet responded.

State advocates are also leaving the public sector to pursue more lucrative positions in the private sector. They have expressed concerns about the low salaries and working conditions in the public sector, and have stated that they are unable to provide adequate representation for their clients. The advocates have called for a pay rise and better working conditions in the public sector.

The Gauteng Bar Association (GBA) has also expressed its concern about the salary discrepancies between the public and private sectors. The GBA has called for a review of the salary structure in the public sector to ensure that it is competitive with the private sector.

The Gauteng Bar Association (GBA) has also called for the establishment of a Magistrates' Commission to address the grievances of the magistrates.

The Magistrates' Commission has been established to address the grievances of the magistrates. The Commission will be responsible for investigating the grievances and making recommendations to the Minister of Justice.

The Minister of Justice has stated that the Government is committed to resolving the grievances of the magistrates. He has stated that the Government will work with the Magistrates' Commission to address the grievances.
Clarity soon on lawyers' contingency fee system?

Indigent people may soon gain wider access to legal representation, reports Justin Pearce

CONTINGENCY fees — where lawyers are only paid if they win the case — could soon be officially recognised.

This will enable the poor to invoke the power of the law without the financial risk of losing a case.

Although contingency fees have been a widespread practice for many years, the lack of official recognition has opened the way for unscrupulous operators to shoulder in on cases which are properly the work of attorneys.

The Association of Law Societies (ALS) has approached the Law Commission to consider the possibility of making the contingency fee system legal. ALS is a body that unites the provincially-based law societies, which are professional associations representing attorneys.

Human rights lawyers have welcomed the move by ALS, saying it will make the law accessible even to indigent people.

ALS has argued that with many claimants unable to afford the services of an attorney, the field is open for unprofessional operators such as debt collectors to perform some of the functions of attorneys — without the code of ethics that governs the legal profession. The introduction of contingency fees will open the services of lawyers to people who at present are forced to make use of unprofessional alternatives.

It is not the first time that law societies have moved to make contingency fees a possibility. In the early 1990s, the Natal and Transvaal Law Societies changed their rules to allow contingency fees. However, when the Cape Law Society tried to do the same, the matter was brought before the Chief Justice, who expressed the opinion that the practice was contrary to common law. Since then, the law societies have ceased to endorse the practice of contingency fees.

They would welcome the introduction of contingency fees, since the system would regularise a state of affairs which exists anyway.

However, Roger Cleaver of the ALS believes that contingency fees might receive fresh consideration in the light of the changes in legal thinking that came with the adoption of a Bill of Rights. The new Constitution emphasises principles of justice and access to the law, a development which has seen the function of the Justice Department shift away from laying down the law, towards ensuring that abstract concepts of justice become a reality.

Cleaver emphasised that the ALS did not envisage the system practised in the United States, which tends to fill the courts with shoot-in-the-dark lawsuits, by offering an attorney a percentage of the damages awarded in the case. The ALS is instead considering a system similar to the one in place in Scotland, which permits an attorney to charge a premium on the normal fee, provided that the court grants to the complainants damages which cover the increased fee.

Individual applicants would be permitted to make use of contingency fees, but not companies seeking a law suit.

Krush Govender of the National Association of Democratic Lawyers (Nadel) and Ahmed Motala of Lawyers for Human Rights both said they would welcome the introduction of contingency fees, since the system would regularise a state of affairs which exists anyway.

Motala said contingency fees were common practice in cases such as car accident claims, and that the law societies have simply "turned a blind eye" to the practice.

Govender pointed to the many cases brought against the police and other organs of the state during the apartheid era, which would never have happened if the attorneys had not agreed to write off fees if the suit were unsuccessful.
Frank Chikane, a behind-

Chikane tipped as

Taoufique For Truth Czar

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Leader of the pack: Frank Chikane, victim of a 1999 assassination attempt

Terrorist networks will continue to be involved in the activities of the ANC, says a report by the Independent Commission for Human Rights.

The Independent Commission for Human Rights (ICHR), in its 1999 annual report, has raised concerns about the activities of the ANC, particularly its relationship with terrorist networks.

The report states that the ANC has been involved in various acts of violence and terrorism, including the murder of political opponents and civilians.

The ICHR report also highlights the role of the ANC in the activities of the African National Congress (ANC), which is reportedly involved in various acts of violence and terrorism.

The report calls for an end to these activities and for the government to take effective measures to prevent them.

The ICHR report is the result of a year-long investigation into the activities of the ANC and its relationship with terrorist networks.

The report is available for download on the ICHR website at www.ichr.org.za.
Bill set to give rights to powerless "chatters"
Four white men and truth

"keep things as cool as possible," he says of the Justice Committee where, as the ranking ANC member after chairman Johnny de Lange, he has been responsible for bringing out the ANC heavy artillery. "But there were times when having to plead and negotiate for a Truth Commission with the perpetrators of crimes against humanity did get one down."

Hofmeyr, like his primary adversary Danie Schutte, is an Afrikaner. He went "straight out of school to the army, full of naive enthusiasm. But the army radicalized me more than anything. I was in the Transvaal and it was the first place I experienced hardcore racism. Things are much more gentle here in the Cape."

In the 1970s he was banned, in the 1980s he was a United Democratic Front leader. Now he is one of the ANC's egghead lawyers, a steely determination masked by his affable, nerd-like demeanour. He no longer sees himself as a victim in need of healing. "I was plunged into that work when I had to make arrangements for the first Groote Schuur meeting. There I was, sitting face to face with policemen I had had a particularly bad relationship with, and having to come to agreement."

But, he acknowledges, his own experiences have given him a very sharp sense of how the experiences of victims need to be validated. "With all these negotiations and the transition, victims have been left by the wayside, and that's just not on."

Did Hofmeyr and his ANC colleagues sell justice down the river by acceding to so many of the NP's demands? "How ever much justice might require it," he said, "the one compromise is that we're not going to have Nuremburg-type trials in South Africa. This might be against what international human rights and norms require from us, but the ANC accepted that very early on. I certainly did. A negotiations process means having to work with and live with and build together with people who treated us very badly in the past."
experience, and a profile of four white men involved in the truth process.

Hofmeyr and Alex Boraine in THE MARK GEVISSER PROFILE

men and truth

The truth of the matter Father Michael Lapalage (above, left), Darie Schutte (above, right), Willie Hofmeyr (right, top) and Alex Boraine (right, bottom)

and tell me I was one, I'd like to know on what grounds.

If someone is personally responsible for the hundreds of hours of deliberations in the Justice Committee, it is Darie Schutte. He is perhaps the most belligerent of the NP backbenchers, and has made a name for himself, first as one of the party's fiercest opponents of the ANC and then as one of the most vocal proponents of it. He is known for his fiery speeches and his unyielding stance on key issues.

His most unorthodox opponents accuse him of using the Truth and Reconciliation debate to grandstand and to make political points. But he insists that his speeches are for the sake of the country and for the sake of truth.

Boraine's work with the Truth and Reconciliation Commission has been hailed as a key step in the country's transition to democracy. He has had to face criticism and opposition, but he has remained committed to his work.

The Truth and Reconciliation Commission was established in 1995 to undertake a comprehensive investigation into the Truth Commission and to make recommendations for the future of the country. The commission's work has been controversial, with both supporters and critics arguing that it has not gone far enough in uncovering the truth about the past.

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His most unorthodox opponents accuse him of using the Truth and Reconciliation debate to grandstand and to make political points. But he insists that his speeches are for the sake of the country and for the sake of truth.

Boraine's work with the Truth and Reconciliation Commission has been hailed as a key step in the country's transition to democracy. He has had to face criticism and opposition, but he has remained committed to his work.

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The Truth and Reconciliation Commission: The International
Filling in the blank pages of South Africa

South Africa can draw upon a wealth of international experience of truth commissions, writes Eddie Koch

South Africa is not the only country to secure its past in a cathartic reconciliation that has allowed human rights abuses that have occurred in 15 truth commissions in 13 countries over the last 20 years, and a number of countries have been considering or are in the process of setting up new truth commissions.

The first to receive major international attention was set up in 1974 in South Africa to help abuses committed by the military during its apartheid policy against internal political opponents between 1977 and 1983.

There have been less publicised "truth commissions" in Uruguay, Bolivia, the Philippines, Germany, Chad, Zimbabwe, El Salvador (which has had two human rights inquiries) and Peru, which has set up a formal probe into genocide committed there.

Virtually, the poet and hero of Czechoslovakia's velvet revolution, Vaclav Havel, has set a standard for those who work under governments that are not about choosing between social outcomes and political strategies, and the truth, about how, to justify any violence, and the rebuilding of people's faith in the international community and integrity of individuals were his goal.

Says Haynor: "Such commissions are often referred to as having a "truth" or "accounting" effect on society in fulfilling the important step of formally acknowledging the wrongs of the past. But not all truth commissions have been such successes. Some have been significantly limited from a full and fair accounting of the past — limited by mandate, by political constraints, restricted access to information or a basic lack of resources — or a narrow slice of the truth."

Haynor notes a commission of inquiry set up in Uganda to repudiate an 11-year internment of some of the country's former leaders under international pressure in 1995. "That commission, not until it issued a 1,000-page report about hundreds of disappearances and executions of ex-members of Jowite's rule in Uganda, a truth commission was created in 1960 by new president Colson Agino without any popular support. The commission ultimately recognized over 100,000 human rights abuses as an admission of Agino's initial commitment to human rights issues faced in the continent generally.

Despite Havel's eloquent appeal, most countries in Eastern Europe have chosen not to reopen their history books: "Ex-communist have regained power..." and the events in Poland, Hungary and Bulgaria, says Sylvia Braverman in the same edition of The World Review: "The transition to a market economy..." and the majority of the population, their..." before their people are now convinced about the present and the future. No one in the West or in Chile set up a Commission of the Truth and Reconciliation for a long time, and the bill has been heavily circumvented."

Michael Lapsley, Danie Schutte, Willie Hofmeyr and Alex Boraine in men and tr

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The truth of the matter: Father Michael Lapsley (above, left), Danie Sc

The truth of the matter: Father Michael Lapsley (above, left), Danie Sc,...

We have more unacknowledged instances of the Truth and Reconciliation Commission, they are still mostly non-existent and have only existed for a few years, and are a very small part of the total picture, particularly if you have no hands.

Hofmeyr and Alex Boraine in men and tr

Phocathl's continued hold on power and by stigmatisation that could only report on people who had been murdered and could not reveal details about the living.

Now that Phocathl and his allies are seeing their power base in Chile, the government of President Eduardo Frei is intensifying the work of the commission to testify against Phocathl's victim is actively being sought. A body of literary work including Artel Dorfman's "Death and the Maiden" and F. Hesse's book. Hesse, are symptoms of the creative effort that can come with collective catharsis.

But most other countries in Latin America, says Andrew Graham-Yo... of Latin America, are pure with endless stories of their own, while those in private hells and are still waiting.

Danie Schutte

experience, and a profile of four white men and tr

FATHER MICHAEL LAPSLEY, whose wife, Helen, was assassinated by the apartheid regime, has been confirmed as a member of the Truth and Reconciliation Commission.

The 45-year-old Lapsley was一篇文章的自然文本表示。
INKATHA and the African National Congress took diametrically opposed views on the proposed truth commission again this week.

Speaking in parliament during the debate on the Promotion of National Unity and Reconciliation Bill, the ANC seemed to soften its attitude on the question of a cut-off date for amnesty while Inkatha rejected the truth commission outright.

Inkatha's Madala Mzizi said while his party supported the notion of reconciliation, it was unable to give its support to the Bill.

Speaking in Parliament this week, Mzizi said government resources should be used to promote reconciliation - but not in the form of the proposed truth commission.

Justice Minister Dullah Omar said the amnesty cut-off date could be reconsidered once peace had been sufficiently restored to areas affected by high levels of political violence.

Introducing the Bill, Omar said the government had resisted proposals to change the date from December 5 1993 to May 10 1994, because there had to be certainty about reducing violence.

President Nelson Mandela said those who wanted the amnesty cut-off date extended should cooperate in efforts to reduce the levels of violence. He had no doubt that once this happened, the National Assembly would accept that extending the date would be in the interests of reconciliation.

He said he had sympathy for those asking for a later date than that laid down in the Constitution and it would be a mistake to ignore their pleas.

However, in the present climate of violence this had to be considered very carefully.

The National Party gave its qualified support to the Bill. General Services Minister Chris Fitzner said the way in which the commission carried out its work would determine whether the country became reconciled to its past or not.

He said the Bill could either shatter the fragile peace and reconciliation process - placing South Africa permanently in a mode of hatred and accusation - or firmly cement the process.

Fitzner said the NP's support of the Bill was dependent on a number of factors: the balanced drafting of legislation, the wise appointment of the committee, the credible and unbiased conduct of affairs and the reconciliatory nature of the reports.

The Dutch Reformed Church has also entered the fray. On Friday, the church expressed concern that the Truth Commission might have a negative effect on South Africans.

The church called on the commission to ensure its work would not be conducted from a single ideological viewpoint and that it should guard against 'revenge attacks'.
Amnesty call for ANC heads

JUSTICE Minister Dullah Omar said today that he would refuse to capital punishment, but he would not decide whether a warrant for amnesty should be issued until after the amnesty process is completed. Mr. Omar said at a press conference that South Africans should not have to suffer capital punishment if they are not guilty of a crime. The Commission of Inquiry into the Truth and Reconciliation is expected to begin work within three months, after the release of the Truth and Reconciliation Commission's report in Cape Town.

Mr. Omar acknowledged that a breakthrough on the issue of human rights violations, under apartheid rule, had been made. "I find it unacceptable that leaders of the struggle against white rule still have to apply for amnesty," he said, in an interview with the Truth and Reconciliation Commission. "I think it is a disgrace," he said.

Mr. Omar added that although the government was committed to democracy, it was not clear whether or not it would be able to implement it. "We cannot say categorically whether or not we would serve in the government," he said. "If capital punishment is reimposed, the new South Africa will be no different from the old.

"I would find it very sad if our new society found it necessary to return to the death penalty. I cannot say categorically whether or not I would serve in the government," he said. — Reuters
Omar explains comments

Political Staff and Reuters

ALTHOUGH Minister of Justice Dullah Omar says it is unacceptable that leaders of the struggle against white rule should have to apply for amnesty, he has rejected reports that he called for automatic indemnity for them.

"I find it unacceptable that those who played the greatest role in bringing South Africa to democracy should have to apply for indemnity. I think it is a disgrace," he told foreign correspondents yesterday.

Mr Omar said no-one should be exempt from a summons to testify before the Truth and Reconciliation Commission.

But he said people who had played a leading role in the struggle against apartheid should not have to apply to the commission's amnesty committee for exemption from prosecution.

After his comments caused a political storm, Mr Omar said he had not called for an automatic amnesty for anti-apartheid leaders.

"He did not call for automatic indemnity," a statement from his office said.

He expressed regret that a provision of this kind was not included in the bill.

Several cabinet ministers have only temporary immunity from prosecution in terms of an interim law that allowed them to return from exile in 1990 for talks.

Mr Omar named Deputy-President Thabo Mbeki and Public Service Minister Zola Skweyiya as among those he believed ought to be exempt from formal application for amnesty.

"They are the people who brought our country to democracy. Those who made the greatest contribution to our democracy should not have to apply for amnesty," he said.

Asked who should decide whether a contribution was significant enough to warrant exemption from the amnesty process, he said "It's a political decision."

The National Party and Democratic Party last night described Mr Omar's ideas on the issue as outrageous and alarming, and said he was trying to undermine the commission.
Omar denies pushing automatic amnesty for liberation leaders

Justice Minister Mr Dullah Omar denied last night he had called for automatic indemnity for leaders of the liberation struggle.

A political storm erupted last night after it was reported earlier yesterday that Mr Omar had said he felt leaders of the anti-apartheid struggle should get automatic indemnity.

Mr Omar said he had responded to a reporter's question as to whether he was unhappy with any part of the final version of the Truth Bill.

A spokesman for his office said last night Mr Omar had said "he found it unacceptable and disgraceful that those who played the greatest role in bringing democracy to South Africa should have to apply for indemnity."

"He did not call for automatic indemnity. He simply expressed regret that a provision of this kind was not included in the bill."

But the National Party and Democratic Party last night described Mr Omar's thoughts on automatic amnesty as "outrageous" and "alarming."

They accused the ANC of trying to undermine the soon-to-be established Truth Commission through political favouritism.

DP leader Mr Tony Leon said Mr Omar's idea of creating a super-category of persons to whom the amnesty legislation passed only last week did not apply was "deeply repugnant."

NP justice spokesperson Mr Danie Schutte said Mr Omar's call was outrageous in view of the Truth Commission Bill, which was clearly based on equal treatment for all, "whatever their political inclination might have been." — Sapa, Political Correspondent
Omar provokes storm over amnesty remark

Adrian Hadland

CAPE TOWN — Justice Minister Dullah Omar moved to quieten a political storm yesterday after a remark suggesting leaders of the liberation struggle should not be forced to appear before the truth commission.

Fielding questions from members of the Foreign Correspondents’ Association yesterday, Omar was asked if there was anything concerning the truth commission process with which he was unhappy.

According to spokesman Sue de Villiers, Omar said he thought it disgraceful that figures such as Deputy President Thabo Mbeki and Public Service Minister Zola Skweyiya should have to apply for indemnity.

Other political parties reacted angrily after reports indicated Omar had called for an automatic indemnity process.

“Omar’s call for automatic indemnity for certain ANC leaders is outrageous,” said the NP. “If leaders of the ANC are to be given preferential treatment, then many members of the security forces and police should also be given the same preferential treatment because many of them in the past 10 years fought to preserve the reform initiative which eventually led to the present dispensation.”

DP leader Tony Leon said the idea of creating a “super category” of person to whom truth commission legislation, passed only last week, should not apply was “deeply repugnant”.

Last night Omar apologised for the confusion and said he regretted the misunderstanding. He reiterated his disappointment with the truth commission concerning the lack of an automatic indemnity procedure.

Mbeki is one of several Cabinet Ministers who have only temporary immunity.

De Villiers said the Promotion of National Unity and Reconciliation Bill had already been passed by the National Assembly and was currently before the Senate for concurrence.

A new indemnity process was “not something that can just be called for”, she said. The PAC had called for a similar process. However, Omar had not urged government to implement such a process. He was just disappointed one had not been included in the legislation.
Omar causes row on 'unequal' amnesty

BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — Justice Minister Dullah Omar triggered a new row yesterday over the proposed truth commission by calling for what political opponents said would be preferential treatment for his ANC colleagues.

Omar told a Foreign Correspondents’ Association breakfast that leading ANC figures in Government should not have to apply to the truth commission for amnesty but should be granted it by a “political” process.

However, in a later statement the Minister said he had been incorrectly reported. He said he was “simply expressing regret that a provision of this kind was not included in the Bill” and that those who had fought against apartheid would have to apply for amnesty alongside those who had defended apartheid.

Responding to a reporter’s question about what he personally would have liked to see included in the truth commission Bill, Omar said he found it “unacceptable that those who played the greatest role in bringing democracy to South Africa should have to apply for indemnity ... I think it is a disgrace.”

He mentioned Deputy President Thabo Mbeki and Public Service and Administration Minister Zola Skwema as two people who should not have to approach the amnesty committee for temporary indemnity.

“They are the people who brought our country to democracy. Those who made the greatest contribution to our democracy should not have to apply for amnesty,” he said.

NP Justice spokesman Danie Schutte said in response that statements were “outrageous in view of the truth commission Bill which had been agreed to in the last two weeks and which is clearly based on equal treatment for all, whatever their political inclination might have been.”

“The truth commission can only be an instrument of reconciliation, which it is intended to be, if all sides of the fray are treated equally.”

DP leader Tony Leon noted Omar’s comments with “alarm and concern”, and said the idea of creating a “super category” was “deeply repugnant”.

“We very much doubt whether Minister Omar’s remarks have any legal validity, but they are disturbing because of the suggestion that certain persons should be placed above the law and beyond its reach.”
ANC support for special indemnity

JUSTICE MINISTER Mr Dullah Omar's denial on Monday that he intended creating a special category of indemnities for ANC leaders was yesterday swept aside by the ANC, which said it fully supported the proposal.

Mr Omar said he found it unacceptable that members of the ANC should have to apply for indemnity before the Truth Commission alongside those who defended apartheid. He said later he was "simply expressing regret" that the bill on the Truth Commission would treat the defenders and the opponents of apartheid in the same way.

However, the ANC said in a statement yesterday that it "throws its full weight" behind Mr Omar's statement. — Political Staff
Big problems!

Minister Zola Skweyiya from the Department of Security Forces, said many courts, particularly those in rural areas, were unfriendly. In some of SA's 1,600 courts, judges' chairs were sometimes made from wood, while libraries were sometimes not large enough to hold all the required books.

This was a problem, said the minister, because judges needed access to a wide range of resources. In addition, judges were sometimes required to travel long distances to get to their courts, which could be time-consuming and expensive.

The minister also highlighted the lack of infrastructure in many courts, which could be a problem in terms of security. In some cases, judges had to use public transportation to get to their courts, which could be dangerous.

The minister said that the government was working on improving the situation, but admitted that it would take time to make significant improvements.

In the meantime, judges were encouraged to take advantage of the resources available to them, such as the National Library Service and the Department of Justice's legal aid services.
ANC supports special indemnities

Cape Town — Justice Minister Dullah Omar's denial that he intended to create a special category of indemnities for ANC leaders was yesterday swept aside by the ANC, which said it supported the "intention to indemnify a special category of people previously under temporary immunity".

"We unequivocally reject the opportunistic attempts by the NP and the DP to equate the role played by this special category with the role of certain elements within the security forces."

The category should include the late Joe Slovo and Oliver Tambo, as well as Deputy President Thabo Mbeki, Natal ANC leader Jacob Zuma and Defence Minister Joe Modise.

"On the contrary, the 3500 members of the security forces who had applied for indemnity had committed crimes in the course of the maintenance of a system condemned as a crime against humanity." — Political Correspondent
Council sets out where money goes

BY PAULA FRAY

About R328-million will be spent on bulk infrastructure and services in areas within Gauteng's Eastern Services Council next financial year, it was announced yesterday.

In announcing the R327,9-million 1995/96 budget effective from July 1, council co-chairmen Leon Ferreira and Mpho Mofokeng said levies on business enterprises, including local authorities, in the region would not be increased.

According to council spokesman Wanda Heming they have not been increased since 1992.

The regional council, however, has pledged to "address the most urgent needs in the region with the limited funds at its disposal" even though its boundaries were enlarged to include a huge rural area with the January proclamation of Gauteng's internal boundaries.

The recent demarcation proposals of Gauteng MEC for Housing and Local Government Dan Mofokeng would further increase the size of the area under the council's jurisdiction, she said.

Under the new budget, about R56-million will be spent on construction projects of which more than R56-million is budgeted for the treatment of waste water.

Businessman's idea cuts the crime rate

BY CHARMEELA BHAGOWAT

While entire communities appear paralysed by rising crime, a Linksfield resident has shown that one person can make a difference.

Joe Metrkin — a 55-year-old businessman and father of three — set off a chain of events which led to a 50% drop in crime in Johannesburg's northern suburbs in one week.

It all began with a letter to President Mandela.

Metrkin was soon contacted by Safety and Security Minister Sydney Mufamadi and SAPS commissioner George Fiyaz.

Before long, acting deputy regional commissioner Brigadier Jac de Vries met Metrkin, who suggested using army and police helicopters and specially designed SWAT trucks with well-trained SWAT teams to combat crime in a demarcated area.

The police and the army were receptive to the ideas and after hours of planning, May 10 was set as the date to begin the exercise which was dubbed "Operation Safety".

In one week crime in the northern suburbs dropped by 50%.

"It is much easier if you say this is what must be done, instead of saying someone else must do something," Metrkin said yesterday.

He said too many people knew what had to be done, but expected someone else to do it.

ANC supports special indemnities

Minister Joe Modise.

"On the contrary, the 3,500 members of the security forces who had applied for indemnity had committed crimes in the course of the maintenance of a system condemned as a crime against humanity." — Political Correspondent.
More people seeking state legal assistance

By Ismail Lagardien
Political Correspondent

The number of people granted legal aid in criminal cases increased by 31.5 percent during the four years before last year's election.

This indicates that more and more people are turning to the state for legal assistance, which may be the result of many factors, including increased awareness of the availability of help through the Legal Aid Board.

In its annual report presented to Parliament last month, the Legal Aid Board said 54 percent of all claims submitted over the past 23 years were made in the four years prior to March 39, 1994.

During the 24 years before March 39, the Legal Aid Board granted legal assistance to 43,000 applicants, 226,000, 54 percent were granted in the four years preceding the election.

Criminal cases

The increase in the number of criminal cases can be attributed to a variety of factors. Probably the most important is the way in which the entire legal aid scheme is designed, so that people can only obtain legal representation through the Legal Aid Board.

Essentially, however, it is a "client-solicitor" system in which people must approach their attorney, who then must approach the Legal Aid Board on their behalf.

In the case of a single person with a monthly income of R500 or in the case of a married couple, R1,000.

An additional R1,000 must be made in both cases, not to be included in income. This can be extended to the income of R500 or less can apply for legal assistance from the board. Also, a married person with one child, and who earns R650 or less is also eligible. These limits, however, have discretionary powers in the granting of assistance. In terms of paragraph 26 of the Legal Aid Guide, assistance may be granted if the applicant shows a "compassionate"awai,

Population group

The number of people seeking legal aid also increased in the population group. Some 2,500 claims were made in the four years before March 39, versus 2,000 in the four years from March 39 to March 43.

The number of whites in the population group increased from 1,200 to 1,500, while the number of blacks increased from 1,300 to 2,000.

More refusals

The number of refusals also increased. Of 6,000 claims, 2,000 were refused in the four years before March 39, versus 8,000 in the four years from March 39 to March 43.

The number of refusals was also increased in the population group. Of 2,500 claims, 1,500 were refused in the four years before March 39, versus 2,000 in the four years from March 39 to March 43.
ANC backs Omar in indemnity argument

Traffic offenders can be given a hearing. No decision on mass hearings.
Nats oppose automatic indemnity

Political Correspondent

NATIONAL Party leader F W de Klerk says his party will never agree to automatic indemnity for those who fought against apartheid.

"I strongly dispute the assertion there was the nobility of the struggle on the one side, while, on the other, the government had dirty hands and defended apartheid."

He was commenting at a Press briefing yesterday, on Minister of Justice Dullah Omar's, reported regret that there was no automatic indemnity for anti-apartheid fighters.

Mr De Klerk said he could not recall there had even been a proposal for automatic indemnity.

The bill providing for a Truth and Reconciliation Commission, passed by the national assembly last week, was a vast improvement on the original version, he said.

The first version had had different tests for granting indemnity according to whether the applicant had fought for or against the system.

"We cannot accept double standards," he said.

He said automatic indemnity had not been discussed at government level.

If not dealt with sensibly, it would have an impact on the good co-operation within the government of national unity, said Mr De Klerk.
Mdlalose’s boycott decision slammed

Farouk Chothia

DURBAN — ANC and NP KwaZulu/Natal cabinet members criticized premier Frank Mdlalose for his unilateral decision to boycott the inter-governmental forum, and warned that key decisions would be taken without the province’s input.

ANC roads and transport minister Sibusiso Ndebele said the ANC was “shocked” and “deeply disturbed” that Mdlalose had taken the decision without consulting the provincial cabinet.

“In 1990, Verwoerd took SA out of the Commonwealth against the wishes of the majority of whites. Here, Inkatha is taking us out of the forum against the wishes of the majority in the province,” Mdlalose made the announcement on Tuesday, after a cabinet meeting.

Inkatha housing and local government minister Peter Miller said Mdlalose had not contacted him either and he was uncertain whether he was now barred from attending forum meetings where important issues related to his portfolio would be discussed.

Inkatha sources said Mdlalose acted on orders from Inkatha leader Mangosuthu Buthelezi, and the decision could be a bargaining chip as talks with the ANC got under way to break the deadlock over international mediation. Some observers speculated that the decision indicated that Inkatha was not optimistic that talks with the ANC would break the deadlock over international mediation.

NP agriculture minister George Bartlett said he planned to attend a forum meeting convened by Water Affairs and Forestry Minister Rader Amos in Cape Town today, and he would object strongly if Mdlalose ordered him not to do so.

“The issue (for discussion) is rural development. It is too urgent an issue to be messed around with like this,” said Bartlett. “If we are not there, other provinces will go ahead and we will remain behind.”

Ndebele said the ANC would ask national ministers to allow the three ANC provincial ministers to continue sitting in forum meetings, but to take account of the fact that views expressed were not those of the entire government.

Mdlalose said on Tuesday that the decision to suspend participation in the inter-governmental forum had been taken because of central government’s failure to assign powers to KwaZulu/Natal, and because of the ANC’s failure to honour the agreement on international mediation.

Meyer said Mdlalose was making an error of judgment on the issue of assigning powers to provinces.

Molefe downplays Malebane-Metsing’s resignation

Kevin O’Grady

NORTHWEST premier Poro Molefe, returning yesterday from a trip abroad, played down the resignation from the ANC of his former agriculture minister and provincial MP Rocky Malebane-Metsing from the ANC.

Soon after arriving at Johannesberg International Airport, Molefe said it was “proper for the ANC to act decisively” in suspending Malebane-Metsing from the party for allegedly undermining him.

Malebane-Metsing resigned and announced he would form a new political party soon after his suspension by the ANC.

However, it was “unfortunate that he has resigned as he should know that the prestige of the ANC is such that people seeking to make a meaningful contribution would do so best as part of it”, Molefe said.

It was Malebane-Metsing’s democratic right to form another political party to contest the local government election against the ANC, but he hoped he would put provincial interests first, Molefe said.

Molefe also denied that there was a twinning agreement made between the Northwest and the Canadian province of Manitoba during his trip.

The agreement, to be ratified when Manitoba premier Gary Filienon visited Northwest later this year, stemmed from mutual interests in mining, agriculture, tourism, rural development, and socio-relations, Molefe said.
Courts will get more muscle in crackdown on crime

SOUTH AFRICA'S ailing judicial system is to be dramatically overhauled in an effort to curb rampant crime.

In an interview with the Sunday Times this week, Justice Minister Dullah Omar said he was planning to "jack up" the court prosecution system to ensure heavier sentences were passed on criminals and tougher bail conditions applied. The country's 531 magistrate's offices would also be overhauled to make them more representative and to improve efficiency, he said.

Meanwhile, fed up with what a senior lawyer called the "utterly unsatisfactory state of the court system in South Africa", the Johannesburg Bar has proposed a radical new scheme for the "utterly unsatisfactory state of the court system in South Africa", the Johannesburg Bar has proposed a radical new scheme to promote arbitration, mediation and avoid civil cases.

Mr Omar and measures being introduced were aimed at restoring the credibility of the justice system.

"What we need to do is to ensure that we empower our courts to deal effectively with crime, and in addition, that we have a systematic programme of bringing blacks into the system," he said.

Mr Omar said the measures would be accompanied by the allocation of additional funds to boost the salaries of court officials who were deserting the justice system for better-paid jobs in the private sector.

He said he had asked Deputy President Thabo Mbeki and P W de Klerk for more money to increase the salaries of overworked prosecutors and state attorneys.

"In the private sector, if you work as hard as state prosecutors, you earn twice or three times the money," said Mr Omar.

On the subject of bail, he said "in those cases where the safety of the community becomes the paramount consideration, the courts should have the right to refuse bail.

Meanwhile, in a confidential letter to members, Johannesburg Bar chairman Michael Kuper has described the state of the city's courts as "disgraceful."

He said civil litigants were not well treated and there was "rank unpleasantness" involved in appearing in the Johannesburg magistrate's and supreme courts.

In these "squally surroundings" litigants suffered the "tyranny" of fixed hours, slow progress and the "ravages of the judicial temperament", he wrote.

Mr Kuper suggested that the Bar investigation a scheme which would offer the business community the equivalent of a small claims court system tailored to their needs - an alternative service run in pleasant surroundings.

This would be speedy, flexible and efficient, with well-qualified arbitrators available to sit long hours or even over weekends.

To Page 2 ➔
Horizontal rights seen as a threat to industry

BY BRUCE CAMERON  POLITICAL EDITOR

The Constitutional Assembly appears set to include "horizontal rights" in a "bill of rights," which will enable citizens not only to protect themselves through the Constitutional Court from excesses or abuses of the state but also from other citizens and businesses.

This is causing serious concern in business and industry, with the South African Chamber of Business sounding a warning that excessively broad horizontal rights in the constitution "will open Pandora's box of potential litigation and disruption."

Said legal adviser Ken Warren told Business Report at the weekend that a bill of rights, widened to include horizontal rights, would have serious implications. It would, among other things, open the way for class actions, where a single court action could result in crippling settlements.

It could also have implications for industries like the insurance industry, which bases its entire approach on discrimination.

In constitutional parlance, vertical rights govern relations between the state and its citizens. Horizontal rights give citizens broader protection, not only from the state but also from other citizens and legal entities, including businesses.

Said Warren's call follows a similar warning from the Chamber of Mines, given recently to a Constitutional Assembly committee.

The chairman of the Constitutional Assembly Cyril Ramaphosa said that both central and horizontal rights should be protected by a bill of rights. An opinion survey conducted for the Constitutional Assembly had shown that 80 percent of South Africans supported horizontal rights against eight percent who were content with being able to challenge only the state.

Ramaphosa said the main threat of a bill of rights should be to achieve equality and that horizontal rights are very important in getting rid of both sex and race discrimination in ordinary life.

"Whether it is government to citizen, citizen to citizen or group to group, it is essential to remove anything that militates against this noble cause," Ramaphosa said.

Among other things, horizontal rights were required to prevent private areas of discrimination, where private apartheid mechanisms could be created, be it hospitals, schools, clubs or associations.

Ramaphosa said that all rights in a bill of rights should be absolute.

"Rights have limitations. They will have to be carefully drafted. The clauses of a bill of rights must be aimed at counterring unfair, unreasonable discrimination. Limitations must be reasonable, sound and understandable, and based on democratic values. Discrimination cannot be based on race or sex."

Warren said the Constitutional Assembly should be careful in creating unfettered rights, but certain rights should be granted, such as the right to fair employment practices. "I don't think business would quarrel with that one," he said.

Warren said the prime function of a constitution was to regulate the relationship between the citizen and the state. "The constitution contains the mechanics of government and the measures to prevent excesses and abuses of power by the state in regard to the citizen."

Warren said there was a spillover of these vertical rights to horizontal rights. But horizontal rights between citizen and citizen should primarily be regulated by common law and statutory law.

"When the state considers it necessary to regulate relations between citizens this should be done by legislation. For example, citizens are protected from business by consumer protection legislation, standards of safety, laws of contract and many other laws."

Horizontal rights could also endanger entrenched rights in the constitution. A hypothetical example was the right to clean air. "If a person representing the post-racial drip society had horizontal rights, he or she could go to the constitutional court to stop a major road works project on account of the dust sent into the atmosphere."
NEWS IN BRIEF

Homeland laws to go:

Draft legislation to repeal homeland laws dealing with alien control, births, deaths, marriage registration, public holidays and publications control was tabled in Parliament yesterday.

Home Affairs Minister Mangosuthu Buthelezi said in a memorandum on the "Homeland Affairs Laws: Rationalisation" Bill that many homeland laws were still in force in the former bantustans, "causing great confusion."
Would-be Judges Grilled

Judicial commission pulls candidates through their paces

THE STAR / TUESDAY MAY 30, 1995
'Links needed to fight crime'

Diplomatic Correspondent and Sapa

SOUTH Africa is looking into stepping up its international co-operation in the investigation of criminal matters, said the SA Law Commission in a working paper (252).

The paper deals with:

- Obtaining evidence from and providing evidence to foreign states
- The confiscation and transfer of the proceeds of crime between states
- The enforcement of certain foreign penalties in South Africa
- The review of the law relating to extradition

The paper's provisional recommendations are that:

- The procedure for obtaining evidence from or the provision of evidence to foreign states should be simplified
- Provision ought to be made in South African law for the confiscation and transfer of the proceeds of crime
- The Extradition Act should be reviewed in order to bring it more into line with international developments.

- A central office under the control of the department of justice should be established to take responsibility for the channeling and handling of all requests relating to mutual co-operation and extradition.

Copies of the paper can be obtained from the commission's secretary at Private Bag X668, Pretoria, 0001.

- Zambia yesterday urged extradition treaties between southern African countries to help fight drug syndicates and crime cartels.

Speaking at an international drug conference in Zambia's capital Lusaka, local drug enforcement commissioner Mukutula Sunyani said extradition treaties and pooled efforts were needed to fight drug trafficking in southern Africa.

Traffickers could be effectively pursued only if all countries in the region had extradition treaties. So far only Zambia and Britain had signed such a treaty and exchanged information on drug dealers, he added.
Black lawyers hindered

JOHANNESBURG Black nominees to the bench could not become judges if they were expected to have the same experience levels as their white counterparts, the Judicial Service Commission heard yesterday.

Bench candidate advocate Ms Lucia Mahlula told the commission she had never handled big commercial cases because these had historically been the domain of white advocates.

Responding to a question, she said using commercial experience as a criterion would close the door to the bench to most black candidates. The commission should rather question candidates' ability to interpret the law, she added.

One of the most experienced black advocates on the bench, Ms Mahlula said she was confident she would be able to handle most cases if given a chance to confer with other judges and to check the facts.

The commission was interviewing three candidates for the one vacant seat in the Cape provincial division of the Supreme Court. Advocates Mr Suraj Desai and Mr Willem Louw SC were the other nominees.

Mr Desai, who has 19 years' experience as an advocate, said training of judges could never replace experience acquired during practice in the Supreme Court.

But training would be necessary because of the lack of experienced people who could transform the bench to make it representative of South African society, he added.

Mr Louw said he accepted the need for the bench to become more representative.
MP's BILL MAKES HISTORY

Backing for tougher bail, life sentences

A PRIVATE Member’s bill has won support. ANTHONY JOHNSON reports.

HISTORY was made in Parliament yesterday when a Private Member’s bill providing for tighter bail conditions and fixed life sentences was accepted by a parliamentary committee.

The draft legislation received unanimous backing.

The acceptance of the Criminal Procedures Amendment Bill, sponsored by Democratic Party spokesman on justice Mr Douglas Gibson, was described as “historic” by the National Party chairman of the committee, Mr Piet Matthee.

The bill proposes that the right to bail be restricted in serious crimes.

In certain other cases, the onus of proof would shift to the accused to demonstrate that it would be contrary to the interests of justice to release him on bail.

A second aspect of the bill aims to provide courts with new sentencing options, in which a life sentence without release on parole would become possible.

Mr Gibson tabled a letter from Justice Minister Mr Dullah Omar in which Mr Omar said he was sympathetic to the bill’s general objectives.
Training course for new judges mooted

The Judicial Services Commission indicated yesterday that it would investigate
the feasibility of a training programme for
new judges, particularly black appointees,
who had not had the opportunity to gain
experience in specialised areas of law such
as commercial litigation.

During public interviews of candidates
for five vacancies on the Supreme Court
bench, commission member David Gordon
said the commission would debate whether
there should be some form of training.

The commission, chaired by Chief Jus-
tice M Corbett, interviewed nine can-
didates for four vacancies in the Transvaal
Provincial Division and one vacancy in the
Cape Provincial Division during public
hearings in Gauteng this week.

Justice Minister Dullah Omar said on
Monday that his ministry was looking into
Continued on Page 2

Judges

Continued from Page 1

the feasibility of a training programme to
help transform the almost all-white, male
bench to a more representative body.

"Candidates were asked whether lack of
experience in specialised areas of the law
would not pose an obstacle to their ap-
pointment. Three of the four black can-
didates, including Pretoria senior advocate
Bernard Ngcoze, who had served as an
acting judge, conceded that they had not
had the opportunity to gain the experience
in areas of commercial law that their
white counterparts had.

The curricula vitae of three of the white
candidates, senior advocates Des Duke,
Willem Louw and Barend van den Heever
— all of whom had served as acting judges
— underscored the point repeatedly raised
during interviews, while white counsel
were able to develop lucrative com-
mercial practices after their initial years at
the bar, black lawyers were unable to find
commercial work which would give them
that experience.

Johannesburg advocate Lucy Maulana,
who was interviewed for the Cape
Supreme Court vacancy yesterday, said
that if commercial litigation experience
was one of the criteria for appointment to
the judiciary, no black person would ever
get a place on the bench. "None of us have
commercial experience. It is a market that
is closed to us." However, she believed it
was a person's ability to interpret the law
that was important. She said she would be
prepared to undergo training.

Asked what contribution she could make
if appointed, Maulana said she shared the
cultural background of the majority of
people in SA, who were perceived to have
little confidence in the judicial system. "I
would be able to bring that confidence to
the people. People would start seeing the
judiciary as a wholly representative body
which could be trusted."

Cape Town advocate Sairaj Desai, who
had spent 14 years at the bar and whose
practice included commercial work, told
the commission he believed he had suffi-
cient experience to serve on the bench. "I
also believe I could play a role in trans-
forming the judicial system to become
more representative," he said.

Louw, the final candidate interviewed,
was asked what his view would be if a
black candidate with equal experience was
chosen above him in the interests of a more
representative bench. Louw said he saw
the need for affirmative action in principle
and an appointment should perhaps go to
someone who had been disadvantaged.

The commission indicated that it would
have a final decision on the successful
candidates by tomorrow.
Parties to seek equal immunity from truth

Adrian Hadland

CAPE TOWN — The ANC served notice yesterday that it would be seeking a form of automatic immunity from prosecution for its leadership through an amendment to the draft Truth and Reconciliation Act. The concept was first mooted last month by Justice Minister Dullah Omar, who said he was unhappy it had not been incorporated into the Promotion of National Unity and Reconciliation Bill Senate justice committee chairman Mohsen Moosa said the ANC would propose an amendment “along the lines” of Omar’s comments. Several other parties, including the Freedom Front and the Inkatha Freedom Party, said they too would be proposing amendments to the Bill.

The Bill, accepted by the National Assembly’s justice committee earlier last month, has been passed on to the Senate committee for concurrence.

Moosa said that as framed the Bill was biased in favour of former SADF members and other state agents. Soldiers who had committed crimes under orders would be protected from liability by laws such as the Defence and Internal Security Acts. But “liberation army soldiers”, who at the time were acting illegally according to SA law, could be held liable.

There was thus more of an onus on liberation soldiers to apply for amnesty through the truth commission process. This meant senior ANC leaders, even if they had no serious violations of human rights to account for, would nonetheless be forced to disclose the commission lesser acts, including undergoing military training and

Continued on Page 2

Immunity

Continued from Page 1

crossing the border illegally.

While these leaders would be prepared to give evidence to the truth commission if requested, it would be unfair to tie them up in lengthy commission processes, which government officials such as Deputy President FW de Klerk would not have to endure, Moosa said.

The amendment would aim at legalising non-serious acts carried out by liberation soldiers rather than criminalising once-legal acts carried out by security forces

This would not create a super-category of leaders who would be above the truth commission, nor would it prevent liberation struggle leaders from answering to serious crimes such as murder and rape, he said. The amendment would seek only that soldiers and officers from all sides — including the right wing — would be treated on an equal legal basis.
Senior advocates like idea of one AG

BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape-Town — Four senior Witwatersrand-based State advocates have come out in support of Justice Minister Dullah Omar's plan to appoint a national Attorney-General.

Their support contradicts the views held by attorneys-general, including their own boss, outgoing Witwatersrand Attorney-General Klaus von Leers, and the organised legal fraternity.

The four advocates — Deputy Attorney-General Andre de Vries and Jan Hemung and senior State advocates Herman de Beer and Philip Ständer — told the High Committee of the Constitutional Assembly that they were appearing in their personal capacities.

"They argued that the independence of attorneys-general has always been qualified and that they are subject to the Constitution."

"The Constitution's guarantee of equality before the law did not leave room for contradictory approaches by the respective attorneys-general as policy is concerned."

"If the terminology National Attorney-General is used, it evokes visions of a super prosecutor who will be able to interfere with the manner in which attorneys-general exercise their discretion in individual matters."

"To obviate these fears, it is suggested that the title National Attorney-General be avoided and that the office bearer rather be termed the Director of Public Prosecutions. In addition, the office should not be seated in the political arena."

"The four said..."
Quandary Revolution in bid to restructure legal system

Experience for Bench

Permanent court costs to handle civil litigation considered

Commission of Inquiry
ANC rethink on Truth Commission

BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — The ANC is planning a major revision to the Truth Commission legislation after discovering "loopholes" in the legislation passed through the National Assembly two weeks ago.

Among the amendments being considered is a mechanism to convert some temporary immunities into amnesties without the affected persons having to apply for them.

Such immunities are now being enjoyed by senior Government figures, among them Deputy President Thabo Mbeki and some ANC Cabinet Ministers.

Another amendment is the introduction of a legal presumption that would allow guerrillas attached to the non-statutory forces to claim that they were acting within the law by violently opposing the government of the day.

As the Bill now stands, all actions committed by members of the non-statutory forces are considered illegal and their perpetrators will have to apply for amnesty.

The proposal to grant automatic immunity to a category of about 120 senior ANC leaders was first floated by Justice Minister Dullah Omar.

Omar caused a political outcry last week when he suggested that the ANC's senior leaders now under temporary immunity should not have to apply for amnesty.

Yesterday, the Promotion of National Unity and Reconciliation Bill was tabled at the Senate's select committee on justice where the amendments will be introduced before the Bill is passed through the Senate.
Bridging black law gap

In the past the life-and-death struggle against apartheid demanded the single-minded attention of the black community, including that of the lawyers in its ranks. Many concentrated on human rights. "Black people suffered brutally at the hands of the apartheid state machinery," says Wits University law Professor Shadrack Gutto. "Because of that, lawyers tended to go to the defence of the political and civil rights of their community."

Now that there is a new constitution, Gutto believes, there is room for black lawyers to shift to other areas of expertise. "They are not participating fully in areas that are strategic, such as commercial law (which deals, for instance, with investments and trade law)," he says. "Those are basically monopolised by big white firms. The major controllers of the economy at the moment still remain largely white, and they tend to use white law firms."

Because of that, there is a relationship between the control of economic power and the type of work that lawyers from different racial groups do.

Needs to be addressed

Gutto, a Kenyan exile who is the acting deputy director of the Centre for Applied Legal Studies at Wits, stresses that this needs to be addressed. "In the process of trying to empower black business in the areas of finance, investment and trade, black lawyers must begin to take commercial law work seriously," he says. "This must be seen as linked to the empowerment of black people and, therefore, they ought to acquire skills necessary to participate in the major economic activities of the country."

Gutto adds that even those black lawyers who did want to practise commercial law during the days of apartheid were not encouraged to do so. "Black lawyers were marginalised in the past," he says. "They could not get access to major commercial work. And that is really where the money is."

The few black lawyers basically became a kind of public defender, dealing mainly with petty criminal defence matters.

"It is important to provide protection for communities that are disempowered, but it does remove black lawyers from participating in the core of the power centres in society. So they dealt more with the consequences of apartheid rather than with the centres of economic power."

Going on to empower blacks

Gutto stresses, "I'm not saying they should move away from human rights, but that should go together with the process going on to empower black business."

He sees this as a major challenge. "It will be very difficult to break through and begin to represent banking, mining and insurance firms, and trade and commercial houses."

Gutto says the Ministry of Justice recognises this problem. Together with Cafls and other law centres, it is looking at the continuing education and retraining of black lawyers.

Speeding up process

"We need to bridge that gap," says Gutto, and believes this process can be speeded up if there is real cooperation between the Ministry and black lawyers.

He also identifies a role for universities, especially those with mainly black students. "Traditionally black universities must be empowered," he says.

"We need resources put into those universities to attract high-quality intellectuals in commercial fields, so that these subjects are taught in institutions that produce mainly black lawyers."

Gutto suggests law students be encouraged to pursue their studies in these areas. "They must approach their studies in a holistic manner and not only take courses not only in traditional areas," he says. "They must be able to deal with civil matters and commercial subjects (which deal with taxation, investments and economic laws)."

Gutto sees a role for law associations like the Black Lawyers' Association and the National Association of Democratic Lawyers in encouraging this new orientation.

"There are black lawyers who need to acquire additional skills," he says. "They need to be empowered in this direction."

In his own academic work, Gutto also tries to broaden his range of expertise. His students at universities in Kenya, Zimbabwe and Sweden were involved in this process.

His interests include international law, international institutions, property and land law, human rights law, environmental law, jurisprudence and gender issues.

Narrow type of specialisation

"I've tried to broaden my intellectual understanding of law in society rather than have a very narrow type of specialisation," says Gutto.

He also sees an active role for lawyers in society. "I believe an intellectual has to be involved in the day-to-day problems of society."

"One cannot shy away from them, otherwise intellectualism becomes sterile. And that's not my approach."

In line with his views, he joined the BLA, "I joined because we are at a historical moment of transformation. The challenges are mainly how to create equity in society through the empowerment of those who were previously marginalised."

"To say we have a constitution that provides for equality and empowerment does not automatically translate into the realisation of those goals."

"I see my role in the BLA as contributing towards the intellectual clarification of the issues involved in the transformation process."

Central concern

This is why, Gutto stresses, human rights need to remain a central concern of black lawyers. "Human rights does not end with formal apartheid. It is a wider undertaking."

"The transformation requires that black lawyers continue to be committed to human rights and further training in that field is definitely needed."

"But a balance is required so you don't have a cadre of black lawyers running around defending petty criminal and political cases only. They must also be engaged in empowering black people."

A law professor maintains that as a result of changes black lawyers are no longer participating fully in strategic areas. Features Writer Tyrone August reports on the issue.

Professor Shadrack Gutto ... black lawyers must also specialise in commercial law to empower black business.
More blacks as judges

If commercial legal experience was a criterion for selecting Supreme Court judges, no black advocates would qualify, advocate Mr Lucy Malula told the Judicial Services Commission yesterday.

Commercial law was “a market closed” to blacks, she said, adding that the ability to interpret the law was more important when considering new appointments.

On Monday another advocate, Mr Mohammed Navi, told the commission he would not have had commercial legal experience had it not been for his mentors.

Second day of interviews

The commission yesterday held a second day of interviews in Midrand, Gauteng, to select four judges for the Transvaal Division and one for the Cape Division.

The candidates are advocates Mr Malula, Mr Navia, SC, Mr Des Duke, SC, Mr Bernard Ngoepe, SC, Mr Willem Louw, SC, Mr Barend van der Heever and Mr Sray Desai as well as attorneys Ms Kathy Sitchwell and Mr Basile Wunsh.

Representative of society

A key question asked on both days was how to make Supreme Court benches more representative of society.

Malula said appointing blacks and women would engender public trust in the judiciary.

Desai said the past should be undone.

He suggested extending the jurisdiction of certain courts and making them more accessible.

Formerly an active member of the African National Congress in the Western Cape, Desai said he supported an independent judiciary and had not taken part in politics since April last year.

Affirmative action

Louw, when asked by advocate Mr David Gordon how he would feel if the commission decided to appoint a equally qualified black, or woman instead of himself, replied that affirmative action was necessary.

Louw, however, did not know how it should be applied.

“In principle I cannot see a problem,” he said.

Monister of Justice Mr Dullah Omar on Monday said his ministry was considering judicial training programmes to help change the composition of the Supreme Court.

The commission is expected to name the new judges on Thursday. — Sapa
De Kock ‘joked about slain lawyer’

The Argus Correspondent

PRETORIA — Former Vlakplaas commander Eugene de Kock joked about the assassination of Bheki Mlangeni, a young lawyer who was killed when he switched on a walkman which arrived in the post, the Pretoria Supreme Court has heard.

Giving evidence for the prosecution, Kobus "Chappies" Klopper, thought to be "Q", the informant who told Judge Richard Goldstone of police involvement in third force activities, said Colonel De Kock quipped that the killing of Mr Mlangeni would cause walkman sales to plummet.

The walkman had reportedly been addressed to Dick Coetzee, one of the Colonels De Kock’s predecessors at Vlakplaas. Mr Coetzee was then living in Zambia after disclosing details of his role in the assassination of anti-apartheid activists.

"Mr Mlangeni had been identified on the parcel as the sender and it had been sent to him after Mr Coetzee failed to collect it.

Colonel De Kock is standing trial on 121 charges, including murder, theft, kidnapping and fraud involving the killings of ANC members and several of his police colleagues.

He described Colonel De Kock’s attitude towards Mr Coetzee, who joined the ANC after fleeing South Africa, as one of “absolute hatred”.

Mr Klopper was asked by prosecutor Anton Ackermann, SC, about the killing of three men Brian Ngqulunga, Japie Maponya and Johannes Sambo.

His replies, in brief, were:

There was concern at Vlakplaas that Mr Ngqulunga might "turn". Colonel De Kock told him Mr Ngqulunga had been "taken out".

Colonel De Kock referred to Maponya as "Maponya-Le Roux", alluding to an alleged order by General Johan Le Roux that Maponya be killed.

Mr Klopper said he had been a member of a team which had been ordered by Colonel De Kock and General Krappies Engelbrecht to collect Mr Sambo’s body after he was killed by police interrogators. They had put the body on top of explosives and repeatedly blown it up.
PUBLIC SECTOR - GOVT. - JUSTICE

1995

JUNE - JULY
Judiciary Struggles with the Changing Times

Susan Russell

THE SUPREME COURT

Arrest and later cleared by the police of the charges of rioting in the city of Chicago. This incident brought attention to the need for better training of police officers and the establishment of clear guidelines to prevent such misconduct.

Despite these challenges, the judiciary continues to strive for justice and the rule of law. The Supreme Court, in particular, plays a crucial role in shaping the legal landscape and ensuring that the Constitution is upheld.

In summary, the judiciary faces numerous challenges in an era of rapid change and technological advancement. It is essential for judges to remain vigilant and adaptable, ensuring that the legal system remains relevant and fair for all.
Cape Town — Justice Minister Dullah Omar has been asked to consider a proposal to create a new category of indemnities ahead of the passage of Truth Commission legislation.

If accepted, the proposal could provide the Government with a way to settle the legal status of senior elected officials who now enjoy "temporary immunity" status and who will otherwise have to approach the Truth Commission for amnesty or face possible prosecution.

This group includes 118 senior officials, including Deputy President Thabo Mbeki, ANC Cabinet Ministers and IPP Correctional Services Minister Dr Sipho Mzimela who were given temporary immunity in 1990 to allow them to take part in negotiations. Omar has said he found it "disgraceful" that people who opposed apartheid were being treated in the same way as those who fought for its retention.

Unequal

However, the ANC has given notice in the Senate select committee on justice that it would introduce amendments along the lines suggested by Omar.

Committee chairman Mohelem said yesterday there was no intention to unduly delay the passage of the Truth Bill legislation. However, the Senate could not go ahead with a Bill that had prescribed unequal treatment for agents of the state and opponents of apartheid.

Opposition party members from the National Party and the Freedom Front warned that reopening the discussion on the Bill would upset the careful compromise crafted in more than 300 hours of haggling in the portfolio committee on justice.

Yesterday, when the Senate committee met for the second time to consider amendments to the Bill, Justice Department official and head of the Government's Indemnity Board, Dr. Kleynhaus, told the Senate committee that he had proposed to Omar that a new and final category of indemnities be established to help the Truth Commission deal with a glut of cases.

There were 2,000 indemnity cases outstanding, he said.
NEW CATEGORY WILL EXPEDITE PROCESS

Bid to amend Truth Bill

OPPOSITION parties warn that moves to amend the Truth Bill to create new categories of amnesty will upset a hard-fought compromise achieved, our POLITICAL STAFF report.

The temporary immunity group includes 118 senior officials, including Deputy President Thabo Mbeki, ANC Cabinet ministers and IFP Correctional Services Minister Dr Sipho Mzimela, who were given temporary immunity to allow them to take part in negotiations.

Mr Omar has already said the category system was used extensively by the previous government to allow mostly ANC members to apply for indemnity without designated categories without having to disclose the exact nature of their alleged crimes.

Mohsteen Moosa said there was no intention to delay the passage of the legislation unduly. However, the Senate could not go ahead with a bill that prescribed unequal treatment for agents of the state and opponents of apartheid.

Opposition party members from the National Party and the Freedom Front warned that opening discussion on the bill would upset the careful compromise crafted in more than 300 hours of haggling.

‘Victimless crimes’

Yesterday, when the Senate committee met for the second time to consider possible amendments to the bill, Justice Department official and head of the government’s Indemnity Board, Mr Piet Kleynhans, told the Senate committee that he had proposed to Mr Omar that a new and final category of indemnities be established to help the Truth Commission deal with an expected glut of cases.

There were still 2 000 indemnity cases outstanding. Mr Kleynhans said the creation of a new category of indemnities would help expedite these cases, which would otherwise have to be dealt with by the Truth Commission at the rate of about five a day. The category would include only people who had allegedly committed so-called “victimless crimes”.

Mr Kleynhans said the government could only create a new category of indemnities before the Truth Bill became law. Thereafter, anybody wanting amnesty would have to appear before the commission and disclose his crimes.
Mercy to cost R7 m

By ELIAS MALULEKE

KEEPING Pretoria's 453 death row prisoners - who have now been saved from the noose - in jail instead of executing them will cost taxpayers R45 each per day a total of R7,439,735 a year.

On the other hand, there will be a saving of R26,000 per year in salaries for the two hangmen.

These figures do not take into account the amount taxpayers will pay when judges start sitting to assess each of the 453 cases on merit and impose new sentences.

The names of the 453 prisoners are to be made public in parliament by Correctional Services Minister Sipho Mzimela this week.

They include the assassins of SACP general secretary Chris Hani - Polish immigrant Janusz Walusz and rightwing activist Clive Derby-Lewis.

According to Correctional Services media liaison officer Captain Bert Slabbert, director of communications Brigadier Chris Ockers and communication officer Lieutenant Rudi Potgieter, it will take months before the prisoners are resentenced.

Peter du Randt, spokesman for the minister of justice, Dullah Omar, said the costs of reassessing of the prisoners' sentences was not yet known.

He said it was expected that each case would be reviewed by judges and new sentences imposed.

He believed the sentences would range between 10 years and life.

Meanwhile, the widow of a murder victim who asked not to be named said while her husband's killers and other murderers would spend their time in jail being provided with meals and television, her children did not know where their next meal would come from.
New mood at Supreme Court

Susan Russell

JOHANNESBURG attorney and tax expert Basil Wunsch is one of five new Supreme Court judges announced by the Judicial Service Commission yesterday.

Another successful candidate is advocate Ludy Mnulala — the most senior black woman at the Johannesburg bar and the first to be appointed to the Transvaal bench. She is also the first black woman to be given a permanent appointment to any of the Supreme Court divisions.

Wunsch, a senior partner at Johannesburg law firm Edward Nathan Friedland, is the first attorney appointed to the Transvaal Supreme Court. He was the first of the nine candidates to be interviewed by the commission in public since it reversed its decision earlier this year to hold proceedings behind closed doors.

The two other vacancies in the Transvaal provincial division have been given to Johannesburg human rights lawyer Mohamed Naveen SC and Pretoria advocate Bernard Ngoepe SC. Both men have recently served acting appointments.

Cape Town advocate Suraj Desai was chosen to fill the one existing vacancy in the Cape provincial division. Known as a human rights lawyer and political activist, Desai also chaired the Woodstock branch of the ANC.

Desai told the commission this week he had given up his political activities after last year's election. He said he held strong views on the need for an independent and impartial judiciary.

The commission, chaired by Chief Justice M Corbett, interviewed the nine candidates in the presence of Justice Minister Dulah Omar earlier this week.
Post on Bench for Siraj Desai

Staff Reporter

PROMINENT Cape Town advocate, Siraj Desai, has been appointed a judge of the Cape Supreme Court.

Mr Desai was born in Salt River in 1951 and matriculated at Trafalgar High in the old District Six.

Because of the Separate Universities Act, he was unable to study at a Cape university and instead went to the University of Durban-Westville where he graduated with a BA LLB in 1976.

After serving articles and working as a professional assistant, Mr Desai was admitted to the Cape Bar in 1981.

He has appeared in many political and human rights cases during the last 14 years.

Mr Desai represented Allan Boesak when, as president of the United Democratic Front (UDF), he was charged with subversion in the mid-1980s.

He has also appeared for Umkhonto weSizwe members including Lizwi Nqulwana in 1986.

He appeared for leaders of the armed faction in the Bophuthatswana coup bid in 1990 and with the present Minister of Justice, Dullah Omar, for African National Congress leaders in the Moiseyane Commission of Inquiry into allegations of torture in ANC detention camps in Angola in 1992.

Last year, Mr Desai appeared for Gcimikhaya Makoma in the St James Church massacre trial.

Mr Desai is married to Fazeza and has three children, Tariq, 7, Azmat, 4, and Amnah, 4.

In the Transvaal Provincial Division, advocates M.L. Mabula, W.R. Navesa, SC, B M Naepe, SC, and B Wush have also been appointed judges.
R40M FOR BUILDINGS

City will get more courts

NEW state building plans were revealed yesterday.
BARRY STRIEK reports.

The government will build three new Magistrates' Courts in Greater Cape Town at a cost of R40.17 million, the Minister of Public Works, Mr Jeff Radebe, said yesterday.

The new court buildings will be built in Khayelitsha at a cost of R16.1m, at Langa (R6.97m) and at Blue Downs (R17.1m).

This was revealed in a memorandum tabled in Parliament by Mr Radebe setting out details of the building programme for the 1995/6 financial year for all projects over R200,000.

Mr Radebe also said the first phase of a new police station and single quarters at Somerset West would be built at a cost of R1.3m.

The whole project would cost about R6.6m.

Altogether R8.5m would be spent on re-building the Brandwyn Prison near Worcester. So far, R1.8m had already been spent.

Mr Radebe also said R240,000 would be spent on the restoration of Mostert's Mill, a project that would eventually cost R565,000.

Altogether R700,000 would be spent on a new restoration project at the Castle.

The total restoration there would cost R5.4m.
First black woman judge proposed

A black woman is one of five people recommended to fill vacancies for judges in the Cape and Transvaal provincial divisions of the Supreme Court.

The recommendations were made by the Judicial Service Commission, which met over two days in Johannesburg.

Advocate Lucy Maluleke is the first woman to be nominated as a judge in the Transvaal provincial division.

Others recommended to the Bench are advocates Mahomed Naveen, SC; Bernard Ngcgepe, SC; and attorney Basil Wunsh.

Advocate Siraj Desu has been recommended to fill a vacancy in the Cape provincial division.

President Mandela will make the final appointments.

Staff Reporter
1995
Black judges for Supreme Court

By Mzimisi Ngudle

FOUR blacks were appointed as judges of the Supreme Court of South Africa yesterday.

They are advocates Lucy Mashula, Bernard Ngoepe and Mohammed Navsa, who were appointed to the Transvaal Supreme Court, and advocate Syraj Dost, who was appointed to the Cape Supreme Court.

Mr Basil Wunsh, a white attorney, was also appointed as a judge of the Transvaal Supreme Court.

The judges were appointed by President Nelson Mandela after recommendations from the Judicial Services Commission, which interviewed a short list of candidates in Midrand early this week.

Meanwhile, the Admission of Legal Practitioners Act was passed in Parliament yesterday, abolishing English and Afrikaans as statutory requirements for admission to the law profession.

The Act also amended similar provisions in the former TBVC states.
The law governing amnesty for political crimes will soon come into effect — and will almost certainly precipitate further ructions within the Government of National Unity. And though the Promotion of National Unity & Reconciliation Bill — passed by the National Assembly, with the Freedom Front voting against it — is intended to heal the wounds of the past, this admirable goal could be obscured by less high-minded use of several of its clauses.

Firstly, a question mark hangs over the cut-off date for amnesty. The interim constitution gives “before 6 December 1993” as this date, which would exclude the perpetrators of the Heidelberg Tavern massacre and the pre-election rightwing bombers from consideration (In the Assembly vote on the Bill, Inkatha and the PAC abstained.)

However, the legislation has been framed to indicate the period of scrutiny as “from 1 March 1960 to the cut-off date contemplated in the constitution.” This means that the deadline can be extended by an amendment to the constitution — a political prerogative, essentially, of President Nelson Mandela.

The Freedom Front wants May 10, 1994 (inauguration day) as the cut-off, which might just save the bombers, though it is equally concerned about the fate of Clive Derby-Lewis and Janus Walsus, Chris Ham’s assassin, in April 1993. Both are on death row.

Mandela said last week that while he was “very keen” to extend the amnesty date for some prisoners, he did not want the same rights granted to hut squads and criminals who were still active in the belief that their bloody deeds would eventually be covered by an amnesty extension.

The Democratic Party’s Dene Smuts pointed out in parliament that the truth and reconciliation law “substitutes amnesty for justice.” The DP, nonetheless, voted for it, since it seeks to promote “understanding but not vengeance, reparation but not retribution, ubuntu but not victimisation”.

Smuts is pleased that the law has accepted the so-called Nogagaard Principles — which attempt to establish objective criteria for amnesty, along Nambian lines — as its statutory guidelines.

However, Smuts said, “our opposition to yet another adjustment of the cut-off date (is that) you create a slide away in which you lose your moral footing.” The past, once documented, is “not a different country when disputes and battles continue.”

It is the Truth & Reconciliation Commission that will do the documentation — within, it is envisaged, two years — by way of special investigations and the work of its three subordinate committees on human rights violations, amnesty and reparations.

To counter criticism that such a huge exercise could degenerate into a witch-hunt, the commissioners (according to the law) “shall be South African citizens who are impartial and respected and who do not have a high political profile.” This clause will be keenly watched when appointments are made.

The problem for Derby-Lewis and Walsus, should they apply for amnesty, lies in the requirement that their act “does not constitute a gross violation of human rights.” It has also been made difficult for common criminals to apply for amnesty claiming political motivation. But interpretation will be a slippery process.

The intention is to provide a broad and comprehensive picture of apartheid-era violence and oppression — on both “sides” — should emerge. But as the Freedom Front has argued, the cut-off date, as it stands, compromises whatever case might be summarised up for the Heidelberg killers and the bombers. The ANC, it says, is being favoured.

Justice Minister Dullah Omar’s remark that liberation leaders should not have to apply for amnesty inflamed the debate. Automatic amnesty should be granted to “those who made the greatest contribution to our democracy,” he said last week.

In the face of outrage, Omar explained that he found it unusual that men like Thabo Mbeki and Zola Skweyiya have had to have previous indemnities extended by the president. In fact, this is a technical matter relating to the intention of previous laws enabling exiles to return to SA without fear of arrest. The indemnity laws will be superseded by the National Unity & Reconciliation Act, and anyone seeking amnesty will have to do so on its terms.

DP leader Tony Leon found Omar’s comments “disturbing, because of the
Black judge nominees bring a new perspective to the law

By SUE BLAINE

FOUR black advocates, one a woman, and an attorney were nominated by the Judicial Service Commission this week for appointment to the Transvaal and Cape Supreme Court divisions.

Among them is the advocate Lucy Malula, who may soon be the first black woman judge in South Africa.

The five nominees were chosen from nine candidates grilled in public interviews in Midrand early this week by members of the commission including Justice Minister, Dullah Omar and the Chief Justice, Michael Corbett.

Miss Malula, known as one of the most experienced black advocates in Johannesburg, told the commission the background she shared with most South Africans could help release the bench from the common perception that the only justice was white justice. She said her background, education, and experience would bring a wider perspective to the bench.

The second Transvaal nominee, the human rights advocate Mohammed Navsa SC, said his experiences as a youth of mixed heritage had brought him to the law.

When he was 15, the government had tried to reclassify his Malay coloured father. "Even in the darkest moments in our history, people have looked to the law to establish their rights," he said.

Mr Navsa, who has served as an acting judge, said he had put himself forward because he "wanted to make a difference to people's lives".

His obvious enthusiasm was contrasted by Johannesburg attorney and tax expert Basil Wunsh's replies in his interview.

When asked why he had put himself forward his reply was simple: "I was approached, and I thought it would be interesting at this stage in my career".

"Like Miss Malula, the final Transvaal nominee, Bernard Ngoepe SC, said his background would "go a long way" to inspiring confidence in the bench.

A veteran political activist and Cape advocate, Stanley Desai, was the only person recommended to the Cape bench.

Mr Desai used to be the ANC's chairman for Woodstock, Cape Town. His practice, begun in 1976, has spanned civil, criminal and human rights work.

"Other candidates interviewed were the attorney and former human rights activist Kathleen Satchell, well, acting judge Des Duke SC, Willem Johannes Louw SC and acting judge Barend van den Heever SC."
PAC pulls out of truth body

JOHANNESBURG: The Pan-Africanist Congress national executive committee has decided to distance itself from the Truth Commission, it said yesterday.

Political Staff, Saps-Reuters
Johannesburg: The Bill of Rights could lay a foundation for equality in SA, especially between workers and business, Cosatu general secretary Mr Sam Shilowa said at the weekend.

Mr Shilowa and other labour delegates from across the country made submissions on the draft constitution at the World Trade Centre in Kempton Park.

He said although the constitution was a watershed document, it would not erase apartheid's wrongs. "Just because we now have Mr Mandela as President and a draft constitution, doesn't mean I had a right to an education when I was growing up or that a woman wasn't denied a position because of her gender."

Mr Shilowa said the draft constitution should include clauses on the right to strike, freedom of association, freedom of religion, the right to picket and the right to information.

He said the right to strike should be unlimited, except where health or lives were at stake.

Cosatu was against including a clause that would protect ownership of private property. Mr Shilowa said this right had often embraced colonialism and racial discrimination — and could undermine basic human rights.

Opposing Cosatu's view, Federation of South African Labour representative Mr James Abraham said the provision for protection of private property was critical for the smooth running of economies.

**Workplace**

"The right to own private property is critical in a democratic modern economy. Property includes rights of assets and if the economy is to function, we need this protection," Mr Abraham said.

National Council of Trade Unions general secretary Mr Cunningham Ngcukana said a safe and healthy workplace, as well as the right to health care, should be guaranteed in the constitution.

"If health is left to profiteers, poor people, including workers, won't have access to health care," Mr Ngcukana said — Sapa
Parliament to decide if SA will be member of child law convention

THE cabinet has approved a Justice Department proposal to submit to Parliament the question of South Africa’s accession to the Hague Convention on civil aspects of the International Child Abduction Act, Justice Minister Ms Dullah Omar said on Saturday.

The cabinet had also approved the simultaneous introduction of legislation required to implement the convention, he said.

This would make it part of South African law and extend the powers and functions of the family advocate as a central authority in terms of the convention.

Mr Omar said the convention’s main objective was to ensure that a child wrongfully removed or retained in a member state was returned or handed over as soon as possible, and that the access and custody rights under law of one member state were respected by other member states.

Passage of the proposed legislation through Parliament would make it possible for SA to accede to and implement the convention.

The draft followed a recommendation by the SA Law Commission, which had “investigated and consulted widely” — Sapa
Legal aid made more accessible

Cape Town — The Cabinet has approved an amendment to the Legal Aid Act requiring the State to give free legal assistance to detainees, sentenced prisoners and accused in criminal cases, Justice Minister Dumisa Ntsheni said at the weekend.

In terms of current legislation the Legal Aid Board may provide legal aid to only the indigent. Omar said in a statement the amendment requires the State to provide assistance in matters "where substantial injustice would result if the person concerned were unrepresented."

The draft amendment also authorises the former South Africa's Legal Aid Board to give "constitutionally prescribed" legal aid in all parts of the country, including the former TRC states.

The draft of the amended legislation will be forwarded to Parliament for discussion. The Bill will come into operation from March 10, 1996.

The Cabinet has also approved an amendment to the Investigation of Serious Crimes Act. The amendment revises Section 6, which in terms of the Constitution violated the right to privacy.

The section, which provides for search and seizure, was amended following a recent order by the Cape Provincial Division of the Supreme Court.

The amended draft Bill provides that premises may be entered and searched only with a warrant issued by a competent legal authority, and that information obtained in the form of answers to questions during the search is inadmissible as evidence in subsequent criminal proceedings.

It also provides for the search of premises without a warrant where consent is given by the person in charge of the premises.

Parliament was given until June 19 to correct the defect in Section 6 of the Act.

The Cape Provincial Division Court ruled that instead of the Director of the Office for Serious Economic Offences authorising a search, prior authorisation should be obtained from a magistrate or judge.

In addition, the court ruled that the use of evidence in subsequent criminal proceedings of any explanation given during the search would violate a person's right to a fair trial — Sepa.
Victims’ families ‘to charge Mandela’

David Greybe

CAPE TOWN — Families of the victims of the Shell House shootings would bring charges against President Nelson Mandela as an “accomplice to murder,” the Inkatha Freedom Party said yesterday.

Inkatha MP and deputy Gauteng leader Thembisile Khoza said a second charge of “defeating the ends of justice” would also be brought against the ANC president.

He said the families had instructed their lawyers to proceed with the charges after Mandela’s “confession” in the Senate last week that he had told guards to shoot to kill outside ANC headquarters during a Zulu march in Johannesburg on March 28 last year.

The families had also brought civil claims for damages of more than R10m against Mandela.

ANC guards killed at least eight Zulu marchers on the day, claiming they were acting in self-defence after the marchers stormed the ANC headquarters. Inkatha claimed the death toll was 11, and denied that the building was attacked.

Khoza said the families’ lawyers were investigating the possibility of “altering” the civil claims case to include the criminal charges, so as to expedite proceedings.

He said the accomplice to murder charge resulted from the fact that Mandelaphoned with those who killed at Shell House”.

The criminal charge of defeating the ends of justice was linked to Mandela’s role in the denial of police access to the ANC head office after the incident.

Meanwhile, Mandela’s office said yesterday it was unaware that a meeting had been scheduled between National Police Commissioner George Fivaz and Mandela to discuss the president’s remarks in Parliament last Thursday.

Fivaz’s spokesman Joseph Ngobeni confirmed reports that the police commissioner had planned to meet Mandela.

Presidential spokesman Parks Mankwana said: “As far as I know there is no meeting planned.”

Another spokesman, Joel Netshitenze, referred queries to the ANC.

ANC spokesman Ronnie Mamoepa, in turn, said it was Mandela’s prerogative to speak out on any such meeting.

Mamoepa said the ANC hoped that the snap debate in Parliament tomorrow would “finally clear up any misunderstandings” on the issue.

Death penalty judgment to be delivered

Susan Russell

MORE than 300 death row prisoners, some of them there since the 1990 moratorium on capital punishment, will know their fate when the Constitutional Court hands down its long-awaited judgment today.

The constitutionality of the death penalty was the first case heard by the new court after its inauguration in February.

The 11-member court, headed by its president Judge Arthur Cashman, reserved judgment after hearing two and a half days of argument.

Argument in favour of scrapping capital punishment based on the grounds that it was unconstitutional was led by counsel representing two murderers sentenced to death for the slaying of four people during an armed robbery.

The State, represented by Advocate George Bizos SC, also argued for the scrapping of the death penalty on constitutional grounds.

Argument in favour of retaining capital punishment was submitted on behalf of the attorneys-general by Witwatersrand attorney-general Klaus von Lieres, who announced his retirement recently.

Central to the argument for scrapping capital punishment was the submission that the death penalty violated section 10 of the constitution which guaranteed the right to life.

It was also argued that capital punishment was contrary to those sections which guaranteed the right to dignity and protection from cruel and inhuman treatment.

The court was asked to consider to what extent the limitation clause in section 33 of the constitution could accommodate the retention of death penalty.

Section 33 provided for the reasonable and justifiable limitation of a right as long as the limitation “does not negate the essential content” of that right.

There were 300 people on death row when the case was argued in February.

Biehl murder judgment scheduled today

CAPE TOWN — The Supreme Court in Cape Town is to pass judgment today on Ntombeni Peni, 19, accused of murdering US exchange student Amy Biehl in Gugulethu in 1993.

He has pleaded not guilty to murdering her by striking her head with a brick, although he admits having been among a group of people shooting “one settler, one bullet” shortly before she was killed.

In closing argument yesterday state advocate LR Norton said Peni had repeatedly contradicted himself while two state witnesses, including a woman who said she had to look away in horror as Biehl beat Biehl over the head, were outstanding.

Peni’s advocate J Kuzwayo asked the court to acquit him because he was “a victim of circumstance who was in the wrong place at the wrong time”.

Kuzwayo said the State had not proved its case beyond reasonable doubt. — Sapa.

‘Apartheid’ army officer arrested

Stephané Bothma

PRETORIA — A senior SA National Defence Force (SANDF) officer was arrested yesterday on 13 charges of murder, alternatively conspiracy to murder, by a special hit squad investigation unit, police commissioner George Fivaz said.

More arrests, believed to be connected to hit squad activities in Pretoria, could be expected.

Brig John More, formerly a senior staff officer in Military Intelligence’s directorate, was arrested after a task, was arrested at his Pretoria home early yesterday morning.

He is currently on secondment to Armscor as director of marketing for Denel.

The murders in which More is implicated took place in KwaMashu in KwaZulu/Natal in 1987, and further arrests could be expected, Fivaz said.

More is the second high-ranking security force officer arrested in connection with the Kwamashu killings. Last week, former Durban security branch policeman Col Louis Botha appeared briefly in the Durban Regional Court in connection with 13 murders. He was released on R10 000 bail.

In January 1987, 13 members of the Ntuli family, including seven children, were massacred in KwaMashu near Amanzimtoti.

Following Botha’s arrest, detectives of the investigating task unit probing hit squads, under the command of Col Frank Dutton, raided the Pretoria offices of Military Intelligence on Thursday night in search of documents believed to contain vital evidence of murder and conspiracy to murder. The file was not found.
Joy among prisoners after Constitutional Court ruling.

Deblished
MIXED reaction greeted the abolition of the death penalty today.
The ANC regarded it as "long overdue," said MP Willie Hofmeyr, co-chairman of the Constitutional Assembly theme committee on the legal system.

But he warned criminals: the government would not be soft on crime following the decision.

The National Party expressed disappointment, saying the decision sent the wrong message to South Africa, which had the highest rate of crime in the world.

Meanwhile, the DP spokesman on safety and security, Douglas Gibson, urged parliament to amend legislation so that life sentences meant jail for life.

The courts now had only the option to impose life sentences, but those sentenced to life were often out within nine years.

"The community demands a more appropriate sentence than that,"

IFFP MP Abram Mazibuko said in his personal view the abolishment of capital punishment meant that rape and murder victims and their relatives were being "punished" daily.

The IFFP would respond fully later.

Capital Punishment Campaign organiser Simoni Groom said: "This outcome represents a missed opportunity to combat the tidal wave of murder, currently threatening the foundations of our nation."

Attorney-General of the Cape Frank Kahn said: "I welcome the legal certainty which has been far too long in coming.

"Now, that sentences of imprisonment become the only deterrent, it is imperative that government looks at the whole system of parole whereby sentences have been slashed out of all recognition to those imposed by the judiciary."

He called for a greater role for sentencing judges in the parole system.

National police commissioner George Fyaz said he did not believe the reintroduction of the death penalty would have been a deterrent to criminals.

"If the constitutional court is of the opinion that the death penalty is not in line with the constitution, we shall have to administer our policies in terms of that."

Solving crime meant getting rid of disrespect for life, property and people's rights. This meant creating a new culture.
AGs fight to keep system of multiple provincial offices

Single appointment 'open to manipulation'

TYRONE SEALE
Political Staff

A HIGH-powered panel of attorneys-general have told parliamentarians that the creation of a national or "super" attorney-general would leave the country's prosecutorial agencies open to political interference and manipulation.

Harsh exchanges marked yesterday's meeting of the constitutional assembly theme committee concerned with the appointment of attorneys-general and other judicial officials, as the attorneys-general of the Transvaal, Eastern Cape, Cape of Good Hope and Witwatersrand divisions of the Supreme Court gave evidence.

Supporting the attorneys-general in opposition to the African National Congress-favoured idea of a national attorney-general who would coordinate prosecutions countrywide, were roving attorney-general and former Cape attorney-general Niel Rosseuw, André Blignault of the Cape Bar Council and George Bizos of the Judicial Services Commission.

Cape of Good Hope attorney-general Frank Kahn, SC, said in a country that was slowly becoming riddled with corruption, a "super" attorney-general would have the image of having been created "to protect super-friends".

Attorneys-general were already vulnerable to political interference in the form of indemnities, measures to keep people out of jail and the expunging of convictions.

He cited as another difficulty the dilemma over the death penalty, saying the Minister of Justice had never consulted attorneys-general on the matter.

ANC MP and theme committee chairman Johnny de Lange challenged the attorneys-general to show why there should be nine provincial prosecuting agencies that applied different rules in different parts of the country.

Up to now it had been accepted that justice was a national, not a provincial competence.

Jan d'Olivera, SC, of the Transvaal division of the Supreme Court told the committee all attorneys-general wanted to see the independence of the office of the attorney-general emshrined in the constitution.

Klaus von Loeres und Wilkau SC, of the Witwatersrand division, said the interim constitution favoured a devolution of power and the concept of a single attorney-general was an anachronism.

Centralising prosecutorial services would remove ordinary South Africans' access to a justice system which was already "based on the white South African concept, not the total African concept".

Consultation between the theme committee and the attorneys-general will continue...
Death penalty verdict today

ANTHONY JOHNSON
POLITICAL CORRESPONDENT

TODAY is D-day for the death penalty.

The Constitutional Court will deliver its judgment at 10am on whether the death penalty is to be retained or rescinded.

The 11-member court, chaired by its president, Mr Justice Arthur Chaskalson, has been pondering its decision for more than three months now, after holding hearings at the beginning of the year on whether the death penalty violated the constitutional right to life.

No hangings have taken place since the National Party government placed a moratorium on the death penalty in 1989. There are now more than 400 prisoners on death row.

A recent survey showed that four out of five white South Africans and almost half the blacks want the death penalty. But there has been speculation that most judges on the court want it abolished.

The National Party favours the retention of the death penalty in certain circumstances but favours clemency for those now on Death Row.

Justice Minister Mr Dullah Omar said recently he would be disappointed if the government returned to capital punishment but would not necessarily resign. He acknowledged at a meeting with foreign correspondents that there was majority support in the country for a return to hanging.

But he said the new South Africa would be no different from the old if capital punishment were re-imposed.

"Very sad"

"I would find it very sad if our new society found it necessary to return to the death penalty," he said.

A spokesman for the Constitutional Court, Mr M S Niemelke, told the Cape Times last night the court's ruling was contained in "a bulky document" that would be tabled this morning.

She said the judgment was the second one handed down by the Constitutional Court but declined to be drawn on further details.
Death penalty decision

Once the court decides whether the defendant is guilty, the debate between abolitionists and their opponents will heat up.

By Wm. Meade
The death penalty is one of the most controversial topics in criminal law. It is a form of capital punishment, which means that it involves the execution of a person who has been found guilty of a serious crime. The death penalty is used in many countries around the world, but opinions on its use vary widely. Some argue that it serves as a deterrent to crime, while others believe it to be cruel and unusual punishment.

In the United States, the death penalty is legal in 31 states and the federal government. However, its use has been declining in recent years, with fewer states imposing it and fewer executions occurring. This is partly due to public opinion and the influence of human rights organizations, which have argued that the death penalty is inherently flawed and should be abolished. Despite these criticisms, the death penalty remains a significant issue in American criminal justice.

The process of imposing the death penalty involves several stages, including an arrest, trial, and sentencing. If a person is found guilty of a capital offense, they may be sentenced to death. However, appeals and other legal procedures can take place, which may delay the execution of a sentence.

The death penalty has sparked numerous legal challenges in the United States. In 2020, the United States Supreme Court ruled that the death penalty is unconstitutional in the case of Atkins v. Virginia. Atkins argued that the state of Virginia's execution process violated the Eighth Amendment of the U.S. Constitution, which prohibits cruel and unusual punishment. The court held that the state's method of execution, by injection, was cruel and unusual, and therefore unconstitutional.

In conclusion, the death penalty remains a controversial issue in criminal justice. While some believe it serves as a deterrent to crime, others argue that it is cruel and unusual punishment and should be abolished. The legal and ethical implications of the death penalty are complex and continue to be debated in courts and legislatures around the world.
ANC’s 30 amendments will reshape truth Bill

TRUTH commission legislation is in danger of getting bogged down in the Senate. The ANC announced yesterday it had about 30 new amendments to tack on to the Promotion of National Unity and Reconciliation Bill while other parties have also indicated their wish to shape further the most ambitious and complex Bill to be introduced by this government.

Members of the National Assembly’s justice committee were bracing themselves recently when the Bill was formally approved and despatched to the Senate for what is, perhaps euphemistically, called “concurrence.”

The Bill, which sets out the objectives and frames of reference of SA’s truth commission, took more than 130 hours of deliberations, was referred twice to a special Cabinet committee to iron out the more controversial issues and was subject to at least 300 amendments.

“I am grateful,” NP justice spokesman Dane Schuit told the Assembly, “that after many months of hard bargaining and after the rewriting of more than 90% of the Bill, it does deal with all sides on an equal footing. It can now be recommended as an instrument of reconciliation.” The Bill’s passage was proof that the government of national unity concept could be made to work, ANC MP Wilhe Hofmeyr told the House.

Few MPs doubted that such a comprehensive Bill would be quickly ushered through the Senate — some said in two weeks — before enactment and the appointment of commissioners.

Despite the backslapping, some prickly questions remain unresolved. The cut-off date for indemnity may have to be extended again, having been moved from October 1999 to December 1993. Justice Minister Dullah Omar has argued strongly against a further extension. It would send out an inappropriate signal, he said.

Though President Mandela has indicated he has “sympathy” with those who want the date moved to May 10, 1994 — including the IFP, PAC and Freedom Front — he has linked the extension to the cessation of violence.

This has not pleased the Freedom Front which had been at the head of the campaign to change the date. Its leader, Constand Viljoen, argues that the right wing has not committed any violent acts since just before the election. Retaining the December 1993 date would tacitly aggrieve rightwingers to further violence.

Even though a constitutional amendment is required to change the date, the Freedom Front indicated in the first meeting of the Senate justice committee last week that it would again be pressing for an extension. This can be bypassed easily enough by the comfortable NP/ANC majority in the committee and referred, once more, to the Constitutional Assembly.

Eyebrows were raised when Senate committee chairman Mohsen Moosa “served notice” that the ANC was preparing an additional 30 amendments to the Bill, one of which was described as “substantial.” Without giving any further details, Moosa said the lesser amendments referred to issues such as improving witness protection and the remuneration of commissioners, while the substantial amendment referred to comments made earlier last month by Omar.

When asked, at a breakfast, what aspect of the process leading to the finalisation of the truth commission most disappointed him, Omar had mentioned his “disgust” that senior leaders of the ANC would have to go through the humiliating process of applying for indemnity for what were mostly minor crimes.

Fuelled by a report suggesting Omar had “called” for automatic indemnity for leaders of the liberation struggle, the idea quickly gained momentum Moosa said yesterday the ANC’s national working committee was considering whether or not to go ahead with the proposal.

The way the Bill is structured at present, there is more danger of liberation army soldiers applying for indemnity. Failure to do so, given the illegality of their acts under SA law at that time, could result in the filing of civil and criminal suits.

On the other hand, security force operatives who were acting within SA law and are covered by clauses in the Defence Act and Internal Security Act, among others, will not be subject to such recourse. This seems unfair to the ANC, particularly given the moral high ground — as evidenced by numerous UN resolutions condemning apartheid as a crime against humanity and condoning the armed struggle — occupied by those who fought against...
ANC’s 30 amendments will reshape truth Bill

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Fuelled by a report suggesting Omar had “called” for automatic indemnity for leaders of the liberation struggle, the idea quickly gained momentum. Moosa said yesterday the ANC’s national working committee was considering whether or not to go ahead with the proposal.

The way the Bill is structured at present, there is more onerous for liberation army soldiers to apply for indemnity. Failure to do so, given the illegality of their acts under SA law at that time, could result in the filing of civil and criminal suits.

On the other hand, security force operatives who were acting within SA law and are covered by clauses in the Defence Act and Internal Security Act, among others, will not be subject to such recourse. This seems unfair to the ANC, particularly given the moral high ground — as evidenced by numerous UN resolutions condemning apartheid as a crime against humanity and conducting the armed struggle — occupied by those who fought against apartheid. “It’s not the Bill itself, it is our past, where we come from, that means the playing field was not level,” says De Lange.

An amendment to the Bill is therefore not the only option. Alternatives being considered by the NWC and the ANC’s justice study group include new legislation retrospectively legalising acts carried out by members of the liberation armies. A further option, suggested by the Justice Department’s indemnity office, is to pass a law granting amnesty to certain categories of offenders. Provincial premiers have also been asked to send in their comments concerning the Bill.

While the ANC mulls over these options, the Bill sits with the Senate justice committee awaiting consideration. The view that the Bill would slip through the second House appears to have been over optimistic. This is further complicated by the difficulty the committee has had in securing a sufficient quorum. The last committee meeting was postponed when only four Senators turned up. Only one of 30 ANC members was there.

With more than 30 amendments likely to be tacked in the Senate, including the possibility of one or two substantial ones, the truth commission process looks certain to be delayed further.
What now for the killers on Death Row?

Political Staff

ADVOCATE George Bizos has been appointed by the justice ministry to look into what to do with the 453 death row prisoners who have been reprimanded as a result of yesterday's Constitutional Court ruling abolishing capital punishment.

The prisoners, who celebrated the ruling after hearing it on the radio, will remain on death row until a decision has been taken, a spokesman for the justice ministry said last night.

The spokesman said the Acting Justice Minister Zola Skweyiya, standing in for Justice Minister Dullah Omar who is abroad, would present a 10-page summary of the judgment to the cabinet today in a discussion on how to take the matter further.

In a separate statement yesterday, Mr. Omar moved quickly to give the assurance that everything necessary would be done to ensure that alternative sentences for the prisoners would be "suitable and effective."

Death row prisoners spontaneously started clapping, singing and shouting after hearing the decision on the radio, said Correctional Services spokesman Chris Ockers.

Brigadier Ockers said that depending on the new sentences handed down to the prisoners, they would be categorised as either A, B, C or D prisoners, which would influence their privileges.

President Mandela said yesterday the court's decision was "a sober and humane consideration of the issue" and was in line with contemporary civilised norms.

He said the decision would not have any bearing on the government's commitment to tackle crime with all its resources and determination.

In his ruling, which took five minutes to deliver, Constitutional Court President Arthur Chaskalson said "With effect from the date of this order, the state and its organs are forbidden to execute any person already sentenced to death."

He said the government's responsibility was to improve the country's policing and justice systems, which allowed about 60 to 70 percent of violent criminals to escape unpunished.

The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished.

"It is that which is presently lacking in our criminal justice system and it is at this level that the state must seek to combat lawlessness," Mr. Chaskalson said.

The Constitutional Court made the ruling after a number of arguments, for and against the death penalty in a case stemming from death sentences handed to Themba Makwanyane and Movusane Mchunu for killing four people in a hijacking attempt in August 1990.

Vision of the 42 steps still haunts page 21.
Mandela allays fears after death penalty decision

Political Staff

ACTING Justice Minister Zola Skweyiya will brief the cabinet today on the constitutional court ruling on the death penalty.

Senior government figures, among them President Nelson Mandela and Justice Minister Dullah Omar, yesterday moved quickly to assure the public that the government remained committed to fighting crime.

Mr Skweyiya will present to the cabinet a 10-page summary of the judgment and a discussion will be held on how to take the matter further.

The court's ruling received a mixed reaction from parties in parliament yesterday.

Mr Mandela said he welcomed it. The NP and the Freedom Front said they opposed it and the DP said "government has been caught with its pants down by the decision by not making provision for the situation where society demands proper punishment but the constitutional court holds that the death penalty is out".

A spokesman for Mr Omar, who is out of the country, said no decision had been taken on the fate of those sentenced to death — who number 454 — including those sentenced in the former TBVC states.

The department has appointed advocate George Bizos to look into the conundrum of what to do with people whose only sentence was the death penalty.

In terms of the court ruling, they will be kept in custody until a solution is found.

One possibility may be to try them all again.

DP justice spokesman Douglas Gibson said the criminal courts needed to be given sentencing options in addition to ordinary life sentences which could be as little as eight or nine years after remissions for good behaviour.

A statement by the office of the president said Mr Mandela viewed the decision as being a "sober and humane consideration of the issue."

"The president also wishes to emphasise that the decision has no bearing on the commitment of the government to tackle the problem of crime, and particularly violent crime, with all the resources it can muster," the statement said.

Mr Omar said in his statement that the government was considering all the implications and that appropriate steps would be taken.

"The public is assured that the department of justice, in observing the judgment of the court, will continue to do everything necessary to ensure the effective punishment of all crimes in accordance with the law," Mr Omar said.
No crime let-up, despite ‘no hangings’

STAFF REPORTERS

THE scrapping of the death penalty did not reflect on the government’s determination to crack down on crime, President Nelson Mandela said yesterday.

He said the decision of the Constitutional Court that hanging was incompatible with the right to life enshrined in the Bill of Rights was “a sober and humane consideration” of the issue and in line with contemporary civilised norms.

However, Mr Mandela emphasised that “this decision has no bearing on the commitment of the government to tackle the problem of crime, and particularly violent crime, with all the resources and determination it can muster.”

Advocate Mr George Bizos has been appointed by the Justice Ministry to investigate what to do with the 433 death row prisoners who have been reprieved as a result of yesterday’s Constitutional Court ruling abolishing capital punishment.

The prisoners, who celebrated the ruling after hearing it on the radio, will remain on death row until a decision on their future has been taken, a spokesman for the Justice Ministry said last night.

The spokesman said acting Justice Minister Mr Zola Siswana, standing in for Justice Minister Mr Dullah Omar who is abroad, will present a 10-page summary of the judgment to the cabinet today for discussion.
WIDESPREAD PROTESTS AT ABUSE BY LAWYERS

Hundreds want legal system changed to protect clients

ANITA ALLEN writing for SPECTRUM, Argus Newspapers' investigative unit. The author is a senior writer on the Star in Johannesburg.

Hundreds of South Africans are calling for a renewal of the legal system because they say it fails to provide them with recourse against abuses by lawyers.

Widespread public reaction has followed recent reports in newspapers and on radio dealing with the experiences of ordinary citizens at the hands of lawyers.

Public dissatisfaction with South Africa's legal system was brought to light recently by radio and newspaper reports of the case of Ms Elke Feesten of Sandton in Gauteng.

She has been embroiled in a four-year struggle to wind up the estates of her parents, Mike and Else, who, with one of their workers, Mr Andries Mothepu, were murdered on their farm in 1990.

Since publication of an article about her experiences on April 29, more than 100 South Africans have contacted Argus newspapers citing similar experiences to Ms Feesten's.

Groups have been formed in the Cape, KwaZulu-Natal and Gauteng to campaign for fairer treatment from the legal profession.

Piles of documentation, some dating back 20 years, have been forwarded to newspapers. They were unanimous in their condemnation of what they claim to be inadequate treatment by law societies throughout the country and of perceived unprofessional conduct among law professionals.

"We the victims are calling for reforms," said Cape Town lawyer Mr Richard Benson, whose battle dates back 20 years and relates to the National Fund Investment scam in which he is representing 12,000 defrauded shareholders.

Battles

"It's a matter of major public concern. We have the situation where a number of politicians are lawyers — like F W de Klerk and Nelson Mandela — but what are they doing about civil justice?"

Mr Benson has joined forces with Ms Martie Griessel in the Transvaal and Mr Snowy Smith in Natal, both of whom have been waging battles with law societies for several years. Under the banner of Fair Civil Justice they are collecting signatures and affidavits to support a petition directed to Minister of Justice Mr Dullah Omar.

Fair Civil Justice is calling for an independent Ombudsman's office with statutory powers to act in the interests of the public and to hold a roll of accredited legal practitioners.

Common patterns emerged in readers' complaints. Wrong postal addresses, wrong names, wrong dates, wrong reference numbers, long delays, closed disciplinary hearings and no reasons given for decisions, perceived collusion between legal people, fees and affidavits being lost and abrupt and even aggressive behaviour by staff members at law societies.

Anyone with further information is invited to phone Spectrum on (011) 633-2577.
Societies ‘do protect public’

MAX GEBHARDT

LAW societies around the country believe they are successful in protecting the interests of the public.

The Cape Law Society said it was incorrect to say law societies were not capable of reconciling differences between their members and the public. They had often done this quite successfully.

Director Ms Ingrid Hoffman said the society proposed introducing a motion at their forthcoming annual general meeting that would provide observer status for lay people at disciplinary hearings.

Mr Raymond Koen, assistant director of the society, believes that, unfortunately, many members of the public either misunderstand or overestimate the jurisdiction and powers of law societies. That jurisdiction is essentially a punitive one, restricted to instances of misconduct.

“Many complaints relate to allegations of negligence or breaches of contracts on the part of attorneys. Complaintants who allege such negligence or breach, and consequent damages, have no civil remedies available to them,” he said.
The last victims of the gallows

BY JO-ANNE COLLINGE

The identity of the last person executed in South Africa depends on whether you choose to do apartheid spectacles or not. Alphusa Sekohaane was hanged on November 13 1990 in what was at the time Bophuthatswana.

In South Africa “proper” the last execution had been carried out 364 days earlier, when 26-year-old Solomon Ngobeni went to the gallows.

The reason for the gap? The existence of a moratorium on hangings which came into effect in February 1990 in the area directly under Pretoria’s jurisdiction.

Little is known about Sekohaane’s life or crimes, save that lawyers for Human Rights made a last ditch attempt to stay the execution. The grounds were familiar enough: Sekohaane had not petitioned Bophuthatswana president Lucas Mangope for clemency because he did not have money for a lawyer.

He was hanged in Pretoria Central Prison.

A few days before Ngobeni’s execution, Port Elizabeth brothers Tembinkos Welcome Boo (31) and Boy-Boy Boo (22) were executed in Pretoria, along with 40-year-old David Mbusana, all convicted of murder. Mbusana’s execution caused an outcry because, it was claimed, he had not exhausted all legal means at his disposal when his life was taken.

On the same day, at Bophuthatswana’s Kookgrond prison Pieter Coetzee (22) was executed.

These few names are the permanent markers to the end of an era in the administration of justice. They tell little of the drama of the struggle against the death penalty—a human rights initiative that gained ground as the liberation struggle moved towards its democratic goal.

There were moratoria and repeated threats to end these periods of reprieve. There was a groundbreaking change to the law to allow judges more discretion in relation to the death penalty. There was political bargaining for sentences to be commuted and amnesty granted in relation to political offences.

Until 1990, Death Row was an almost certain route to the gallows. During the past five years, some inmates have found an outright escape route, but hundreds have existed in a kind of legal limbo in the shadow of the gallows. As of yesterday the shadow is gone—but the bars remain.
Parties concerned over lack of viable alternative

Death penalty decision lauded and bemoaned

By Brendan Templeton
and Cheryl Hunter

The scrapping of the death penalty yesterday was welcomed by many political and human rights organisations, but concern was also expressed that no effective alternative existed.

Some organisations said the Constitutional Court had ignored the majority will of South Africans who daily faced a rampant crime wave.

The ANC welcomed the decision as a "major victory to the democratic forces" in SA, saying it would inspire confidence among the majority of South Africans in the rule of law and the integrity of the courts.

The NP, IFP and Freedom Front (FP) were among the organisations that bemoaned the court's decision.

"We are extremely disappointed at the outcome because we feel it gives the wrong signal in a country where the crime rate is the highest in the world for a country not at war," NP justice spokesman Dante Schutte said.

IFP justice spokesman Abram Mzazi said in his personal view the decision amounted to a double punishment for the families of rape and murder victims. They had lost their loved ones and now had to pay "for the welfare of the perpetrator" who might serve a life sentence.

DP spokesman Douglas Gibson said the Government had been "caught with its pants down" because no provision had been made to replace the death sentence with "proper punishment".

SA faces the threat of dangerous criminals being released from long prison terms after only a few years, he said.

"Life sentences are often commuted to as little as eight or nine years after remission for good behaviour and early release or parole."

Anglican Archbishop Desmond Tutu was thrilled that SA had abolished the death penalty. "I think there is no moral justification for the death penalty. Nowhere in the world has anyone found the death penalty has a deterrent effect on criminals."

The Black Sash supported the decision, saying the State and civil society should work together to develop an appropriate penal system and to bring down levels of criminal activity.

Cape Attorney-General Frank Khan said prison sentences were now the only deterrent criminals faced and that it had become imperative for the Government to review the whole system of parole.

"Court sentences have been slashed (by the Commissioner of Prisons) to the point where they are scarcely recognisable from the original sentence. As in the rest of the world, the sentencing judge should have the final say in parole matters."

One of the options open to judges is to sentence a person to an indefinite sentence, he added. This is the toughest sentence available to the court and has been imposed only once in SA.

Mr Justice Johan Els made legal history in March when he sentenced Andre Bashford to an indefinite jail sentence without the possibility of parole.

In the case of indefinite sentencing, it is the judge alone who may decide, after a number of years, whether to keep the criminal in jail, reduce his sentence or release him, Khan said.

He added, however, that this was not a viable option to replace the death sentence, as indefinite sentences for dangerous criminals required that the sentence be recommended after a psychiatric inquiry and that not all criminals fitted this profile.
How to punish the 453

Suitable and effective sentences for reprieved killers will be found...
Law societies fail to protect citizens

By Anita Allen
Spectrum

Hundreds of South Africans are calling for a renewal of a legal system that fails to give them recourse against abuses by members of the legal profession.

There has been widespread public reaction to recent newspaper and radio reports of the experiences of ordinary citizens at the hands of lawyers. Public dissatisfaction with the legal system came to light after reports of the case of Ms Elmine Eksteen of Sandton.

For four years now she has been trying to wind up the estates of her parents, Mike and Elise, who were brutally murdered on their farm in 1990. Since an article about her experiences appeared in April, more than 100 South Africans have contacted Argus newspapers citing similar experiences.

Groups have been formed in the Cape, KwaZulu-Natal and Gauteng to campaign for fairer treatment from the legal profession. Petitions of documentation have been forwarded to Argus newspapers.

Hundreds of individuals have signed petitions and letters expressing their willingness to state their cases publicly.

They were unanimous in their condemnation of what they claim was inadequate treatment by law societies throughout the country and of perceived unprofessional conduct among law professionals.

Call for reforms

"We, the victims, are calling for reforms," said Capetownian Mr Richard Benson.

Benson has joined forces with Ms Martie Greesel and Mr Snowy Smith, Under the banner "Fair Civil Justice", they are collecting signatures and affidavits to support a petition to Justice Minister Mr Dullah Omar.

Greesel says she is part of the point of complaining to law societies. Fair Civil Justice is calling for an independent Ombudsman's office with statutory powers to act in the interests of the public and which will keep a roll of accredited legal practitioners.

Mr Ronald Edwards of Edenvale has a court judgment which he says effectively proves an attorney's unethical conduct.

Yet the law society found "no unprofessional conduct" on the part of its member. Subsequently, the attorney was censured in a court judgment.

The Association of Law Societies' code of conduct states that it must "promote the interests of its members and the profession, while at all times taking into account the broader interests of the public who are served by the profession, and to strive, where these come into conflict with each other, to reconcile the interests of the profession and the public."

Only one person said her case had been reconciled, but this was only because she appealed directly to the then president of the Transvaal Law Society, Mr Micheld Pinnock.

Ms Ange Smason said her complaint involved an attorney who refused to send her a copy of court documents in a case in which she was involved.

The law society had looked into the matter and found there was nothing unethical in this.

After complaining to Pinnock, the law society advised her that it had arranged for her to take possession of the documents.

Common patterns

Common patterns emerged in readers' complaints. Wrong postal addresses, wrong names, wrong dates, wrong reference numbers, long delays, closed disciplinary hearings and no reasons given for decisions, perceived collusion between legal people, files and affidavits being lost, and abrupt and even aggressive behaviour by staff at the various law societies.

Mr Morre Wingate said that, after months of delay in her case, she was advised by the Transvaal Law Society to take civil action through another attorney.

However, in her documentation to the society, she had already notified it that that was exactly what she had done.

When she challenged a senior staff member at the law society, he said her files had been lost or misplaced. She had since been notified that the society found no fault with the attorney she complained about.

Many readers expressed profound frustration and anger at the way they have been treated.

Ms Gladys Lange described her case, which started in 1986, as one where attorneys had allegedly stolen money from the dead by filing fraudulent liquidation and distribution accounts.
The stars of the television series LA Law present the glamorous side of the law. However, many people complain that local law societies do not adequately protect the public.

Protection offered, but 'only in private'

By Max Gebhardt

THE country's law societies believe they are successful in protecting the interests of the public. But they do so behind closed doors.

The Cape Law Society says it is incorrect to say law societies are incapable of reconciling differences between their members and the public. They have, the statement says, on many occasions done this quite successfully.

Director Ms Ingrid Hoffman says the society proposes introducing a motion at their forthcoming annual general meeting, which will provide observer status for lay people at disciplinary hearings, to reassure the public that the society is not protecting members against public criticism.

Mr Raymond Koen, the society's assistant director, believes many members of the public either misunderstand or overestimate the jurisdiction and powers of law societies. That jurisdiction is essentially a punitive one, restricted to instances of misconduct.

"Many complaints relate to allegations of negligence or breaches of contracts on the part of attorneys. Complainants who allege such negligence or breach, and consequent damages, have civil remedies available to them," he says. "Courts of law adjudicate upon such claims. The Law Societies are not courts of law, and consequently have no power to consider such claims nor to make any findings as to liability for damages."

The Law Society of the Free State says they are unaware of any unhappiness with their procedures, but they will take seriously any criticisms and suggestions from the public in this regard.

The Natal Law Society, says enquiries involving their members are not held in public, and complainants may be present throughout the duration of the hearings.

The Transvaal Law Society, similarly, has a policy of keeping proceedings confidential.
Three parties to press for amnesty deadline extension

THE Conservative Party, Inkatha Freedom Party and the Afrikaner Weerstandsbeweging are to push ahead with efforts to extend the amnesty deadline and obtain the release of former death row prisoners, CP leader Dr Frans Hartzenberg said yesterday.

Prisoners from various political parties had agreed at a meeting on May 15 at Pretoria Central Prison that all political prisoners should be granted temporary amnesty, Hartzenberg said.

These prisoners represented the African National Congress, CP, IFP, AWB and PAC. The agreement was aimed at eliminating any discrimination against political prisoners, he said.

It had also been agreed that the concession stipulated by President Nelson Mandela and Deputy President FW de Klerk, that all death row prisoners receive clemency or be released, be implemented as soon as possible.

The prisoners had agreed that the May 10 1994 cut-off date for amnesty should be extended, but ANC and PAC prisoners had felt the Government should be left to handle this aspect.

After the meeting it had been agreed that all representatives would contact their leaders to arrange a joint meeting between them and the "political prisoners committee".

This meeting had not materialised because the ANC and PAC leadership had advised their members to withdraw from the committee.

Hartzenberg said this action could hamper the efforts of the ANC and PAC to secure the release of their members.

A meeting yesterday attended by prisoners from all parties and with the ANC and PAC attending as observers, had approved their original objectives.

A PAC representative who had attended withdrew, saying the PAC would continue its own efforts to secure the release of its members. — Sapa
453 prisoners escape hangman

Death row prisoners burst into song yesterday after hearing on the radio that the death sentence had been abolished, prison officials said.

Correctional services spokesman Brigadier Chris Olckers said the 453 prisoners started clapping, singing and shouting.

Justice Minister Dullah Omar said he would consult immediately with the correctional services department to arrange the removal of sentenced prisoners from death row.

The Justice Ministry would ensure suitable sentencing in accordance with the law, he said in a statement.

Olckers said the prisoners would in the meantime remain where they are until the courts had passed new judgments.

Omar said he would inform the Cabinet of the Constitutional Court's decision and its implications.

Meanwhile, Police Commissioner George Fivaz said he did not believe the reintroduction of the death penalty would have been a deterrent to criminals.

"It has always been my belief that the issue of the death penalty should be decided by the Government of National Unity. If the Constitutional Court is of the opinion that the death penalty is not in line with the constitution, we shall have to administer our police work in terms of that.

"Fivaz said there were people who said the death penalty would solve the problem of crime. "I do not agree," he said.

Lawyers for Human Rights welcomed the Constitutional Court's ruling, saying the decision was a turning point in South Africa's penal history.

LHR, in a statement, said the ruling brought South Africa in line with the growing international trend towards abolition of the death sentence.

Mr Abram Mzazi, Inkatha Freedom Party MP and member of the national assembly portfolio committee on justice, said in his personal view the abolition of capital punishment meant that rape and murder victims and their relatives were being "punished" doubly.

"They've already lost their beloved and now they are being placed in the mainstream of those who are paying for the welfare of the perpetrator who might serve a life sentence.

The National Party expressed disappointment at the scrapping of the death penalty, saying this sent the wrong message to South Africa which had the highest rate of crime and violence in the world. - Sapa
Mixed reaction to abolition of death penalty

By Themba Sepotokele

THE abolition of the death sentence yesterday caused mixed reactions, according to a snap survey conducted by Sowetan.

"In terms of the section 33 of the Constitution there are limitations of the fundamental human rights. People must be given opportunities to exercise their rights and we cannot deny them that," Mr Mahloki Maflula, a law student at Unisa said.

Maflula, of Mapetla in Soweto, said the death penalty was not the only possible sentence. "Life sentence is one of the alternatives to save human life," he said.

Mr Koale Nyoni, a managing consultant, shared Maflula's sentiments. He said the death penalty was "unconstitutional and unchristian" and the bill of fundamental human rights are against the death penalty. "The problem is that we are living in a violent society and crime can be attributed to the society we are living in," Soweto police officer Warrant Officer Frans Mbanyle said.

Mr Rachel Talane of Lombardy West said, "Although the death penalty is not subtle, criminals must feel the pain and pay for their deeds," he said.

Mrs Vivian Makhoba of Springs said it was good that the death sentence had been done away with because a person who perpetuates a crime was entitled to live. "My son was killed but I did not even attend court proceedings because any sentence imposed will not bring my son back to life," Makhoba said. "The government is committing political suicide by scrapping the death penalty. Anyone can take the law into their own hands as they are doing because the Government fails to protect us," Mr Freddy Mjwara of Emndeni said.
NOOSE abolished

By Mzimasi Ngudle and Pamela Dube

DEATH ROW prisoners at Pretoria Central Prison were elated yesterday when Lawyers for Human Rights gave them letters informing them they would no longer be hanged.

Thembu Makwanyane and Mavuso Mchunu, the two death row prisoners whose test case led to the Constitutional Court outlawing the death penalty yesterday, shared their moment of joy with about 300 other prisoners awaiting the hangman's noose at Pretoria Central Prison.

"I am happy because the noose is gone," said Mchunu during consultation with LHR lawyer Mr Mike Kekana. Another prisoner, Norman Molefe, hugged Kekana when he told him of the decision by the Constitutional Court.

The decision affects 453 prisoners who have spent years on death row. However, it came too late for 2 326 people who were hanged between 1911 and the 1989 moratorium. The last person to be hanged was Richard Ngobeni, in November 1989 for murder.

The highest number of executions was between 1978 and 1988, when an average of 120 people were hanged each year. This coincided with the upsurge in political activity by the liberation movements.

Delivering the judgment yesterday, Constitutional Court president Mr Justice Arthur Chaskelison declared that all laws sanctioning capital punishment were inconsistent with the constitution and therefore invalid.

"The state and its organs are forbidden to execute any person already sentenced to death under laws which have been declared invalid.

"All such persons will remain in custody under the sentences imposed on them until such sentences have been set aside in accordance with law and substituted by law.

"It is whether the constitution allows the sentence."

The African National Congress said the abolition of the death penalty represented a major victory for the democratic forces who had campaigned for its abolition.

"The Constitutional Court's decision will go a long way to inspire the confidence of the majority of our people in the rule of law."
The significance of the Constitutional Court's landmark judgment abolishing the death penalty lies not only in its break with an eye-for-an-eye justice. Perhaps the most explosive issue dealt with in the judgment relates to how the judges tackled the question of public opinion on capital punishment — found in past informal surveys to be weighted in favour of its retention.

Arguing before the court in February for the retention of the death penalty, retired Attorney-General of the Witwatersrand Kasie von Lieres put it that what was cruel, inhumane or degrading depended on a large extent on contemporary attitudes within society, and that South African society did not regard the death sentence for extreme cases as cruel, inhuman or degrading.

The Constitutional Court president, Mr Justice Arthur Chaskalson, in a response which provides a good reflection of the quality of the argument contained in the 243-page written judgment, commented:

"It was disputed (between the judges) whether public opinion, properly informed of the different considerations, would in fact favour the death penalty. I am, however, prepared to assume that it does and that the majority of South Africans agree that death sentences should be imposed in extreme cases of murder.

The question before us, however, is not what the majority believe a proper sentence for murder should be. It is whether the Constitution allows the sentence.

"Public opinion may have some relevance to the inquiry, but in itself, it is no substitute for the duty vested in the courts to interpret the Constitution and to uphold its provisions.'

Mr Justice Chaskalson goes on to say that if public opinion were to be decisive, there would be no need for constitutional adjudication.

He adds "The very reason for establishing the new legal order, and for vesting the power of judicial review of all legislation in the courts, was to protect the rights of minorities.

"Those who are entitled to claim this protection include the social outcasts and marginalised people of our society. It is only if there is a willingness to protect the worst and weakest amongst us, that all of us can be secure that our own rights will be protected.'

The legal precepts on which Mr Justice Chaskalson relies are seminal cases which were decided in American courts in the 1970s, in which the point was made that the assessment of popular opinion is essentially a legislative, and not a judicial function.

"This approach was strongly supported by both Mr Justice John Didcott and Mr Justice William Kenridge in the Constitutional Court's judgment.'

Mr Justice Kenridge also pointed out that public opinion in South Africa had not expressed itself in a referendum nor in any recent legislation. "Certainly there is no evidence of a general social acceptance of the death penalty for murderers such as might conceivably have influenced our conclusions.'

The debate around these remarks will no doubt be ongoing in other cases to be heard by the Constitutional Court, but of equal importance in this case is the thought given by the judges to the effect of removing the death penalty.

The problem of deterrence was afforded a great deal of consideration, and in his commentary, Mr Justice Chaskalson took the opportunity to counter the popular argument that violence and criminality flourish in the absence of the death sentence.

"The cause of the high incidence of violent crime cannot simply be attributed to the failure to carry out the death sentences imposed by the courts (as a result of the 1990 moratorium). The upsurge in violent crime came at a time of great social change associated with po-

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**MR JUSTICE ARTHUR CHASKALSON:**

"The question is not what the majority believe a proper sentence for murder should be. It is whether the Constitution allows the sentence'.

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litical turmoil and conflict, particularly during the period 1990 to 1994.'

He adds that homelessness, unemployment, poverty and frustration are other causes of South Africa's crime wave and that between 60 percent and 70 percent of criminals are unlikely to be caught.

"There will always be unstable, desperate and pathological people for whom the risk of arrest and imprisonment provides no deterrent, but there is nothing to show that a decision to carry out
The cause of the high incidence of violent crime cannot simply be attributed to the failure to carry out the death sentences imposed by the courts (as a result of the 1990 moratorium). The upsurge in violent crime came at a time of great social change associated with political turmoil and conflict, particularly during the period 1990 to 1994.

Mr Justice Laurie Ackerman puts the responsibility for finding effective alternative punishments squarely in the hands of the State's judicial system, which has been accused of expeditiously pardoning prisoners or using the parole system to empty overcrowded prisons.

"With the abolition of the death penalty society needs the firm assurance that unreformed recidivist murderer or rapist will not be released from prison. Society needs to be assured that in such cases the State will see to it that such a recidivist will remain in prison permanently."

The judgment, quite apart from the sudden dilemma it has imposed on the State to deal with those on death row, and the predictably emotive public responses it has elicited, has impressed the legal fraternity in the depth of its deliberation on the subject, which involved extensive research into international precedents on the matter.

Legal Resources Centre director Win Trengove, who acted for the two men appealing against the death sentence, described the judgment as being of "superb quality" and one which South Africa should be proud of.

The death sentence would have any impact on the behaviour of such people, or that there will be more of them if imprisonment is the only sanction," he says.

He argues further that the greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. "It is that which is presently lacking in our criminal justice system, and it is at this level and through addressing the causes of crime that the State must seek to combat lawlessness."
Gallows

Courts duty to outlaw principles in their unanimous decision. Constitutional Court judges approached crucial legal abolition this week. Helen Grange looks at how the death sentence was
The significance of the Constitutional Court’s landmark judgment abolishing the death penalty lies not only in its break with an eye-for-an-eye justice. Perhaps the most explosive issue dealt with in the judgment relates to how the judges tackled the question of public opinion on capital punishment — found in past informal surveys to be weighted in favour of its retention.

Arguing before the court in February for the retention of the death penalty, retired Attorney-General of the Witwatersrand Klaus von Lieres, SC, put it that what was cruel, inhuman or degrading depended upon the extent of contemporary attitudes within society, and that South African society did not regard the death sentence for extreme cases as cruel, inhuman or degrading.

The Constitutional Court president Judge Arthur Chaskalson, in a response which provides a good reflection of the quality of the argument contained in the 243-page written judgment, commented:

"It was disputed (between the judges) whether public opinion, properly informed of the different considerations, would in fact favour the death penalty. I am, however, prepared to assume that it does and that the majority of South Africans agree that death sentences should be imposed in extreme cases of murder.

"The question before us, however, is not what the majority believes a proper sentence for murder should be. It is whether the Constitution allows the sentence.

"Public opinion may have some relevance to the inquiry, but, in itself, it is no substitute for the duty vested in the courts to interpret the Constitution and to uphold its provisions."

Chaskalson goes on to say that if public opinion were to be decisive, there would be no need for constitutional adjudication.

He adds, "The very reason for establishing the new legal order, and for vesting the power of judicial review of all legislation in the courts, was to protect the rights of minorities.

"Those who are entitled to claim this protection include the social outcasts and marginalised people of our society. It is only if there is a willingness to protect the worst and weakest amongst us, that all of us can be secure that our own rights will be protected."

The legal precedents on which Chaskalson relies are seminal cases which were decided in American courts in the 1970s, in which the point was made that the assessment of popular opinion is essentially a legislative, and not a judicial, function.

This approach was strongly supported by both Judge John Dadd and Judge William Kenteridge in the Constitutional Court’s judgment.

Judge Kenteridge also pointed out that public opinion in South Africa had not expressed itself in a referendum nor in any recent legislation.

"Certainly, there is no evidence of a general social acceptance of the death penalty for murderers such as might conceivably have influenced our conclusions."

The debate around these remarks will no doubt be ongoing in other cases to be heard by the Constitutional Court, but of equal importance in this case is the thought given by the judges to the effects of removing the death penalty.

The problem of deterrence was afforded a great deal of consideration, and in his commentary Judge Chaskalson took the opportunity to counter the popular argument that violence and criminality flourish in the absence of the death sentence.

"The cause of the high incidence of violent crime cannot simply be attributed to the failure to carry out the death sentences imposed by the courts (as a result of the 1990 moratorium). The upsurge in violent crime came at a time of great social change associated with political turmoil and conflict, particularly during the period 1990 to 1994."

He adds that homelessness, unemployment, poverty and frustration are other causes of South Africa’s crime wave, and that between 60% and 70% of criminals are unlikely to be caught.

"There will always be unstable, desperate and pathological people for whom the risk of arrest and imprisonment provides no deterrent, but there is nothing to show that a decision to carry out the death sentence would have any impact on the behaviour of such people, or that there will be more of them if imprisonment is the only sanction," he says.

He argues further that the greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished.

"It is that which is presently lacking in our criminal justice system, and it is at this level and through addressing the causes of crime that the State must seek to combat lawlessness."

Judge Laurence Ackermann puts the responsibility for finding effective alternative punishments squarely in the hands of the State’s judicial system.

"With the abolition of the death penalty society needs the firm assurance that unreformed recidivist murderers or rapists will not be released from prison. Society needs to be assured that in such cases the State will see to it that such a recidivist will remain in prison permanently."

The judgment has impressed the legal fraternity in the depth of its deliberation on the subject.
SOUTH AFRICA's parole system had to be reviewed if the abolition of the death penalty was to have a positive influence on South Africa's justice system, Western Cape attorney-general Mr Frank Kahn said yesterday.

"We have the almost farcical result where a judge imposes a sentence of say 10 years and, faceless bureaucracy, the prisons department slaps a sentence like that to under five years without any recourse to the judge, to the courts or to anyone else," he said.

"I think the parole system is out of step with German and other 'European' models, where the sentencing judge or a judicial officer is the prime person in charge of parole," Mr Kahn said.

SAPA
SA's last executioners now retired

CAPROL CAMPBELL

South Africa's last hangman and his assistant have retired following the scrapping of the death sentence by the 11-member Constitutional Court earlier this week.

Court President Mr Justice Arthur Chaskalson said in a 244-page judgment that even the most "inhuman" human being had the right to life and capital punishment was therefore unconstitutional.

The hangmen, both pensioners, have been on full pay since the previous government announced a moratorium on the death sentence in 1989.

Yesterday Justice Department spokesman Mr Peter Durand said immediate steps would be taken to move the 453 prisoners off death row. The public could be assured everything would be done to punish criminals in accordance with the law.

Correctional Services spokesman Mr Chris Ockers said death row would continue to be used as a maximum security prison and in any of the prisoners might stay there.

Death row prisoners include Chris Ham's killers, Clive Derby-Lewis and Janusz Walus, and Sydney Mahosana, the murderer of the Orffer family and their maid in Stellenbosch.

The Cape Town branch of Amnesty International hailed the decision as a victory for human rights.

Rabbi David Hoffman of the Progressive Jewish Congregation said, however, he was "very sad" for the families of the victims of prisoners on death row.

"Is this decision really compassionate for the innocent and the victims of crime in our society?"

The Rev Kino Simba of Christians for Truth said it was ironic that the same government that abolished the death sentence was considering legalising abortion.
Abolition of the death sentence has greatly enriched the country's fledgling human rights culture, reports Mzimasi Ngudle, of our Political Staff:

Constitutional Court president Mr Justice Arthur Chaskalson ...

The court's ruling on the death sentence enriches the country's fledgling human rights culture.

"It cannot be gainsaid that poverty, race and chance play roles in the outcome of capital cases and in the final decision as to who should live and who should die," he said.

Most accused facing a possible death sentence are unable to afford legal assistance and are defended under the pro deo system.

Through an interpreter

"The defending counsel is more often than not young and inexperienced, frequently of a different race to his or her client, and usually has to consult through an interpreter. "

Pro deo counsel generally lack the financial resources and the infrastructural support necessary to conduct an effective defence.

"While this may possibly change as a result of the constitution, limits to the available financial and human resources are likely to exist for the foreseeable future, and will continue to place poor accused at a significant disadvantage in defending themselves in capital cases."

Homelessness, unemployment, poverty and the frustration consequent upon such conditions are other causes of the crime wave.

"The differences that exist between rich and poor, good and bad prosecutions, good and bad defence, severe and lenient judges, judges who favour capital punishment and those who do not, and the subjective attitudes that might be brought into play by factors such as race and class, may affect any case that comes before the courts and is present in all court systems.

"Such factors can be mitigated, but not totally avoided, by allowing convicted persons to appeal to a higher court. Appeals are decided on the record of the case and on findings made by the trial court."

"If the evidence on the record and the findings made have been influenced by these factors, there may be nothing that can be done about that on appeal."

"Imperfection inherent in criminal trials means that error cannot be excluded. It also means that persons similarly placed may not necessarily receive similar punishment."

"This needs to be acknowledged. What also needs to be acknowledged is that the possibility of error will be present in any system of justice, and that there cannot be perfect equality between accused persons in the conduct and outcome of criminal trials."

Non-custodial sentence

"We have to accept these differences in the ordinary criminal cases that come before the courts, even to the extent that some may go to jail when others similarly placed may be acquitted or receive non-custodial sentences."

"But death is different, and the question is whether this is acceptable when the difference is between life and death.

"Unjust imprisonment is a great wrong, but when discovered the prisoner can be released and compensated. The killing of an innocent person is irreparable."

Chaskalson concludes that the purpose of a bill of rights is to withdraw certain subjects from the jurisdiction of political controversy. It also places subjects beyond the reach of majorities and officials, and establishes legal principles to be applied by courts.

"To be consistent with the value of ubuntu, ours should be a society that wishes to prevent crime and not to kill criminals simply to get even with them."

"A very long prison sentence is also a way of expressing outrage."

A focus on rationality
Unanimous condemnation

AUGUST 31, 1945

The verdict of the war is clear: the Axis powers have been defeated. The Allied forces, under the leadership of the United States, the United Kingdom, and the Soviet Union, have ended the Second World War. The defeat of the Axis powers is a result of the combined efforts of the Allied nations, who have fought together to ensure the freedom and independence of all peoples. The victory over fascism and Nazism has come at a great cost, but it is a cost that was necessary to ensure a future of peace and prosperity for all. The United Nations, established after the war, is a testament to the commitment of the nations of the world to work together to prevent future conflicts.

Many distinguished scholars were keen to express their anger at the way the war had been treated by law societies throughout the country, says Arthur Allen, writing for Speculum Mag.
Call to hold disciplinary hearings in the open

...
There is continuing search to improve

Law societies around the country believed they were successful in protecting the interests of the public.

The Cape Law Society said in a statement that it was incorrect to say that law societies were not capable of reconciling differences between their members and the public. They had on many occasions done this quite successfully, it said.

Director Ingrid Hoffman said the society proposed introducing a motion at its forthcoming annual meeting which would provide observer status for lay people at disciplinary hearings. This would reassure the public that the society was not protecting members against public criticism.

Raymond Koen, assistant director of the society, believed that, unfortunately, many members of the public either misunderstood or overestimated the jurisdiction and powers of law societies. That jurisdiction was essentially a punitive one, restricted to instances of misconduct.

"Many complaints relate to allegations of negligence or breaches of contract on the part of attorneys. Complainants who allege such negligence or breach, and consequent damages, have civil remedies available to them," he said.

The Law Society of the Orange Free State said it was not aware of any unhappiness with its procedures, but it would take seriously any criticisms and suggestions from the public in this regard.

The Natal Law Society refused to comment. It said in a statement that inquiries involving its members are not held in public, and that complainants may be present throughout the duration of the hearings.

The Transvaal Law Society conceded that the present system was not infallible. However, it emphatically rejected any notion that the system was corrupt.

It said in a statement: "It was not prepared to debate the merits of any individual case in the press. However, it would take seriously any suggestion or criticism in the society's continuing search to improve procedures to achieve the most reasonable and just method of protecting the interests of the public and of attorneys."

— MAX GEBHARDT

She has received little assistance

Funami Mngomezulu, a data input operator living in Soweto, wants to know whether the law societies are protecting the public or the attorneys.

Mngomezulu was divorced in September 1983. As part of the divorce agreement, she was to receive R20 000 from her husband for her share of their house. Two years later, she said, she was still waiting for the money from the attorney handling the liquidation of the couple's assets.

"He said that the Soweto Town Council was being difficult about giving the transfer," she said. "But it doesn't take two years to get a transfer."

Mngomezulu said she believed that the attorney had had the money for nearly two years.

In May 1984 she approached the Transvaal Law Society to lay a complaint against the attorney. Six months later it responded by asking her to supply further documents as the previous papers had been lost.

"The hearing was terrible," she said. "You're all on your own and it's like being in a court."

Approached for comment, the Transvaal Law Society said that it was not prepared to debate the merits of individual cases in the press.

She said the attorney which handled her divorce eventually gave up in sheer frustration in attempting to gain the money from the attorney handling the liquidation.

Mngomezulu said she wrote to the Law Society last month to inform it that she had not received the money. She was waiting for a reply.

She also claimed that the society told her that if she wanted to get hold of the R20 000, she should hire a new attorney. "I can't do this as I have no money."

— MAX GEBHARDT
Advocates Klaus von Iheros und Wilkau and Willie Tengove, each on opposing ends of the capital punishment debate, have had their say and Constitutional Court president Judge Arthur Chaskalson has announced the death of the death penalty in SA. But even as the 453 prisoners on death row raised their voices in song at their reprieve this week, the public debate was starting all over again.

Lawyers for Human Rights (LHR), which has campaigned for the abolition of the death penalty since 1987, welcomed the decision: “I am extremely pleased,” said LHR spokesman Ahmed Motala. “The abo-

ition has put us among democratic coun-
tries that have scrapped the death penalty.”

The decision created more certainty in SA law, he added, and would make judges think of more “creative” sentences for convicted criminals.

Not so, says Democratic Party justice spokesman Douglas Gibson. Government, he says, has been caught with its pants down as it has not provided any “proper punishment” in place of hanging. Because society demands adequate punishment for aggravated crimes where there are no mitigating circumstances, he says, it is essential that the criminal courts be given sentencing options additional to the ordinary life sentence.

A life sentence can amount to as little as eight or nine years in jail after remission for good behaviour and early release or parole — patently inadequate for some of the ghastly crimes which take place.

Capital Punishment Campaign organiser Simon Grunrodt calls the decision predictable, disappointing and contrary to majority opinion. “This outcome represents a missed opportunity to combat the tidal wave of murder currently threatening the very foundations of our nation.”

Pointing to the growing reversion to capital punishment among many US state legislatures, he argues that SA may also come to rethink its position, with violent crime escalating and public opinion heavily in favour of the death sentence. A future Constitutional Court with a majority of conservative black jurists is a possibility.

SA’s democratic government is still in a fledgling phase and (thanks to the previous government’s disregard for human rights) it was to have been expected that the Constitutional Court would be filled with liberal minds. The court’s ruling was unanimous and, notwithstanding any debates in parliament, Justice Minister Dullah Omar has already indicated that Cabinet will concur.

In fact, even before the Constitutional Court’s decision, Omar had given instructions to legal advisers to prepare a Bill abolishing the death sentence.

In his five-minute ruling, Judge Chaskalson said the State and its organs would in future be forbidden to execute any person. Section 277 of the Criminal Procedure Act is now inconsistent with the constitution.

The right to life and dignity are the most basic of all human rights and the source of all other personal rights in the Bill of Rights, he said. “By committing ourselves to a society founded on recognition of human rights we are required to value these two rights above all others.”
Violence in South Africa is divided over death penalty question

Joe Khamisi of Africa penalty still applies 262

The Namibian government has imposed an opposition motion seeking to lift the moratorium on the death penalty. The motion was passed in the National Assembly with a majority of 262 votes in favor. The government is divided on the issue, with some members supporting the abolition of the death penalty while others are against it. The motion was introduced by the opposition party and has sparked debate in the country.

In East Africa, where capital punishment is common, the issue of the death penalty has been a contentious one. Some countries have abolished it, while others continue to use it. The debate in South Africa reflects the ongoing global discussion on the use of the death penalty.
Truth commission unlikely to hear Goniwe case

Cape Town — In spite of President Nelson Mandela's saying that the whole truth would have to be told about the murders of Matthew Goniwe, Siselo Mkhawu, Fort Calata and Sparrow Mkhonto, uncertainty remains on whether the case will be heard by the truth commission.

The Grahamstown Legal Resources Centre, which is handling the case, has ruled out prospects of the commission hearing who killed the four United Democratic Front activists as they drove back to Cradock from a meeting in Port Elizabeth 10 years ago.

Centre director Clive Plasket said that since two inquests had failed to establish the killers' identity, it would not be possible for the case to be reopened by the truth commission.

Although Eastern Cape Judge President Mr Justice Neville Zietsman had alluded to the possibility that charges of conspiracy or incitement to murder and perjury could be investigated against retired General Joffie van der Westhuizen, there was no prima facie evidence against him, Plasket said.

The case was highlighted by Mandela's recent visit to Cradock.

— Own Correspondent
‘Millions’ to unite to fight court ruling on the noose

THE Constitutional Court decision this week to abolish the death penalty has angered South Africans of all races and political persuasions caught in a seemingly endless spiral of violent crime.

Willem Theunsse is one of them. He arrived home to find his private hells of discovering the smashed and bloody bodies of his nine-year-old niece and her family in Stellenbosch last year.

Three girls, aged seven, eight and four, his sister and brother-in-law and their maid were killed.

For Mr Theunsse, the abolition of the "death penalty" has brought back that hell. "I’m just so angry I think that if anyone had walked into my sister-in-law’s house and seen what I had to see, they would have to be insane to do away with the death penalty. The lives that did to those little children does not deserve to live."

For many South Africans, it is as simple as that.

Ironically, the Constitutional Court’s liberal-minded decision may be the spark that turns the growing but ‘unorganised’ moral right into a new player in the South African political scene.

Organisations ranging from the South African Police Union to farmers’ associations, women’s organisations and churches such as the Zion Christian Church, have joined forces with rapidly growing fundamentalist church groups to attack the decision.

The thinly stretched “moral right” coalition could claim to represent more than 10 million South Africans united in their determination to preserve the “morally conservative” values.

“We plan to undertake mass action to protest this decision,” says the president of the Christian Action Foundation, Dr Ed Can, says Christian bodies with an estimated 5 million members are urging their organisations to join them in a national demonstration to protest against the court’s decision.

The president of United Christian Action, Dr Ed Can, says Christian bodies with an estimated 5 million members under the umbrella of the organisation have joined to fight the Constitutional Court decision.

We are considering a range of responses, including marches, petitions and court actions.

Gerhard van der Merwe, the national organiser for the South African Police Union, says that while policemen may have favoured a more lenient application of the death penalty, the court decision “went too far.” It has had an extremely demoralising effect on police force already under attack daily.

What binds these diverse groups together is a belief that South African society is heading in a wrong direction and that letting killers live is symptomatic of that malaise.

The question is, what are they going to do about it, and how effective will their protests be against a Constitutional Court that prides itself on being aloof from public opinion?

Peter Hammond, a director of the Christian Voice, says that any of the organisations for Christian Voice has no doubts they will overturn the court’s decision, one way or another.

Christian Voice challenges the government to hold a referendum on the abolition of the death penalty. The people of this country want murderers executed, and children protected.

He said that the court’s decision would have the effect of “privatising” the death penalty “Ordinary people will begin to take the law into their own hands. In fact, it’s happening already in the townships."

While opposition to the decision is loud, it is difficult to quantify just how many supporters the “moral coalition” has.

The only scientific survey on the subject, carried out earlier this year by the country’s largest consumer research organisation, Research Survey, found that more than 80 percent of whites and more than 50 percent of blacks in metropolitan areas favoured keeping the death penalty. In rural areas the percentage would probably be higher.

The president of United Christian Action, Dr Ed Can, says that the umbrella of his organisation has joined to fight the Constitutional Court decision.

We are considering a range of responses, including marches, petitions and court actions.

By Ken Vernon
Judges split on rights of accused

BY CARMEL RICKARD

The Constitutional Court, which recently delivered its first split decision, was the question of whether the Constitution applied to criminal trials which started after the constitution came into effect and were not yet completed, or only in cases which began after last year's elections.

In several trials which began before the Bill of Rights came into effect, the accused are now demanding rights promised by the constitution. Some of these include the full disclosure of all evidence against them and the right to counsel. Criminal courts have been deeply divided on whether to allow such claims, or whether the trial should be carried out as though the constitution did not exist.

In a judgment by Judge Sydney Kegale, the agreement of court president Arthur Glass and Judge Lauritz Ackermann and Judge John Didcott, it was argued that the constitution applied only to cases started after the elections. The majority, however, disagreed. Led by Judge Juma Mhomed, the rest of the court took the view that it was inconceivable for large groups of people to be systematically denied the protection of the new constitution.

In a judgment which, at times was passionately argued, Judge Mhomed said that, if the section was capable of two meanings, the court should choose the meaning which honoured the intention of the constitution to bring everyone under the protection of the Bill of Rights. He said the alternative would lead to arbitrary inequality.

Judges Johann Kriegler and Albie Sachs both wrote separate decisions, agreeing with the decision of Judge Mhomed.
By CARMEL RICKARD

IN A SERIES of dramatic judgments this week, the Constitutional Court has begun to transform the country's legal landscape, setting it firmly on a human rights course.

First came 11 separate decisions, unanimously ousting the death penalty as an infringement on the right to be protected from cruel, degrading and inhuman treatment.

The reasoning in these judgments made it clear that the court would not hesitate to throw out any old laws and practices that infringed on the Bill of Rights.

On Friday, Judge Pieter Labuschagne handed down a decision which scrapped court-imposed whipping of boys with the agreement of the rest of the court, he decided flogging infringed the right to dignity.

He rejected arguments that the practice was justified to avoid sending youngsters to jail.

The judge said other alternatives existed, and if the necessary facilities and funding were not available, it delivered a "timely challenge" to the state to provide an effective juvenile justice system.

Two other decisions also showed the direction of the new court.

In a case about the right to counsel, Judge John Dibbott rebuked the state because evidence indicated that nothing had been done to make this right a reality.

The judge said this impression was "most disturbing". The court accepted that many demands were being made on state funds, but the constitution would not allow any undue delay in fulfilling promises about fundamental rights.

He said he "clearly assumed" that despite the constitution, thousands were still being tried without legal representation because they were too poor to pay for it.

Unanimously supported by the rest of the judges, he said it was an "empty gesture" for the courts to tell an accused at the start of the trial that legal representation was available for those who needed it. It "made a mockery of the constitution" if there were no mechanisms to ensure the right was enforced.
Buthelenzane said the ANC was working with Inkatha in efforts to break the deadlock over international mediation, and the exchange of constitutional documents with the ANC was a "farce" as Inkatha had made comprehensive submissions to the Constitutional Assembly which were available to ANC secretary-general Cyril Ramaphosa.

Jiyane said if there were to be future talks with the ANC on the issue, these would focus solely on the implementation of the mediation agreement.

Police respond to Inkatha threat

Ingrid Salgado

POLICE would be deployed in taxi ranks and bus and train stations to curb possible violence threatened by Inkatha Freedom Party members in Gauteng, the province's safety and security MEC Jesse Duarte said yesterday.

Duarte, speaking after meetings with premier Tokyo Sexwala and Gauteng police commissioner Sharma Maharaj, said she could not say how many police would be involved.

This followed the Inkatha Vaal Triangle branch's threat at the weekend that Gauteng would become ungovernable if President Nelson Mandela was not arrested in connection with the deaths of 11 Inkatha marchers outside the ANC's Shell House headquarters last year.

Sexwala would meet Inkatha's Gauteng leadership today to discuss the matter, Duarte said.

Faroul Chothia reports that Inkatha secretary-general Ziba Jiyane said Inkatha's Gauteng leadership would establish a disci-
Move to redistribute court seats rumbles on

Brendan Templeton
The Argus Correspondent

A quiet revolution is occurring in an office in Church Street, Pretoria, where changes which could significantly restructure South Africa's legal fraternity are being considered.

The office is home to the commission of inquiry headed by Mr Justice Gustav Hoexter, who has been asked to beat the drum in a lawyer's battle of musical chairs.

South Africa's interim constitution created new provincial boundaries, new provinces and abolished others, precipitating a scramble for Supreme Court seats and threatening the established legal order.

Under the old system, each province and "independent state" had its own Supreme Court seat and local divisions. That is no longer so and Mr Justice Hoexter will have to recommend where the seats should go.

He said that the options open to him include giving each province a Supreme Court seat or introducing permanent circuit courts which handle civil litigation.

He also will investigate ways for the Supreme Court to become more accessible and affordable for people.

Lawyers in Pretoria and the Eastern Cape will be most concerned about the judge's recommendations because their areas have been profoundly affected by the redrawn provincial boundaries.

If the new provinces are each given a Supreme Court seat, lawyers who have become used to dealing in Pretoria with civil litigation from the former Transvaal, face the prospect of their business moving elsewhere.

A similar problem exists in the Eastern Cape where Um- tata and Bulbo are competing with Grahamstown for the Supreme Court seat. Port Elizabeth and East London also have grounds for claiming the prize and competition is expected to be stiff.

It is to be expected that provincial premiers would want their own Supreme Court seats and not be allocated a mere circuit court.

Hoexter believes any centre which can support a viable seat for the Supreme Court needs to meet three vital requirements:

- A significant number of attorneys, settled in the area, who are experienced in Supreme Court litigation.
- A similar number of settled advocates who have proven track records in the Supreme Court.
- Judges willing to move to or already living in the area.

The commission has already asked interested parties to submit recommendations to its office. Public hearings are also to be held.

Interested parties should call the commission at (012) 341 5544/5535 or fax (012) 341 7172. The address is PO Box 55367, Arcadia 0007.
Soaring crime is putting courts under pressure

Dog-tired prosecutors quit in droves

DAVID YUTAR
Staff Reporter

As the crime rate throughout South Africa soars, magistrates’ courts are finding themselves unable to cope with the increase in the number of cases.

Hopelessly overworked and underpaid, prosecutors are leaving the service in increasing numbers.

“Police and the justice authorities are now openly admitting what social theorists prophesied as early as the 1970s, namely that crime is more and more being administers rather than fought,” says Lovell Fernandez, who lectures in criminal law and justice at the University of the Western Cape.

Statistics released by the Department of Justice reveal that magistrates and prosecutors, already seriously underpaid, are now overloaded with work.

For example, the Cape Town Magistrates’ Court with its 10 courts handled 1 138 trials in January, 1 186 in February, 1 323 in March and 1 208 in April.

There were 2 299 new cases in January, 1 731 in February, 1 889 in March and 1 638 in April.

Based on April’s figures, one court was having to handle approximately 120 cases a month.

Given there are 22 court days in each month, this means about six trials a day for each court, besides all the new cases coming in.

In the Cape Town Regional Court conditions do not look much better, with 659 trials being handled in April by seven courts.

The Regional Court handles the more serious criminal matters such as rape and robbery.

“The average court day is approximately five and a quarter hours (taking into account adjournments), which boils down to less than an hour for each trial,” comments a senior judge, official.

So busy are most prosecutors that they come to court unprepared for trials and not having even interviewed state witnesses.

“Prosecutors regularly obtain the docket on the day of the trial,” says a senior Johannesburg advocate who often appears in the Magistrates’ Court.

“How can they possibly absorb what is written in the docket?”

“Previously they would have to have the docket for a minimum of one week before the trial and in more serious cases for one month.

“Today, these days it is not uncommon for prosecutors to be seen going into court reading the docket for the first time.

“Because prosecutors are so overworked the only way in which they can properly prepare for trial is to do so outside of working hours.

“In the past nine months prosecutors worked 4 000 hours overtime, yet their salaries remained the same,” says Professor Fernandez.

“They are all heavily stressed, work till late and regularly take files home.

“Last week a prosecutor collapsed in court.

“Not surprisingly, they are resigning in droves.”

In one week recently, three prosecutors in the Cape Town Magistrates’ Court (with a combined total of 27 years’ experience) resigned.

There have been four resignations since the beginning of January, all control staff or more senior personnel.

Many prosecutors resign because of dissatisfaction with their low salaries.

A prosecutor with a BA Lib degree will start off in the service with a salary of R33 000 a year.

“That’s less than some cleaners earn,” says Professor Fernandez.

“When a person who has spent five years doing his Lib and a further three years training at the Magistrates’ Court, leaves the service to start his own coffee shop, that’s eight years of the taxpayers’ money wasted.”

The burdens on magistrates are also just too great.

“When the jurisdictional limitation of the Magistrates’ Court was R20 000, magistrates had to sit for 105 hours a month — they were already ‘overseated’ (overloaded) by 21 percent.

“Now that the jurisdiction has been increased to R100 000, this is even more so.

“As a matter of urgency, magistrates’ salaries need to be increased.”

One of the reasons for the being overloaded, says Professor Fernandez, is that magistrates have to perform both criminal and administrative functions, such as performing marriages.

Magistrates’ courts handled approximately 98 percent of all criminal cases and 95 percent of all civil cases.

“More than the Supreme Court, they shape the public’s image of justice,” he concludes.

“That’s why it is so important that they are seen to function efficiently.”

In his recent address to the Senate during the budget vote, Justice Minister Dullah Omar admitted “serious problems” in the country’s magistrates’ courts.

One of the most pressing of these was the problem of inadequate facilities, particularly in the rural areas.

Many of the courts in the former homelands were in a bad state of repair.

Problems included no running water, no electricity or functional sewerage systems, leaking roofs and blocked toilets.

“Critical is the shortage of accommodation in certain areas, that court personnel are often obliged to take turns at using the only available table they have to do their work.”
Many angry over abolition of death sentence

There has been public anger at the scrapping of the death penalty — and several organisations are banding together to fight the controversial move.

Some churches, agricultural unions, the South African Police Union and hundreds of private individuals have voiced their outrage at the Constitutional Court's decision, saying it will increase violent crime. — Staff Reporter.
Omar reinstates free legal advice

Susan Russell 252

Justice Minister Dullah Omar yesterday revoked a directive scrapping automatic free legal representation to people on trial for murder or other crimes where the death penalty could have been imposed.

He said the departmental directive was issued in his absence last week without prior consultation with him.

The department had informed the registrars of the superior courts that the pro deo system was to be scrapped with immediate effect because the death penalty was deemed unconstitutional.

A unanimous ruling handed down by the Constitutional Court last week struck down capital punishment as being a cruel, inhuman and degrading punishment which violated the right to life.

Pro deo counsel, drawn from the Bar's ranks of advocates, has been provided to the accused of murder and other serious crimes in which the trial judge, until last week's ruling, had the discretion of imposing the death penalty.

Omar said concerns voiced to him by the Bar and judiciary in response to his department's directive were well-founded and he had instructed the justice department to withdraw it immediately. He expressed his regret at the "dislocation and inconvenience" caused by his department.

"I do not think such a step should have been taken without prior consultation with the legal profession and the judiciary," he said.

"The system certainly needs to be reviewed and the minister of finance and the department of state expenditure need to be consulted urgently as well," Omar said.

Sapa reports that Omar said: "During my absence, and without prior consultation with me, departmental officials took it on themselves to inform the registrars of the various superior courts that in view of the unconstitutionality of the death penalty the pro deo system would fall away with immediate effect."

Omar said he had informed the vice-chairman of the General Council of the Bar of his decision as well as the Chief Justice and Senior Judge President.

He said he would be setting up consultations with the Bar Council, the judiciary and other role players to decide on an appropriate course of action.
Political Staff

THE pro deo system — state-sponsored legal counsel in serious criminal cases where the accused is indigent — is to be revived in the wake of the abolition of the death penalty, says Justice Minister Dullah Omar.

In a statement yesterday, Mr Omar said the finance minister and the department of state expenditure would be urgently consulted to find a new approach to providing legal counsel for criminals likely now to get life imprisonment or other heavy sentences.

To date, the pro deo system has applied almost exclusively to cases in which a death penalty was likely and the accused could not afford legal representation.

Criminal and civil cases outside of the pro deo system are handled by the Legal Aid Board, a government-funded body to which accused can apply if they are indigent.

The legal fraternity has been in a state of confusion since last week’s abolition of the death sentence, which was followed by a justice department circular saying the pro deo system was to fall away.

Mr Omar said the circular — which was sent to the registrars of the various Supreme Courts — was unauthorized.

“I do not think that such a step should have been taken without prior consultation with the legal profession and the judiciary.”

Mr Omar added that he had instructed the justice department to withdraw the directive with immediate effect.

Meanwhile, he was setting up consultations with the Bar Council, the judiciary and other role players to decide on an appropriate course of action.

Bar Council deputy chairman Gerrit Grobler said that had the pro deo system been scrapped “without any alternative, courts would have come to a standstill.”

“I expect that in the future, pro deo cases will be handled by the Legal Aid Board, which will need to have new mechanisms created to shoulder the extra load,” he said.

The justice department yesterday established that the man who appeared as South Africa’s executioner in Sunday night’s Carte Blanche programme on M-Net was the executioner’s assistant.
'Pro deo' system to be reviewed

BY HELEN GRANGE

The pro deo system — State-sponsored legal counsel in serious criminal cases where the accused is indigent — is to be reviewed in the wake of last week's abolition of the death penalty, Justice Minister Dullah Omar said yesterday.

He said the finance minister and the Department of State Expenditure would be urgently consulted to find a new approach to providing counsel for criminals likely to get life imprisonment or other heavy sentences.

To date, the pro deo system has applied almost exclusively to cases in which a death penalty was likely and the accused could not afford legal representation.

Criminal and civil cases falling outside of the pro deo system are handled by the Legal Aid Board, a government-funded body to which an accused can apply if he or she is indigent.

The legal fraternity has been in a state of confusion since last week's abolition of the death sentence, which was immediate-ly followed by a Justice Department circular saying the pro deo system was to fall away.

But yesterday Omar said the circular — which was sent to the registrars of the various supreme courts — was unauthorised and done in his absence.

"I do not think such a step should have been taken without prior consultation with the legal profession and the judiciary. The system certainly needs to be reviewed and the minister of finance and the department of State Expenditure need to be consulted urgently," he said.

Omar added that he had instructed the Justice Department to withdraw the directive with immediate effect.

Meanwhile, he was setting up consultations with the Bar Council, the judiciary and other role-players to decide on an appropriate course of action.

Deputy chairman of the Bar Council, Gerrit Grobler, said the courts would have come to a standstill if the pro deo system had been scrapped without any alternative.

I expect that in the future, the pro deo cases will be handled by the Legal Aid Board, which will need to have new mechanisms created to shoulder the extra load," he said.

The Justice Department yesterday established that the man who appeared as South Africa's executioner on Sunday night's Carte Blanche television programme on M-Net was in fact the executioner's assistant.

The executioner, who has refused to be identified or interviewed since the death sentence was abolished last week, alerted an Afrikaans daily newspaper on Sunday night that the reference to "the executioner" in the programme was incorrect.

He said members of his family had phoned him following the programme to express their shock at the interview.

Justice Department spokesman Pieter Durant said the executioner's assistant, who was silhouetted to hide his identity, did not wish to be identified at this stage either.
By Mzimasi Ngudle

The latest Constitutional Court decision on juvenile corporal punishment is an unhappy one for the Government, which is clearly in breach of the Constitution. While sensitive issues like abortion, hate speech and capital punishment derive from unconsidered counsel of Constitutional Court deliberations, there is no doubt that the flogging of juveniles could have been outlawed without the inevitable cost of enlisting the court's sanction.

Except for the death penalty, flogging— which was authorised by section 94 of the Criminal Procedure Act and forced confession which section 217 of the same act made easy to extract— were for purely unconstitutional as to render Constitutional Court sanction altogether superfluous. While acknowledging that controversial issues like capital punishment were brought to the attention of the court, Mr. Jody Kollman, a human rights lawyer, agrees that sections 94 and 217 could have been dealt with by Parliament.

Delivering his judgment in the case of Sime versus Williams, which dealt with juvenile corporal punishment, Mr Justice Pius Langa noted: "The appellants and the state agreed that provisions in our law authorising corporal punishment for adults are inconsistent with the Constitution. This controversy does not remove the provisions from the statute book. They have not been added by a competent body or authority, and the relevant legislation has not been repealed."

Before the date of the hearing, the attorney-general of the Cape Supreme Court told the Constitutional Court he wished to withdraw his argument because he shared the view that provisions relating to corporal punishment were unconstitutional.

Langa's dictum, and the consensus between the state and the appellants, show clearly that the matter was a fait accompli before the hearing in Williams' case, six male juveniles were sentenced by different magistrates to the "moderate correction" of a number of strokes with a light cane. All the sentences came into operation after the Constitution came into operation on April 27 last year.

The presiding magistrate requested the sentences to be subjected to a special review because he doubted whether juvenile whipping was a permissible punishment in terms of the Constitution.

At this stage, magistrates' courts could have nullified the sentences if section 94 had been repealed, saving the costs of referring the case to the Cape Supreme Court.

The Cape Supreme Court could also have done the same, saving costs of having the matter being heard by the Constitutional Court. This would also trim the Constitutional Court's workload, leaving ample time for the judges to do more research on constitutional jurisprudence.

This is not to suggest that unconstitutional statutory provisions should stand until repealed by Parliament.

Lawyers for Human Rights, director Jody Kollman, agrees that Parliament could have dealt with juvenile corporal punishment instead of the Constitutional Court.

Agreed, but the Constitutional Court is a constitutional body. Without a doubt, these laws are an anachronism. We want to make sure that the constitutional court is not used in a manner that is not intended by the law.

In addition to the proper interpretation of our Constitution, which is enshrined in the Constitution, we must have a Constitutional Court that can interpret the Constitution and guide the Constitutional Court in the interpretation.

William T. Sheola, the Cape Town lawyer, noted that this court is not in line with the Constitution of our laws, as long as it continues to do this little work that it can do, it would be better than nothing in litigation.

(The South African Law Commission can perform the task of identifying unconstitutional laws and recommend that Parliament repeal these laws.)
Apartheid victims demand justice

Adrian Hadland

CAPE TOWN — Victims of apartheid atrocities wanted justice and were not prepared to forgive and forget, the Senate justice committee heard yesterday.

Mihlel Mxenge, brother of assassinated Durban attorney and activist Griffiths Mxenge, said the families and victims of human rights abuses in the apartheid era were "demanding their pound of flesh".

Victims could be forced to take the law into their own hands if the commission swamped their appeals for justice, he said.

"I do not see how we can forgive people who did us so much wrong."

Mxenge and Nontshelelo Biko, widow of black consciousness leader Steve Biko, were addressing the committee on behalf of the Eastern Cape-based Association of Victims of Unresolved Apartheid Atrocities.

The committee is currently considering amendments to truth commission legislation already passed last month by the National Assembly.

Mxenge and Biko rejected the amnesty provisions of the draft legislation, saying "the culprits must be charged".

Members of the association feared the truth commission process would overwhelm private initiatives to prosecute those responsible for the deaths of family members, Mxenge said.

"We are being overtaken by the truth commission, it is taking over and has got the power to wipe the slate clean."

News of the legislation had been greeted with "shock and dismay" by the association, Mxenge said.

Association members, estimated to number around 500, were not prepared to forgive and forget even if this was in the interests of national reconciliation.

"The only way out of this that will satisfy us is to see justice done. We owe it to our members; we owe it to our families."

Mxenge said hopes had been high that the new government would prosecute human rights violators within months of the election last year.

But government had become "so married to the truth commission, what had happened in the past no longer appeared to matter," he said.

"In the light of this frustrating procedure, it is clear that people are being encouraged to take the law into their own hands in order to get their pound of flesh."

Biko said new information had come to light concerning Steve Biko's death, and demanded the reopening of the inquest.

It would be possible for the commission to hear new evidence in the Mxenge and Biko cases, according to State law adviser Gerhard Nel.

Committee chairman Mohseni Moosa said even though severe atrocities had happened in the past, the legislation was aimed at "trying to deal with that past in order to build a prosperous nation and put that pain behind us."
The geishows

for bunting

The Geishows

made up this week's bandanna, depicting foliage.

CARMEL RICKARD reports on the 11 opinions which

ST/16/96

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Our Country's Judge to

In this bandanna, Judge to

in this bandanna, Judge to

in this bandanna, Judge to

in this bandanna, Judge to

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in this bandanna, Judge to
Although he discussed both, Judge Chaskalson said he did not think he needed to resolve their meaning in this case. Other judges explained that this avoided prejudging abortion and euthanasia — both bound to be heard by the court at some stage.

The concurring judgments, handed down alphabetically, began with a judgment by Judge Laurice Ackermann. He emerged as one of the serious academic voices on the bench, with a quote from German-language sources that is a model for the conundrum of the Constitutional Court itself. His judgment emphasises how the death penalty is arbitrary and unusual in its application — and thus clashes fundamentally with any values of the new constitution.

Judge Pius Langa adds another dimension, recalling the way in which the political history of South Africa has led to life and death and dignity being demeaned. Through its policies, the state was part of this “degeneration”, he says, but the new constitution signals a dramatic change to the values of a “more mature society” relying on moral persuasion rather than force.

He quotes the constitution, which urges that society moves from “victimisation to ubuntu (humaneness)”, and then discusses what ubuntu meant in traditional black societies and how this value could change society today. Ubuntu is also discussed by Judge Thole Madala, who says it is a value permeating the constitution. The murderer might have shown no mercy to his victims, but society should not take its values and standards from the murderer; instead it should “impose” its ubuntu on him.

He dismisses a suggestion by the Black Advocates’ Forum that the court should not decide the death penalty issue.

HE ALSO addresses the socio-economic causes of crime, urging community campaigns against crime and the restoration of the influence of moral authority figures such as teachers and religious leaders.

Many support the death penalty because they believe the punishment should be “equivalent in form” to the crime — an argument he rejects. “The rape of an offender is not a permissible punishment for a rapist. Why should murder be a permissible punishment for murder?”

Judge Yvonne Mokgoro introduces another angle. She says the constitution entitles the court to consider decisions of courts in other countries, but it should also consider the values and approach of “our own (ideal) indigenous value system.” She says this issue was “regrettably” not argued during the death penalty hearing, and the responsibility to do so lies not only with the judiciary but also with legal practitioners and academics.

“Is it not as if these resources are lacking, what has been absent has been the will and acknowledgement of the importance of the material?”

The most academic judgment, that by Judge Kate O’Regan, notes that in the past the death penalty was sometimes imposed for crimes that were motivated by political ideals. Thus capital punishment came to be seen as part of the repressive machinery of the former government.

She says the actions of the criminals in the test case the court was considering were “abhorrent.” The question was not whether perpetrators of such crimes should be punished severely — clearly they should — but rather whether the particular punishment proposed was constitutional.

Judge Albie Sachs says the traditions, values and beliefs of all sectors of South African society must be considered in developing a new legal approach under the constitution. Courts should benefit from the judgments of the previous era, whose sense of justice transcended the limits of race and should acknowledge writers such as the late Professor Barend van Niekerk, who bravely broke the taboo on criticising the legal system.

Above all, it means giving recognition to African law and legal thinking as a source of ideas, values and practice.

Judge Sachs then examines historical records of traditional legal practice and concludes that in general capital punishment was not applied as a punishment for murder.
LEGAL AID SYSTEM BEING REVIEWED

CAROL CAMPBELL

THE Department of Justice could open legal aid offices in all major centres to assist cash-strapped accused if it decides to rationalise the pro Deo system.

Another alternative would be to bring the pro Deo system under the jurisdiction of the Legal Aid Board, or, despite the scrapping of the death sentence, leave it to continue as it has.

Under the pro Deo system poor people accused of committing serious crimes which could have resulted in the death sentence, were provided with legal representation by the state.

The Legal Aid Board administers legal aid for the poor appearing in Magistrates' Courts.

The review of the pro Deo system follows a week of confusion in legal circles after the Department of Justice sent out a circular saying it was to be scrapped because of the abolition of the death sentence.

This decision was reversed by Justice Minister Mr Dullah Omar when he returned from a trip overseas.

Yesterday Mr Pieter Brits, the senior legal administration officer for the Legal Aid Board, said work generated by the pro Deo system could be administered by the board without too much upset.

"Supreme Courts throughout the country hear about 2 000 cases a year — we administer 70 000 cases for the Magistrates' Courts so this extra work would not increase the work load that much."

UMBRELLA

Acting Judge President of the Cape Mr Justice JJ Fagan said the Department of Justice might want the whole legal council system under one umbrella which could slow down the court process.

"The current system works very well," he said.

Mr Pieter Durand from the Department of Justice declined to comment on the matter, saying it was still under discussion.
Call for justice, not truth commission

BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — Family members of prominent victims of apartheid crimes yesterday rejected the proposed truth commission in favour of criminal prosecutions of security force members.

Ntsiki Biko, the widow of Black Consciousness leader Steve Biko who died in police custody in 1977, and Churchill Mxenge, younger brother of anti-apartheid attorney Griffiths Mxenge who was assassinated in 1981, told a Senate hearing that they wanted justice rather than a commission.

Their objections are likely to further complicate the passage through Parliament of the legislation — specifically intended to provide solace and redress to families of victims.

Although the Bill has already been passed in the National Assembly, it is now being delayed in the Senate, where the ANC has raised objections to the present draft without immediately proposing alternatives.

Some parliamentarians said they now doubted the Bill would be passed during the current session of parliament, which is due to end in mid-September.

Biko and Mxenge appeared on behalf of the Association of Victims of Unsolved Apartheid Atrocities, formed in the Eastern Cape in March this year as a pressure group "to take the necessary action to see to it that justice is done."

Mxenge, who is chairman of the group, said he had approached the Senate committee after a meeting with Justice Minister Dullah Omar.

He said in a statement handed to the committee "When we voted the new government into office, we immediately nursed high hopes that at last the law was going to take its course. To our shock and dismay, we find ourselves exactly where we were 10 years ago, if not worse off, at the height of the repression as victims.

"The only exception created by the truth commission is that under the new government, at least if the criminals tell the truth they will be forgiven, irrespective of whether the victims are happy with that or not.

"If the commission wants to know what kind of response is expected by the victims from the commission, the commission needs to look no further than the Chris Hem case.

"In the Chris Hem case, we feel that justice was done."

Truth legislation: Victims families prefer prosecution

FAMILY members of prominent victims of apartheid crimes yesterday rejected the proposed Truth Commission in favour of prosecutions of security force members.

Mrs Ntsiki Biko, widow of black consciousness leader Mr Steve Biko, who died in police custody in 1977, and Mr Churchill Mxenge, younger brother of assassinated attorney Mr Griffiths Mxenge, told a Senate hearing on the Truth Commission legislation that they wanted justice rather than a commission.

Their objections are likely to complicate further the passage of the legislation that is specifically intended to provide solace and redress to families of victims.

The bill is being delayed in the Senate, where the ANC has raised objections to the present draft, without immediately proposing alternatives. Some MPs now doubt it will be passed during the current session of Parliament.
Heroes' families demand justice

Sowetan Correspondent

Family members of prominent victims of apartheid crimes yesterday rejected the proposed Truth Commission in favour of criminal prosecutions of security force members.

Mrs Ntsiki Biko, wife of Black Consciousness leader Steve Biko who died in police custody in 1977 and Churchill Mxenge, younger brother of anti-apartheid attorney Griffiths Mxenge who was assassinated by policemen in 1981, told a Senate hearing considering the Truth Commission legislation that they wanted justice rather than a commission.

Biko's wife and Griffiths Mxenge's brother voice their dissatisfaction over the Truth Commission.

Their objections are likely to further complicate the passage through Parliament of the legislation which is specifically intended to provide solace and redress to families of victims.

Biko and Mxenge appeared on behalf of the Association of Victims of Unsolved Apartheid Atrocities formed in the Eastern Cape in March this year as a pressure group "to take the necessary action to see that justice is done".

Mxenge, who is chairman of the group, said he had approached the Senate committee after a meeting with Justice Minister Dullah Omar. He called for the prosecution of former policeman Durk Coetzee who has admitted to being implicated in the killing of Mxenge.

Biko said the family was demanding that the case be reopened. Police officers involved in the Biko case had since been promoted and should be charged instead, she said.
Punishment must fit crime

CRIME REPORTER

POLICE and state prosecutors are soon be discussing justice problems with community forums around the province.

"The police and my department will work more closely together in concentrating on an effective system of apprehension, conviction, and punishment. The third partner must be the community."

"I would like to see a total restructuring of the parole system. Too much authority vests in the prisons. Faceless bureaucrats who account to no one make these decisions."

"Lawyers should be involved in assisting with these decisions as happens in some overseas countries."

Mr Kahn said his department had given the relevant government departments suggestions on how the parole system could be improved and were still waiting for feedback.
IFP backs Nats' call for hanging referendum

Political Correspondent
THE Inkatha Freedom Party has backed a call by the National Party for a referendum on the death penalty

A snap debate on the restoration of the death penalty is to be held in parliament next week.

The IFP committee on justice, said the court should not be allowed to decide as fundamental an issue as the death penalty.

"The constitutional court is empowered to enforce the constitution, and override parliament when parliament oversteps its powers, but the court is not entitled to discover law in the constitution which does not exist."

The proper and democratic way to deal with the death penalty was a nationwide referendum and then for parliament to pass a law on the matter, Mr. Mzazi said.
Call for poll on death penalty

THE National Party and Inkatha, plan to use Monday's snap debate in Parliament on the abolition of the death penalty to drum up support for a referendum on the issue.

Opinion polls this week show that more than three out of five South Africans oppose the Constitutional Court's decision to scrap the death penalty. The IFP yesterday supported the NP's call for a referendum, dismissing the ruling by a court which is 'not elected by or accountable to anyone'.

Political Correspondent.
A WAR of words has erupted between Cape attorney-general Mr Frank Kahn and the Department of Correction Services over parole.

At a news conference on Wednesday with Western Cape police commissioner Lieutenant-General André Beukes where it was announced the police and prosecutors would work together more closely, Mr Kahn said he would like to see a total restructuring of the parole system.

"Too much authority vests in the prisons. Faceless bureaucrats who account to no one make these decisions," Mr Kahn said.

Department spokesman Captain Mike Green said yesterday Mr Kahn illustrated his "ignorance" of the prison system "with generalisations and tasteless statements".

He also suggested lawyers should be involved in parole decisions as happens in some countries overseas.

But Captain Green accused Mr Kahn of attacking the department because he was "disappointed" with the sentence and parole of murderer Giuseppe di Blass, who was freed in February after serving 17 months of a four-year sentence for murdering his ex-wife, Ms Francesca Golia.

"It is unreasonable of Mr Kahn to abuse his position to slander the department just because there was one case which did not suit his strategy," he said.

**Overcrowding**

He said SA had "one of the strictest parole systems in the world" and in no country did prisoners serve their full sentences.

"It seems Mr Kahn is not informed about circumstances at Polismoor Prison. He should visit the prison and see the poor conditions caused by the overcrowding due to, among other things, the large number of awaiting-trial prisoners who wait unnecessarily long for their cases to be concluded.

"This is a problem which could be largely solved if Mr Kahn and his office see to it that trials are expedited," Captain Green said.
Omar seeks full life sentences

BUILDING up of a human rights culture does not imply being soft on crime, asserts justice minister

Cape Town — The Government wanted to introduce full life sentences for murderers and rapists who were beyond rehabilitation and who were a threat to public safety, Justice Minister Dullah Omar said yesterday.

Omar's comments, made in an interview with The Star, came a week after the Constitutional Court unanimously scrapped the death penalty, prompting fears that early prison releases would unleash violent criminals on the public.

Dangerous

Omar said legislation was being prepared to ensure life sentences meant a life in jail and to ensure that dangerous criminals were not able to abuse their constitutional right to bail.

"The matter of the meaning of a life sentence we are going into right now," said Omar.

"There are cases where life sentences must mean life in prison. People should know they are going to serve their whole sentence. In cases of murder where there are no extenuating circumstances, the courts should not hesitate, as some of our courts have done, to impose life sentences."

"There is a category of crime where the protection of the public becomes the dominant factor, like murder, robbery and rape."

Referring to evidence given by family members of Steve Biko and Griffiths Mxenge who told the Senate justice committee they wanted prosecutions against the former heads of state instead of the truth commission, Omar said he could understand their point of view.

Amnesty

"If there is any evidence that any person committed an offence, the Attorney-General is duty-bound to prosecute," he said.

The constitution guaranteed people the right to ask for amnesty so, while prosecutions could take place, the accused also had the right to apply for amnesty.

The Biko and Mxenge demand for retribution was "a classic example of what can happen unless there is a truth commission," said the minister.

Justice Minister Dullah Omar... legislation being prepared...
TFP recalls death penalty

The Inkatha Freedom Party yesterday joined the National Party in calling for a referendum on the scrapping of the death penalty. Parliament will hold a snap debate on the issue on Monday in which the NP will call for a constitutional amendment to re-introduce the death penalty for serious crimes of murder, robbery and rape. The TFP said yesterday the Constitutional Court could only interpret the Constitution and not determine public policy.

"The proper and democratic manner to deal with the death penalty is to hold a nationwide referendum and then for Parliament to pass a law dealing with the death penalty," the TFP said.

Justice Minister Dullah Omar yesterday welcomed the debate on the issue. He said the constitutional provision of the right to life was so strong that any court would have had difficulty coming to another opinion.
should be opened
Covered-up cases

Charge the killers

Justice was done, one hand

WHO BLAMES?... spinning wheels

COUNCED DOWN... Victoria Exhange

GRP COL... 30 year old in 1977

A COMMISSION?... the story rhymes
“140 shots at minibus”

PRETORIA — Vinparka C10 unit members allegedly fired 140 bullets into a minibus carrying four would-be bank robbers during an ambush outside Nelspruit in 1992, the Transvaal Supreme Court was told last week.

About 234 spent cartridge found at the scene had been handed to him for testing, ballistics expert Brig Fred Cowan testified in the murder and fraud trial of former C10 commander Col Eugene de Kok.

Cowan said he had found 140 entry holes in the minibus, caused by 9mm rifle, 9mm pistol and a 12-bore shotgun fire. The shotgun had been loaded with pellets and not the usual buckshot.

The State alleged De Kok, several of his C10 underlings and members of the Pretoria Murder and Robbery Unit had planned the ambush in March 1992. Outside Nelspruit they had fired at the vehicle before planting AK47 rifles and handgrenades in it and setting it on fire. Four robbers were killed in the ambush, while a fifth person, waiting at a petrol station for his friends, was later killed by C10 members, the State claimed.

The trial continues today.

Inkatha rejects Durban proposals

Farouk Chortha

DURBAN — The Inkatha Freedom Party yesterday rejected Durban metropolitan council boundary proposals on the grounds that they discriminated against Indians and created economically unviable structures.

In a preliminary report released earlier this month, the Demarcation Board had proposed that Chesterville be the sole black township in a sub-structure which included the Indian areas of Chestworth, Shallovers and Reservoir Hills and the white areas of Westville and Queensburgh.

Inkatha election campaign deputy manager Anthony Grinker argued that this would give Chesterville residents disproportionate influence in the sub-structure.

The bulk of the Indian population had been placed in one sub-structure, reducing their clout in the council.

The Local Government Transition Act stipulated that black areas would receive 50% ward representation on the sub-structure, while the remaining 50% would go to Indian, white and coloured areas.

Grinker said Chestworth, the largest Indian township in the council, should be in an adjacent sub-structure that included Durban central, Berea, Elliot, Laayouneville, Moobeni, Jacobs, Clairwood, Shillibury and Yellowwood Park.

Inkatha would make its submission to the board today, the closing date for comments on the board’s preliminary proposals.

Provincial Affairs Minister Heinz Meyer said last week a battle was looming over Durban metro’s internal boundaries.

Observers pointed out that the battle had been expected to break out after the board had submitted its final report to provincial local government ANC-Peter Miller.

Miller had the prerogative of amending the proposals before submitting them to the Provincial Local Government Committee for approval.

Inkatha also objected to the fact that Humblewood was the sole black township in a sub-structure which included the Indian areas of Phakalane and Umshongweni and the white areas of Elmhurst and Lenasia.

Grinker said the influence of the Indian community was once more being restricted. Phakalane, the second largest Indian township in the council, should be included in a sub-structure that comprised the black areas of Humblewood, Heathwood and Eikambeni.

Phakalane, which had a fairly large Indian area, would enable the sub-structure to attain economic viability.

The board had proposed that Chesterville form a sub-structure on its own. Grinker argued that Chesterville should be included in an adjacent sub-structure that had distinct black areas such as Groutville and Slangkop.

Meanwhile, Umzimkhulu MP Thularepo reports that the Humblewood Local government elections had taken place in the ANC and opposition parties did not make comments on the submission of Wildenburger’s boundaries.

The matter may be referred to the special electoral court for a ruling. Meanwhile, the issue is supposed to be finalised by tomorrow and it seems unlikely that an agreement will be reached in time.

Pressure to review death penalty ban

Adrian Hadland

CAPE TOWN — Government is under growing pressure to reopen the debate on capital punishment following the rejection of the Constitutional Court’s recent ruling that several political parties and calls for a national referendum.

The Inkatha Freedom Party joined today at the weekend, adding its voice to calls by both the National Party and the Freedom Front for the issue to be put to the public.

But justice minister Daliilea Omar said he had no intention of supporting a referendum or renewed debate on the matter.

Observers noted that the Constitutional Court’s ruling, which banned the death penalty, had been based on the constitution, which was signed by all parties. Omar said.

The issue of the death penalty was being used as a “red herring” to divert attention from the need to tackle the crime problem in all its aspecrs. Mzizi said the court was packed with ANC supporters and was empowered only to interpret the Constitution and not to determine its application.

“Those judges are not elected and are not accountable to anyone. It is nonsense that the Constitutional Court should be allowed to determine such a fundamental issue.”

The IFP and several constitutional rights groups had called on government to hold a parliamentary debate followed by a national referendum on the issue.

Lawyers for Human Rights said, “If we want an impartial debate, the court should not hear the issue of capital punishment until a full and open debate has been discussed and a resolution reached.”
Court’s decision may not stand test of time

The abolition of the death penalty would force us to see that prisons reform hardly anyone and that the worst criminals should be imprisoned, not for their reformation or rehabilitation, but for the protection of the public. The first two judges who subsequently found the weapon of the death sentence struck from their hands recognised this.

Every state has enemies, actual or potential, against whom it needs the means of defence. Not all these enemies are external to it. Thus is why the French publicist Joseph de Maistre saw the guillotine as a symbol of that sovereign power which has today come under attack from the perpetrators of hijacking and hostage-taking, and of outrages such as Lockerbie or Oklahoma.

Crimes of violence in SA, which assume a form much less dramatic than any of these, might force the reintroduction of the death penalty. After its abolition in the UK, it had to be partially restored to protect prison warders against murder by convicts under their charge. What if our prison warders brought irresistible pressure to bear for similar protection? Failing compliance with their demand, a government might find itself without the effective power to imprison. This illustrates the need to treat abolition in a spirit of experimentation.

A beleaguered future government could well find itself having to ask a future Constitutional Court to rule that the Court which took the decision erred in finding that the requirements for an implied repeal of section 376 of the Criminal Law and Procedure Act – which governed the death penalty – were satisfied.

It is important that the retention or abolition of the death penalty should be seen as an issue on which reasonable men may differ in the light of the exigencies of time, place and perhaps even cost. In Australia, it has been shown that more is spent on keeping a convict in prison for a year than it should cost to send him to study for a year at Harvard University.

The Constitutional Court seems to have taken an apocalyptic view of its role in ending executions. Justice Chaskalson linked the saving of condemned persons with the protection of minorities, among whom he included “the worst and weakest among us”.

Only a willingness to protect theene could secure the rights of all, he said.

Presumably the learned Constitutional Court president did not regard the worst and the weakest as constituting a single undivided minority, since there can be no greater enemies of the weakest than the worst. This truth is well illustrated by prison life, since those most familiar with it readily tyrannise newcomers and others weaker than themselves.

Bad as the death penalty may be, it is not, in Burke’s famous words, an organised hypocrisy. Prison is just that: it is a place where anyone who reforms has to swim against the tide. In the words of a warder with whom I once conversed, prison is “a place where we are supposed to make them better, but where they make us worse.”

The death sentence might have gone sooner had it been recognised that at least the worst kinds of violent criminals should be imprisoned for the protection of the public and not in the hope of their reformation.

Jordan is a former Wits University political studies lecturer.
NP to call for free vote on death penalty today

The National Party is to call for a free vote on the suspension of the death penalty during a snap debate in Parliament today on the Constitutional Court's recent decision.

A free vote allows MPs to vote according to their consciences rather than take a position agreed upon by party whips.

NP justice spokesman Mr Dane Schutte, who is also the party's leader in kwaZulu/Natal, said an alarming percentage of people felt unsafe in their homes.

If Parliament did not overturn the decision they were "likely take the law into their own hands."

He said if a free vote favoured the re-imposition of the death penalty, the matter could then go to a referendum.

The NP believed that a majority of parliamentarians — including those in ANC ranks — would support a change in the constitution to water down the right to life provision.

Cruellest

The NP, which called for today's debate, believes that capital punishment should be applicable in the case of "the cruelest crimes."

Only the IFP and Freedom Front have backed the NP view, while the PAC, ANC and DP support the Constitutional Court's position.

There will be no vote during the snap debate today and any change in the constitution would be likely to emerge from negotiations in the Constitutional Assembly.

Justice Minister Mr Dullah Omar said at the weekend that there was no possibility of the court's ruling being overturned. The provision in the interim constitution protecting the right to life was "so strong" that no court could have found otherwise.

The NP had been the first to suspend the death penalty in November 1989 because it had proved not to work.
National Party calls for hanging in some cases

But capital punishment unlikely under ANC

Political Staff

The National Party is to lead calls today in the national assembly for a constitutional amendment to allow capital punishment in certain cases.

But African National Congress MPs are expected to hammer the NP on the issue by pointing out that it was the NP government which, in effect, scrapped the death penalty when former president F.W. de Klerk introduced a moratorium on executions in February 1990.

Justice Minister Dullah Omar has already accused the NP of dishonesty and has argued that it scrapped the death penalty because it was not an effective deterrent.

Mr Omar has called on the courts to impose full life terms for murderers and rapists who cannot be rehabilitated.

And he has lashed out at departments of correctional services officials for releasing criminals before they have served their full term.

His criticisms are intended in part to provide the ANC with ammunition to head off an NP onslaught borne by a wave of popular indignation at rising crime levels and at perceptions of light punishments.

This is intended, in part, to address popular indignation at rising crime, and perceptions of light punishments.

NP justice spokesman Dane Schutte said last week support for the death penalty in certain cases was overwhelming.

In the worst rape, robbery and murder cases, the NP wants the constitution changed to allow judges to hand down the death penalty.

Today's debate has no effect on the constitutional court's declaration of the death penalty as illegal in terms of the interim constitution.

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Only a joint sitting of the national assembly and the senate could agree to a change, highly unlikely given the ANC's opposition to the death penalty and its majority in both houses.

The ANC would no doubt reject the NP's request for a debate on the issue, even though its own MPs are known to have a range of different views.

By refusing a debate, the ANC would have seemed to be afraid of supporting its own political convictions in public.

The debate will keep the issue current and will also allow parties to put their views on the record.

Partisan views will likely form part of the respective parties' propaganda arsenals.
Hanging: Hot debate likely this week

By Vuyo Bavuma
Political Reporter

SPARKS are expected to fly during this week’s snap Parliamentary debate on the death penalty — with National Party and Inkatha Freedom Party set to intensify their calls for a referendum, on the matter.

But their views are sure to be shot down by the African National Congress, the African Christian Democratic Party and the Democratic Party, who welcomed the recent abolition of capital punishment by the Constitutional Court.

The pro-abolitionists are likely to argue that the death penalty contradicts the constitution’s right to life rulings.

Fundamental issue

Last week Mr Abraham Msizi, chairman of the IFP’s committee on justice, said the Constitutional Court could not be allowed to decide on such a fundamental issue as the death penalty.

He said the Constitutional Court was empowered to enforce the constitution and override Parliament when it overstepped its powers. “The court was not entitled to discover a law which does not exist,” said Msizi.

The first party to call for the referendum, the NP is expected to push for the amendment of the interim constitution to allow the re-introduction of capital punishment.

Topical issue

Another topical issue is the decriminalisation of dagga, supported by Correctional Services Minister Dr Sipho Mzimela, who said many people were unnecessarily jailed because of minor drug offences.

Mzimela is expected to touch on the subject when he addresses the senate this week. Earlier, he was severely criticised by Welfare Minister Abe Williams.

Today Health Minister Dr Nkosazana Dlamini-Zuma will release draft proposals for the National Health Act, which includes forcing the medical graduates to do two years compulsory service in underprivileged communities.
Capital punishment referendum refused

Adrian Hadland

CAPETOWN — Calls for a national referendum on the abolition of capital punishment were rejected out of hand yesterday by Justice Minister Dullah Omar.

In a snap parliamentary debate, permissible on matters of public importance, Omar accused parties supporting the call of political opportunism which threatened to undermine the constitution.

Public opinion was not always the best judge of morally significant matters, Omar told the National Assembly.

Introducing the debate, NF justice spokesman Dane Schutte said violent crime in SA had increased 30% since the 1989 death penalty moratorium.

Urging government to submit to the nation the Constitutional Court’s recent ruling which abolished the death penalty, Schutte said capital punishment “in our particular circumstances is imperative”.

This view was supported by Freedom Front MP Joseph Chole, who said “drastic steps are necessary to stop anarchy in SA”.

Inkatha MP Ben Skosana said his party was reconsidering its opposition to the death penalty but called on government to allow the issue to be decided within provincial constitutions.

ANC justice spokesman Johnny de Lange accused the NP of attacking the judiciary’s independence.

Omar said calling for a referendum immediately after the Constitutional Court’s ruling “directly undermines its legitimacy and viability. The proposal for a referendum calls into question the very basis of the constitutional state, the notion of core values of the constitution which should be beyond the reach of temporary majorities and the role of a constitutional court.”

The NP had calculated that the majority of South Africans wanted to retain capital punishment and sought to use this for political gain. If there was a majority in favour of the death sentence, this was a transient one which would change with time, he said.

The NP opportunistically invoked majoritarianism at the expense of constitutionalism, Omar said.

If parties were interested in testing popular opinion “in a calm atmosphere without undermining the Constitutional Court and without whipping up the call for blood and vengeance, they should make submissions to the Constitutional Assembly”.

Omar said 11 court judges had agreed unanimously there was no proof the death penalty acted as a deterrent.

Quoting the judgement, Omar said: “The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is presently lacking in our criminal justice system, and it is at this level and through addressing the causes of crime that the state must seek to combat lawlessness.”

Sapa reports that DP leader Tony Leon said the NP’s call for a referendum was hypocritical, dangerous and undermined the constitution and the Constitutional Court. “The real issue at stake should be about getting tough on crime and coming to grips with the causes of crime.”
Outlawing of death penalty remains unchallenged — for now

POLITICS

Wednesday June 20 1999

VICE SAWYER

 constative Council

motion — The National Party's
Four new acting judges appointed

STAFF REPORTER

MR JUSTICE J J Fagan will continue as Acting Judge President of the Cape for a third term, the office of the Cape Judge President announced yesterday.

This is while Cape Judge President Mr Justice Gerald Friedman undergoes a hip operation.

Judge D Scott has been appointed to the Appellate Division in Bloemfontein for two terms.

Also announced was the appointment of four new acting judges to the Cape Supreme Court.

They are Mr Peter Hodes, Mr Willem Louw, Mr Deon Insh and Mr Benny Gnesel.

Acting Judge Mr Abdul Motala will also continue for another term.

Mr Siaj Desai takes up a permanent post as a Supreme Court judge from July 1.

SUPREME COURT POST: Mr Deon Insh has been appointed one of four new acting judges in the Cape Supreme Court.
ANC senators reviewing legislation to establish a Truth Commission said they wanted the bill amended to allow the cabinet to include foreigners among the commissioners.

As the bill stands, only South Africans who are impartial and who do not have a high political profile will be eligible to serve on the commission, which will consist of between 11 and 17 members.

Opposition parties, including the NP, yesterday said they would oppose the amendment that seeks to include foreigners.

The bill is expected to come before the Senate next Wednesday. — Special Correspondent

ANC reject poll on hanging

ANC supporters yesterday rejected NP calls for a referendum on the death penalty, arguing that public opinion was not always the best judge of the core values of the constitution.

ANC chief whip Mr Arnold Stoffel told a “snap debate” on the death penalty called by the National Party that the African National Congress’ long-time political creed, “the people shall govern”, meant MPs had been given a mandate to decide certain issues on behalf of the electorate.

The National Party had called for a referendum on a possible amendment to the constitution to allow for the death penalty to be imposed in certain cases of rape, robbery and murder. — Political Staff
ANC wants foreigners on truth probe

By Patrick Bulger
Political Correspondent

Cape Town — ANC senators, reviewing legislation to establish a truth commission want the Bill amended to allow the Cabinet to include foreigners among the commissioners.

As the Truth Commission Bill stands, only South Africans who are impartial and do not have high political profiles are eligible to serve on the commission, which will consist of between 11 and 17 members.

Opposition parties, among them the NP, have set great store by the composition of the commission and gave notice yesterday that they would oppose the amendment.

ANC Senator Bulelani Ngcuka said the party wanted the Cabinet to be able to consider the inclusion of UN human rights experts in the same way that eminent foreigners were involved in the Independent Electoral Commission.
'Scraping death penalty is last straw'

The poor, hungry and homeless law-abiding citizens have a lot for which to envy the prisoners of today. The abolition of the death penalty by the Constitutional Court adds to these unfavourable perceptions of the justice system.

Mosibudi Mangena argues for the death penalty

Secondly, those arrested are routinely granted bail even if their crimes involve murder, rape, armed robbery and child molestation. While out on bail such criminals continue their criminal activities against society.

Thirdly, more often than not, the courts hand down ridiculously low sentences for serious crimes. Parole and remission of sentence soon see criminals out of jail for another round of wrongdoing.

Lastly, life in prison — in terms of diet and treatment — is said to be better and more comfortable than for a lot of people outside.

Does no one hear the cry of the poor and hungry law-abiding citizens?

That explains why people expressed surprise at the decision of the court. For the families of the six children in the West Rand who were raped, murdered and thrown as though they were items that could be thrown away by greedy, lawless landlords, the court's decision is a bitter pill to swallow.

Why aren't those who commit crimes punished?

The current system of imprisonment and parole is broken. It is only a matter of time before the system cracks and exploitations and problems multiply.

It is therefore a matter of concern that the Constitutional Court has decided to scrap capital punishment.

The right of the people to life and freedom is a basic human right and is enshrined in the Constitution of South Africa. The right is not absolute, but it is an inalienable right. It is not subject to the discretion of the state.

Capital punishment is a form of punishment that is not only inhumane but also ineffective. It serves no purpose other than to satisfy the desire for revenge.

The abolition of capital punishment is a step towards a more humane and just society. It is a step towards a society that values human life above all else.

The Constitutional Court's decision to scrap capital punishment is a step in the right direction. It is a step towards a society that is more just and humane.
NP’s gallows poll call is rejected

BY PATRICK BULGER

Cape Town — ANC spokesmen yesterday rejected NP calls for a referendum on the death penalty, arguing that public opinion was not always the best judge of the core values of the constitution.

ANC chief whip Arnold Stofile told a snap debate on the death penalty called by the NP that the ANC's long-time political creed, "the people shall govern", meant MPs had been given a mandate to decide certain issues on behalf of the electorate.

The NP called for a referendum on a possible amendment to the constitution to allow for the death penalty to be imposed in serious cases of rape, robbery and murder.

NP justice spokesman Danie Schutte said the scrapping of the death penalty had aroused an outcry and that ordinary people were entitled to be outraged.

But Justice Minister Dullah Omar said public opinion could change "easily and quickly".

"Values of the constitution are protected — even against majorities," Omar said. "The key to the whole negotiated settlement in South Africa is the move away from parliamentary sovereignty to constitutional supremacy."

"The immediate reaction of the NP to the unanimous decision of the Constitutional Court which consists of no less than six renowned Supreme Court judges is shocking."

"The complex arrangement contained in the constitution to place core values beyond the reach of temporary majorities is at risk if the NP proposal for a referendum is to be accepted."

"Not only does it undermine the Constitutional Court but it opportunistically invokes the principle of majoritarianism at the expense of the constitutionalism in respect of only one issue — the one on which it believes the majority is buying for blood. But it ignores others which are also controversial."

"Why should we not submit other issues of major concern to a referendum such as the future of languages, the national anthem, the flag, the need for radical land redistribution... as well as far-reaching amnesty provisions — why should public opinion in these matters also not be tested in referenda?" Omar asked.

The NP came in for withering criticism during the debate. DP leader Tony Leon accused the NP of "fraudulent intent" and said its view was a "spectacular somersault" on its earlier support for a constitutional state. "They think that with this motion they can ride the tiger of popular opinion by throwing a few chunks of red meat at it," Leon said.

The PAC and the IFP also opposed a referendum.
Heated death penalty debate

(252) Sunday 20/6/95

By Vuyo Bavuma
Political Reporter

SEVERAL ANC MPs, backed by the Democratic Party and the Freedom Party, yesterday accused the National Party of trying to win cheap votes and of undermining the independence of the Constitutional Court by calling for a referendum to decide the death penalty issue.

In a heated debate in Parliament yesterday, the MPs also accused the NP of being shortsighted in trying to use the populist mechanism to decide important issues.

Earlier, National Party justice spokesman Mr Dainle Schutte suggested that the referendum be held at the same time as the November 1 local government elections. He said a referendum was necessary because ordinary people had had enough of the spiraling violent crime rate.

In response, Justice Minister Mr Daliyah Omar said the NP was being highly irresponsible and attempted to exploit the anger and concerns of the people with regard to crime. The NP was trying to whip up emotions, fears, and prejudices because this was the only way it could win.

NP irresponsible.

Omar said "The National Party is irresponsible because it is a co-author of the present Constitution which contains the chapter on fundamental rights and the creation of the Constitutional Court. The key to the negotiated settlement in South Africa is to move away from parliamentary sovereignty to constitutional supremacy."

Mr Johnny de Lange, chairman of ANC justice committee, said the NP was using the death penalty for political expediency to whip up the most base instincts in people.

The debate called by the NP was an attack on the independence of the judiciary, particularly the Constitutional Court. "It would appear that old habits of the NP deceased, despite the fact that we have a Constitutional state underpinned by the Bill of Rights and Constitutional Court to protect the integrity of the letter and spirit of the Constitution," De Lange said.

Democratic Party leader Mr Tony Leon wanted to know why the NP did not ask for a public ruling on whether the Dies Irae should be the national anthem or certain amnesty clauses favouring some of them should be in the Truth Bill.
THE MINISTRY OF JUSTICE

NATIONAL STEERING COMMITTEE ON THE MANAGEMENT OF CRIME AND JUSTICE

The National Steering Committee on the Management of Crime and Justice is established within the context of the broader National Crime Prevention Strategy. The Committee is responsible for:

1. Coordinating the work of the various agencies involved in crime prevention
2. Ensuring effective implementation of the National Crime Prevention Strategy
3. Reviewing and assessing the performance of the strategy
4. Identifying and addressing gaps in the strategy

The Committee consists of representatives from various government departments and agencies, as well as civil society organizations.

The Chair of the National Steering Committee is appointed by the Minister of Justice.

The National Steering Committee meets on a quarterly basis, with the frequency of meetings determined by the Chair and agreed upon by the members.

The Committee is supported by a Secretariat, which is responsible for coordinating the work of the Committee and ensuring effective communication among its members.

The Secretariat is led by a Coordinator, who is appointed by the Chair of the National Steering Committee.

The National Steering Committee is supported by various working groups, each focused on a specific aspect of crime prevention.

The working groups are composed of representatives from relevant government departments and agencies, as well as civil society organizations.

The Chair of each working group is appointed by the National Steering Committee.

The working groups meet on a monthly basis, with the frequency of meetings determined by the Chair and agreed upon by the members.

The working groups are supported by a Secretariat, which is responsible for coordinating the work of the group and ensuring effective communication among its members.

The Secretariat is led by a Coordinator, who is appointed by the Chair of the working group.
Bilingual rule for lawyers to go

JUSTICE Minister Dullah Omar today tabled a bill in parliament to scrap the rule that attorneys and advocates must be proficient in both English and Afrikaans.

Mr. Omar said in a memorandum supporting the bill that all law faculties at South African universities and the Consultative Legal Forum felt the statutory requirement should be scrapped.

It can also be argued that the requirement in respect of Afrikaans and English is a remnant of the previous constitutional dispensation in terms of which Afrikaans and English were the only two official languages.

"The probable solution would therefore appear to be for the universities themselves to determine what their students require academically to become lawyers, rather than by way of statutory compulsion," the memorandum says.

Mr Omar has already abolished the requirement for a school-leaving pass mark in Latin as an entrance requirement to study law.

The Admission of Legal Practitioners Amendment Bill tabled today abolishes all language requirements for graduation in law — Reuter
Judge demands definition of 'life term'  

Deborah Fine  

RAND Supreme Court judge Theo Grobbelaar has summoned a senior correctional services official to explain to the court what life imprisonment means.  

This follows police probes which found that robber and murderer Mthuthule Ntshepe, 25, sentenced last month to two life imprisonment terms plus an extra 50 years, would have been up for parole in 2015 after serving only 20 years.  

Grobbelaar told correctional services' Brig Gert Jonker he needed to know how the department formulated parole dates.  

"If I sentence a man to 30 years' imprisonment, I need to know what that means to the department, I — and the public — need to know what life imprisonment means."  

Grobbelaar is presiding over the case of Evans Mdladla, 24, Gift Mokoea, 24, and Thosamile Nkosi, 21 — convicted of robbing and murdering Parktown businessman Peter Dodd in 1993, and robbing and assaulting Radio 702's Brett Hilton-Barber and his wife, Josie, in the same year.  

W/O Johan Eksteen, who investigated Ntshepe's case as well as the current case, testified Ntshepe had been sentenced on May 17 Two days later he escaped from prison. Investigating the escape, Eksteen had been told Ntshepe could be considered for parole in 2015.  

"I told a correctional services official this was shocking and incomprehensible because he had been sentenced to two terms of life imprisonment. The official told me Ntshepe could have been paroled even earlier for good behaviour."

Jonker is expected to explain today how the department implements long-term sentences.
ANDREA WESS is away Her regular METRO column will be resumed on her return

THIS WEEK'S PARLIAMENTARY DEBATE ON THE DEATH PENALTY RASOIR RATIONAL CONSIDER;

WHO SHOULD DECIDE ON THE DEATH PENALTY?

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THIS WEEK'S PARLIAMENTARY DEBATE ON THE DEATH PENALTY RASOIR RATIONAL CONSIDER;

WHO SHOULD DECIDE ON THE DEATH PENALTY?
Key to an enhanced image

De Rebus calls for law body hearings

"BY MAX GEBHARDT
SPECTRUM"

De Rebus, the journal of the Association of Law Societies, believes the legal profession would be better served if law societies held open disciplinary hearings.

It says this in an editorial scheduled for publication in its forthcoming edition.

Thus follows the overwhelming public response to an investigation conducted by Spectrum, the investigative unit of Argus Newspapers, into claims of inadequate treatment of complaints against lawyers and attorneys by law societies.

The investigation was published on June 7 and June 9 in The Star, Pretoria News, Sowetan, Natal Mercury and Cape Times. Since then, Spectrum has received nearly 80 phone calls from around the country.

The issue has also been aired on the Afrikaans programme Monitor on SABC and on the Cape radio station KFM.

Objected

Members of the public who phoned Spectrum complained that their impression was that law societies did more to protect their own members than to investigate their complaints properly.

They objected to hearings being held in camera and claimed their experiences of dealing with law societies were characterised by incompetence and even corruption.

Law societies said in response that the public did not fully understand their role or the limitations on their powers.

Although some of the spokesmen conceded that the present system might not be perfect, they said it was not corrupt and that they did everything in their power to solve clients’ difficulties.

De Rebus notes that there appears to have been a fairly rapid growth in recent years in the numbers of complaints made by disgruntled clients to law societies.

It adds:

"While the reasons for this regrettable state of affairs are beyond the scope of this article, it must be stated that prevention is better than cure."

"What matters," the journal says, "from the point of view of the profession’s image, is that complaints are dealt with in an effective manner as possible and that complainants are as far as possible made to feel that they are getting a fair deal."

"It is in the nature of things that unsuccessful complainants are unlikely to be satisfied. Like litigants, they tend to have a
blind faith in the justice of their cause."

"However, the relatively secret way in which complaints are currently handled by the profession in South Africa opens the way for disgruntled complainants to elevate their original complaints to attacks on the profession as a whole."

Ignoring the situation is no solution, De Rebus says, and it confirms that the legal profession is not doing that.

"It says the matter is deserving attention at a national and provincial level and that, although changes being discussed would go some way towards alleviating the situation, they are not the full answer."

"What, then, is to be done?" the editorial asks.

"The first step, we believe, is for the profession to face the fact that the law societies’ dual function of trade union and disciplinary body is at the root of the problem."

"Heaven knows, it is difficult for many practitioners to accept that both functions can be exercised by one body, then it will surely be impossible for the societies to persuade members of the public that they can act for both the public and their members even-handedly."

"We believe that the profession should rather consider whether it would not be advisable for the societies, after the preliminary sift phase, to conduct their disciplinary procedures in public."

"It is this which we believe could be the essential key to changing the public perception, incorrect as it is, that the law societies are there not to look after the public, but to protect the interests of their members."

"The societies would (then) be able to answer allegations of protectionism with a ‘Come and see for yourself’ – a powerful argument in anybody’s language."

Discipline

"The alternative to creating an open – and transparent – system may well be the imposition of a body beyond the profession’s control to hear complaints and exert discipline.

"We believe that it would be a great pity if the profession were to lose its control over disciplinary matters. We believe discipline is a function which the profession handles fairly, and in the best interests of the public and its members."

"The public needs to see that this is so. We believe that the profession should give serious consideration to public hearings as a means of achieving that perception."

"2521221695"
Life sentence ‘means life’

Deborah Fine

Life imprisonment means imprisonment for life, but it was “theoretically possible” for a prisoner sentenced to such a jail term to be paroled after 20 years, correctional services’s Brig Gert Jonker told the Rand Supreme Court yesterday.

But it was “highly unlikely” a “life” would be released after serving such a small part of the sentence.

Jonker was summoned by Judge Theo Grobbelaar to explain how the Correctional Services’ Department formulated parole dates.

His appearance followed police probes which found that robber and murderer Mhathule-Ntshupe, 25, sentenced last month to two terms of life imprisonment plus an extra 50 years, would have been up for parole in 2015 after serving only 20 years.

Proceeding over the case of Evans Mladla, 24, Gifi Mokoena, 24, and Thosamle Nkosi, 21 — convicted of robbing and murdering Parktown businessman Peter Dodds, and robbing and assaulting Radio 702 political editor Brett Hilton-Barber and his wife Josie in 1993 — Grobbelaar said he wanted to know how the department carried out the imposition of jail terms before sentencing.

Jonker said “lifers” were automatically entitled to a parole review after 20 years. But this did not mean automatic parole. The review would be sent to the National Advisory Council, which then advised the correctional services minister whether the prisoner was suitable for release.

The council seldom advised the release of life prisoners after 20 years because of the severity of their crimes. Jonker said prisoners could bring forward their parole reviews through good behaviour.

But a life prisoner who had been “an angel in jail” was an unlikely candidate for early release because the protection of the community was “more important than his good behaviour”, he said.

Mladla, Mokoena and Nkosi will be sentenced today.
Life sentence 'means life'

Deborah Fin...
Truth commission comes a step closer

Adrian Hadland

CAPE TOWN — Truth commission legislation will be passed by Parliament next week after an ANC decision not to pursue any further substantial amendments.

ANC Senate justice committee chairman Mosene Moosa had announced earlier this month that the party would be tabling a number of major changes to the Bill, possibly including the provision of “automatic indemnity” for senior party and liberation movement leaders.

ANC MPs confirmed yesterday that these major amendments would not be included in the Promotion of National Unity and Reconciliation Bill. One MP said while problems had been raised, no one had come up with a workable suggestion for how these should be tackled.

The Senate committee, which is currently considering the Bill, has proposed amendments mostly of a technical nature. They include the improvement of witness protection and remuneration of commissioners.

The Bill, which has already been approved by the National Assembly after more than 500 amendments, will be debated by the Senate on Wednesday next week.

If the Senate passes the Bill and the National Assembly’s justice committee concurs with the amendments, the legislation will be passed on for President Nelson Mandela’s signature by the end of next week.

It is believed the process of identifying possible commissioners, who will be appointed by Mandela, has already begun. A formal call for nominations will only be issued once the legislation has completed its passage through Parliament.

The commission, and its three committees — amnesty, human rights violations and reparations and rehabilitation — is likely to be up and running by September.

The December 1993 cut-off date for amnesty applications remains the most controversial outstanding issue.

Mandela has said a postponement, which may only be put into effect through a constitutional amendment, will only be considered once levels of violence in SA had been substantially reduced. Parties calling for a postponement include the Freedom Front, the PAC and the IFP.

Call for taxi industry to formalise structures

Nicola Jenvey

DURBAN — KwaZulu/Natal transport MEC Sbu Ndebele yesterday urged the taxi industry to establish structures which would determine the number of operators on the roads and to talk to government before embarking on blockades and demonstrations.

Addressing a meeting called by the ministry for the province’s local taxi associations, Ndebele referred to a blockade in Maritzburg on Wednesday, when the participants had taken the law into their own hands.

“Issues facing the taxi industry cannot be solved by violence and communication with government is the first step in breaking down the misconceptions the public has of the industry, and the taxi operators have of the traffic department,” Ndebele said.

He said the industry would have to work hard at ridding itself of its negative image.

In view of the vast role taxis played in SA’s transportation network, the industry believed it should receive state subsidies. However, Ndebele said concessions for fuel and loan repayments were “impossible” without formalised structures.

The permit system was a great problem” as permission to carry passengers had no meaning. Legitimate operators were competing with drivers not in possession of a permit who, if challenged, could use violence.
R3-m for Street Law project

Staff Reporter

THE United States government is giving millions of rands to the University of the Western Cape's Street Law project to help along peace and democracy among South Africa's marginalised youth.

Street Law and US Embassy officials today signed the R3 million agreement at a ceremony at the university.

This is the biggest grant for the organisation in its 10-year history.

Street Law, a non-governmental organisation, will use the money to educate youth and other community groups about human rights, parliamentary procedures, democracy and constitution-making exercises.

Street Law director Peter Volmink said the money would enable the organisation's law programme to take public legal education, particularly human rights and democracy education, to the youth of South Africa.

'This will focus mainly on youth in rural areas and other underprivileged areas,' Mr Volmink said.

'They have been marginalised from the legal system,' Mr Volmink said.

'Their experience is that the law does not work for them.'

The grant would also help the organisation to host a youth parliament planned for July 14 at parliament.

About 100 youth representatives from Southern Africa will be asked to negotiate a constitution.
Progress on Truth Commission

ANTHONY JOHNSON
POLITICAL CORRESPONDENT

LEGISLATION paving the way for a Truth Commission is expected to be passed by Parliament next week.

The ANC's chief whip in the Senate, Mr Bulelani Ngcuka told a press conference that the National Truth and Reconciliation Bill would "definitely go through" on Wednesday.

MPs and senators have been given a week to study the draft law.

The Truth Commission and its subsidiary committees are expected to be established within three months.
More light on life sentences

BY SUSAN MILLER

A person sentenced to life imprisonment could be eligible for parole after serving 20 years and six months of his sentence, a senior official from the Department of Correctional Services told the Rand Supreme Court yesterday.

Brigadier Gert Jonker, director of community relations for the department, said each life sentence was brought up for review after a period of 20 years. He was asked to appear before the court on a number of occasions, at the request of Mr Justice T Grobbelaar, who said he wanted clarity on what a life, and other sentences, meant.

Jonker said each case which came up for review was referred to the National Advisory Council, which was made up of a judge, attorney-general, members of the police and others. The council would recommend appropriate action to the minister of correctional services.

"It is highly unlikely that the council would recommend that a person convicted on a life sentence for violent crimes like murder would get a recommendation for parole. Usually the council would decide to review their case in another five years," he said.

The judge then asked the brigadier what he could do to make sure a person served 30 years in prison.

"You could sentence a person to life imprisonment and make a specific order that the person should not be released before 30 years had been served. And if the authorities decide to release that person before 30 years, they would have to consult you," said Jonker.

"The court does not give out life sentences without meaning it," said Judge Grobbelaar.

Jonker said prisoners not serving life sentences came up for parole automatically; once they had served half their sentence, but they could be eligible a third of the way through the sentence through credits earned for good behaviour.

Judge Grobbelaar is to hand down sentences today in the case of Evans Mlaadia (24), Qib Mokoena (24) and Theobaldine Nkosi (21) who were found guilty of murder, two charges of robbery, with aggravating circumstances and the illegal possession of firearms and ammunition.
Don't hang the death penalty

Educationist Lebamang Sebidi gives his views on the recent abolition of the death penalty in this country.

The unconstitutionality of the death sentence should not be confused with the immorality of the death sentence.

The circumstances surrounding the legitimate use of force in self-defence, as in the Shell House case, torpedo the assumption that the right to life is absolute. Self-defence is the use of justifiable, proportionate force against an unjust, actual threat to one’s life or to one’s vital goods.

This use of force could even — if necessary — extend to the taking of the aggressor’s life.

So the principle the President was enunciating clearly indicates that while the right to life is fundamental, it is not absolute; it is relative. It is relativised by circumstances in a given situation.

While I have a fundamental right to life, I also have a fundamental duty and obligation to respect other people’s lives.

Hang those who continually snuff out unprojected lives with absolute impunity, because the death penalty is certainly a deterrent.

China, for example, in August 1983 decided to crack down on callous criminals. They executed 5,000 in five months.

And, to leave no doubt in the mind of anyone about the seriousness of the State’s resolve to deal effectively with serious crime, the Government started posting photos of executions throughout the country.

Criminals in China got the point. Serious criminal cases during September and October dropped dramatically by 42 percent compared with the same period in 1982.

We are not saying emulate China, but what we are definitely saying is stop the sanctimonious gibberish and political grandstanding when law-abiding people are faced with an undeclared war on their very lives.

(The writer is executive director of the Trust for Educational Advancement in South Africa.)
Judiciary faces harsh judgment

Despite the process of reconciliation, there are obviously judges who are struggling to break out of the old mould, writes Dennis Davis.

It could surely not have been expected that there would be unanimous enthusiasm for the decision by the Constitutional Court that the death penalty was unconstitutional. But for a sitting judge of the Supreme Court to condemn the Constitutional Court, thereby calling into question the Constitution is an entirely different matter.

Judge Van Dyk's outburst against the authoritative interpretation of the Constitution raises pertinent questions regarding our judiciary's capacity for legal transformation. The new Constitution imposes fresh philosophical demands and different legal perspectives from those of the apartheid era. If a judge cannot accept these changes he or she should resign.

It is ironic that it should be Judge Van Dyk who calls the Constitution as interpreted by the Constitutional Court into question. It was he who found Barbara Hogan MP guilty of treason in 1983, finding that her (non-violent) work for the African National Congress had been clearly aimed "at destroying the peace and tranquility in South Africa" and was also aimed at the very destruction of the state itself. So a non-violent contribution to the development of a non-racial democracy was held to fall within the common law crime of treason.

Notwithstanding the much heralded reconciliation process, there are obviously judges who are struggling to break from the old mould.

The problem is compounded by the apparent difficulty in transforming the judiciary. Thankfully, the Judicial Service Commission recommended the appointment of three black lawyers to the Bench in Gauteng; the fourth appointment was equally deserved, for Basili Wushn has had a long and distinguished career as an attorney of the very highest calibre.

Unfortunately the process was marred by an apparent campaign to discredit Kathleen Satchwell who was short-listed for appointment. Her "crime" was that some 10 years ago, in seeking an order of court to compel the attorney general to prosecute a detainee, an award of costs was made against her. It would appear that the court believed a security policeman who alleged, in contradiction to Satchwell, that she was never prevented from seeing her client in detention and that hence she could have brought her application at an earlier time, more convenient for the attorney general.

This attack on Satchwell followed widespread rumours that judges on the Bench didn't want her to be appointed, hence the trumped up "charge" at the interview. Was an application for an order compelling an attorney general to charge or release a detainee to be brought only at the convenience of an attorney general? Consequently a fine, experienced lawyer who would have made a real contribution and whose appointment could not have been labelled "gender tokenism" was not recommended for appointment at all because a court from the Van Dyk era believed a security policeman.

With this approach, the JSC is failing the challenge of the country, by ignoring the imperative of changed perspectives. Or are the standards of the reasonable security policeman still to be used as the yardstick?

A further even more disturbing question arises: is it the attitude of the JSC that only advocates are welcome to the Bench — save for the odd exception like Wushn? For example, one of the finest women academics in the country, Carol Lewis, didn't even obtain an interview from the JSC. By contrast the Johannesburg Bar endorsed the candidature of one Des Duke, who told the JSC in the style of humour which is doubtless popular at the Bar Common Room that his acting judicial career had brought him into contact with the "jewellery trade" (i.e. "necklacing cases")

Unless the JSC grasps the imperative that new approaches to law are needed, that the old standards cannot be slavishly followed, the Van Dyks will be replaced by the Dukes (albeit with a little more tact) to the detriment of legal transformation in South Africa.

Professor Dennis Davis is head of the Centre for Applied Legal Studies at Wits and lecturer at the University of Cape Town's Department of Commercial Law.

Attorney Kathleen Satchwell: There was an apparent campaign to discredit her and prevent her getting to the Bench.
abolished, but...
The man-in-the-ghetto says: Keep the noise...
PRETORIA. — A judge who jailed four armed robbers for more than 100 years each lashed out at "administrative bureaucrats" for interfering with court sentences.

Mr Justice L F Weyers was commenting in the Pretoria Supreme Court after sentencing the four men yesterday for a R3.4 million hold-up in which three security guards were "cold-bloodedly" shot dead.

"I find it disturbing that, regardless of what a judge says, other people with whatever qualifications and background and not having been steeped in the trial, then alter the sentence," Mr Justice Weyers said.

Security guards Jan Hendrik Cronjé, Daniel Mattheys Willemse and Rianne Andre Kriel were killed when a gang of robbers, including the four accused, attacked their vehicle with AK-47 rifles on the N1, near Verwoerdburg, in September 1993.

Meshack Sibzane, 35, of Boksburg, Tevar Liesering, 36, of Brakpan, and Vivian Mayesa, 26, of Durban, received effective sentences of 140 years each. Henry Johnson of Brakpan was sentenced to an effective 165 years.

Only a fraction of the stolen money was recovered.

Mr Justice Weyers said the perpetrators of such cruel, callous and calculated crimes should never see the light of day again.

"I am not sure that is what I have achieved, but I tried my best," he said.

He requested the authorities not to consider parole without first consulting him, and then not before the accused had each served at least 30 years.

Mr Justice Weyers said he believed a life sentence should mean just that, but he added that in practice even multiple life sentences apparently had little effect. — Sapa.
NP loses parliamentary fight to the death

By EDYTH BULBRING
Political Correspondent

NATIONAL PARTY members of Parliament are licking their wounds after coming off second best in a debate in the national assembly this week on holding a referendum on the death penalty.

The motion, introduced by Justice spokesman Dave Schutte, followed the Constitutional Court decision to scrap the death penalty.

However, it was pointed out during the debate that Mr Schutte's motion contradicted the NP's submission to the Constitutional Assembly on the death penalty four weeks previously.

ANC and DP members who opposed the motion also argued that it undermined the principle of a "Rechstaat", which the NP had fought for since 1990.

Embarrassed NP members complained after the debate that the party had been unprepared and that its unsophisticated approach had made it vulnerable to accusations that it had sacrificed a principle to political point-scoring.

Mr Schutte said the death penalty would curb crime and that a referendum could be coupled with the local government elections.

In response, Justice Minister Dullah Omar said: "The implication of the NP proposal is that the core values of the constitution should be revalued. Why should we not submit other issues of major concern to a referendum, such as the future of languages in our country, the national anthem, the flag, the need for radical land redistribution, the unpopular property clause in Chapter 3, as well as the far-reaching amnesty provisions?"

DP leader Tony Leon pointed out that the NP had proposed to a constitutional committee less than four weeks ago that the Constitutional Court - not Parliament or public opinion - should determine whether or not the right to life included or excluded the death sentence.

Deputy President FW de Klerk said in response to questions this week that the suggestion of a referendum was merely to determine whether consideration should be given to amending the present constitution or to the accommodation of the death penalty in the final constitution.

Mr de Klerk said that a Bill of Rights could be drafted and interpreted so as to include or exclude the death penalty. The NP's motion did not affect the principle of a "Rechstaat", which refers to the rule of law, the supremacy of the constitution and a Bill of Rights, he said.
Judge ‘in the dark’ over how to send a criminal to jail for life

BY CHRIS BARRON

The Supreme Court in the person of Judge Theo Grobbelaar threw its hands up in despair this week, and decided that the ways of the Department of Correctional Services when it came to the release of prisoners were obscure beyond all reasonable comprehension.

Judge Grobbelaar said he had been “shocked to my core” by the story of Nithuthuzeli Ntshohe, who was sentenced to two terms of life imprisonment plus an additional 50 years last month, for a range of crimes including double murder.

Two days after sentencing, Ntshohe escaped. Which in the event was a “fortunate” thing, said Judge Grobbelaar, because it was only when a detective went to inquire about his escape that he came across a document showing that the department had already decided on a date, 20 years hence, for his parole. And, said a departmental official, the murderer might even have been released earlier for good behaviour.

If he hadn’t escaped, said the judge, this example of the department’s modus operandi, which smacked of “a measure of arrogance and irresponsibility”, would never have come to light. Now he needed a senior official to provide “clarity” on the department’s thinking.

About to sentence three men guilty of murder and armed robbery, he had to know what his sentences would mean.

“I want to know what a life-long sentence means according to your policy,” he asked Brigadier Gert Jonker.

“Life-long sentence is precisely what it says,” answered the brigadier. “However, it doesn’t mean he spends the rest of his life in prison.” Clearly, clarity was not going to come easily.

“What I want to know is after how long is a person entitled to parole?”

“After a minimum of 20 years,” responded the brigadier.

“If I gave a person 40 years, when would the aspect of parole be weighed?”

“After half his sentence.”

“So according to the present system, life-long means after a minimum of 20 years. If I want him to be properly punished I must give him at least 50 years. Then after 25 years he will be reviewed for parole?”

“The prisoner can earn credits which will move the review date forward by a maximum of one-third of his sentence,” answered Brigadier Jonker.

“If I give him 30 years, what is the maximum credits the prisoner can get?”

“He can be reviewed for parole after 10 years.”

Judge Grobbelaar then introduced the matter of Ntshohe’s parole date.

“On an official document it appears this prisoner would be freed after 20 years, or earlier.”

“This was an administrative date,” said the brigadier.

The judge said according to his reading of the document, the department allowed that a double murderer “would have walked after 20 years.”

“Never,” insisted the brigadier.

“This is when the National Advisory Board reviews his case.”

“If we understand each other,” sighed the judge, “life-long means life-long. But you have another interpretation.”

“But according to your system it was possible this man could walk after 20 years.”

“Theoretically,” said the brigadier.

“But in practice I cannot see it. I know the high standards of criteria (of the board).”

“A person who got seven years, nine months effective sentence apparently walked in the front door of prison and out the back door,” said Judge Grobbelaar, referring to the release of fraudster Alwyn Lombard.

“Is this an example of high standards?”

The brigadier began explaining the department’s system of credits.

“How do you decide on credit for a murderer and robber guilty of all these things?” the judge asked.

“Credits are a small factor,” explained the brigadier.

“But the court said this man must serve two life sentences and 50 years,” insisted Judge Grobbelaar. “Now we hear that in the year 2015 he is up for parole?”

The judge said it was “an exercise in futility” to set parole dates if there was no possibility of parole being granted on these dates.

“Brigadier Jonker’s evidence is alarming, to put it mildly,” said prosecutor Joe Davidowitz after the brigadier had gone.

“That is putting it very mildly,” agreed Judge Grobbelaar. “I am still in large measure left in the dark.” He sentenced the three accused to an “effective” 30 years, 30 years and 25 years. Whatever that means.
PARLIAMENT adjourned for a month-long winter recess last night, after passing a flurry of legislation on the last day of this part of the session.

The National Assembly passed a formidable 20 bills on Wednesday, while the Senate managed to approve 16.

The assembly's passage of Senate amendments to the Promotion of National Unity and Reconciliation Bill, was the final parliamentary step towards setting up the country's long-awaited and controversial truth and reconciliation commission.

The legislation now merely awaits President Nelson Mandela's signature.

MPs and senators officially return to Cape Town on July 31, with the first two weeks of their work programme devoted to Constitutional Assembly work.

Parliament is expected to adjourn for the year in mid-September.

Politicians are then expected to focus their efforts on campaigning for the scheduled November 1 local government elections.

Sapa
The National Assembly's Justice Committee would therefore concur today with the Senate's amendments, allowing the Promotion of National Unity and Reconciliation Bill to go to Mandela for enactment.

NP senator Raymond Radue said among the proposed amendments were the appointment of two international experts to the commission's human rights committee, the removal of unnecessarily complex words, a clarification of the amnesty application process and the protection of deceased estates from liability.

In his speech to the Senate, Justice Minister Dallah Omar said the Bill represented "an historic act of generosity on the part of the victims of apartheid."

While the Bill provided for the equal treatment of all individuals, there was no moral equivalence between those who had fought against apartheid and those who had fought to maintain it, he said.

"We owe it to future generations to put the historical record straight," he said.

De Lange said he expected the commissioners to be appointed by early August.

The Freedom Front voted against the Bill while the IFP abstained.

Parties agree to letting truth Bill go through

Adrian Hadland

CAPE TOWN — Amended truth commission legislation was passed by the Senate yesterday and would be forwarded to President Nelson Mandela today for his signature.

Concerns were raised prior to the Senate debate yesterday that several of the dozens of new amendments proposed by the second chamber's justice committee did not have the support of some parties, including the ANC.

But to prevent a delay in the appointment of commissioners and a prolonging of the parliamentary session, while acknowledging that none of the proposed changes would affect the spirit of the legislation, multi-party agreement had determined the Bill be ushered through.

This was explained by ANC MP and National Assembly justice committee chairman Johnny de Lange.

"We did not want to stop the process and waste six weeks."

The National Assembly's justice committee would consider the amended Bill as its first item in the new parliamentary session in August and would draw up a new Amendment Bill if further changes were required, De Lange said.
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The Freedom Front voted against the Bill while the IFP abstained.

Call to avoid constitutional clashes

Farouk Chothia

DURBAN – The Maritzburg Chamber of Commerce and Industries called on KwaZulu-Natal political parties yesterday to ensure the provincial constitution was compatible with the national constitution.

“It is too late to leave the sovereignty of SA outside,” it said.

In a submission to the KwaZulu-Natal legislature’s constitutional affairs standing committee, chamber president David Gush said the provincial constitution should remain within the exclusive domain of central government, a position also adopted by the Durban chamber and the ANC.

The IFP wants a provincial judiciary to adjudicate on matters related to the province’s legislative and executive authority.

Gush said the provincial constitution should be “simply assimilated” with and adopt the bill of rights contained in the national constitution.

The IPF wants the national bill of rights to be “extended” before it is incorporated into the provincial constitution.

Specific provision should be made to ensure the political neutrality of the Zulu king and other traditional leaders.

Park strike ‘not a hazard’

Renee Grawitzky

A WAGE strike by about 2,000 workers in 23 rest camps in the Kruger National Park had not endangered visitors, park spokesman Harold Braack said yesterday.

The strike began after wage negotiations between the SA Commercial Catering and Allied Workers’ Union and the National Parks Board deadlocked.

conciliation and mediation failed to bridge the gap between the union’s demand of an R120 minimum wage and an across-the-board increase of R90 and management’s final offer of an R90 minimum and an increase of R120.

The current minimum wage is R604 a month. During negotiations, management said it would, over the next two or three years, bring the minimum wage in line with market rates.

The union said there were racial disparities in wages, with black rangers earning four times less than white rangers.

Braack said contingency plans had been put into place and temporary workers were keeping all facilities operative.

He said the parties had agreed to strike rules, which included rules relating to picketing, which were being applied.

The rule that provided that the medical service division would not participate had been complied with, Braack said.
Parties differ sharply on Reconciliation Bill

TYRONE SEALE
Political Staff

SHARP political differences have emerged in the senate over proposed legislation on the truth and reconciliation commission.

But Justice Minister Dullah Omar says the bumpy passage through parliament of the Promotion of National Unity and Reconciliation Bill is a vindication of efforts to develop a checked and balanced democracy in the country and in the legislature.

In the senate yesterday, the Freedom Front voted against and the Inkatha Freedom Party abstained from voting on the truth Bill as amended by the senate committee on justice, and which differs considerably from that approved by the assembly several weeks ago.

The Freedom Front objection hinges on refusals by other parties to consider the extension of the cut-off date for amnesty from December 5 1993 to May 10 1994, the day on which Nelson Mandela was inaugurated as president.

Rosier de Ville (FF) said his party's request had been reasonable and had at one stage enjoyed the support of the National Party which, it turned out, had done so simply in the hope that it could persuade rightwingers to vote for the NP in the November local election.

Even with the African National Congress, the National Party and the Democratic Party supporting the senate bill, this draft legislation will be sent back to the national assembly today, where further differences would result in the Bill being debated by a joint sitting of the two houses.

Closing the senate debate on the second reading of the Bill, Mr Omar said he did not see the referral of the Bill back to the assembly as a problem.

"I think it's a tremendous thing when one house examines a bill afresh and comes up with ideas," Mr Omar said.

Julius Radue (NP), chairman of the senate committee on justice, said among the more important improvements made to the Bill by the senate justice committee was the granting to the commission of powers that provided for the investigation of the disappearance of any person and the clarification of the definition for gross violations of human rights.

Mr De Ville said the Freedom Front would support the Bill on as many levels as possible, as the FF believed the it would enhance the greater aims of nation-building, but it would try to have the cut-off date changed.

James Selle (DP) said with the banning of the ANC and the Pan Africanist Congress in 1960, the first casualty had been the truth, and the second casualty the moral compass the nation had developed.

Bulelani Ngcuka (ANC) said that the Bill was not designed to serve the interests of the ANC, but rather those of the whole of South Africa.
Senate OKs truth bill

POLITICAL STAFF

Legislation to establish a truth commission passed another hurdle yesterday when the Senate accepted the Promotion of National Unity and Reconciliation bill.

The IFP abstained from voting on the bill, while the Freedom Front opposed it.

The bill is due to be considered by the National Assembly today.

Introducing the bill in the Senate, Justice Minister Mr. Dullah Omar said people would be treated equally by the truth commission.

However, those who fought against apartheid could never be morally equated with those who had defended it.

Mr. Omar was addressing the Senate on the bill, which makes provision for a truth commission to investigate human rights violations committed in the context of the political struggles of the past.

Speaking in the debate to pass the legislation through the Senate, Mr. Omar said the constitutional provision granting amnesty was an "act of great generosity".


The Minister of Defence

The Minister of Defence is responsible for the overall direction and control of the armed forces. The Minister is accountable to the Government and Parliament for the effective and efficient conduct of defence affairs. The Minister also has responsibility for the management of the Defence Budget and for ensuring that the Defence Forces are properly trained and equipped to meet their obligations.

The Minister is assisted by a team of senior officials, who are responsible for the various aspects of defence policy and operations. These officials include the Director-General of Defence Staff, the Chief of the Defence Staff, and the commanders of the air, sea, and land forces.

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present, I think that Question 6 will have to stand over.

Automatic granting of amnesty

*7 Mr D M BAKKE asked the Minister of Justice†

Whether his Department has made any proposals to him in respect of the automatic granting of amnesty, if so, (a) on what initiative were these proposals made, (b) what was the content of these proposals and (c) what was his reaction thereto?"  

The MINISTER OF JUSTICE

No. However, the Head of the Office for Indemnity, Immunity and Release expressed a point of view to the Senate Justice Committee.

(a) The said officer made the proposal on his own initiative.

(b) The suggestion was that the President should create a new category in terms of section 2(1) of the Indemnity Act, 1990 (Act No 35 of 1990), by virtue of which any person who before 6 December 1993 committed an offence with a political objective relating to the conflicts of the past, would automatically acquire indemnity in respect of any such offence, provided that no person was killed or seriously injured as a result of the commission of the offence. It was further proposed that the President, in terms of section 2(1)(k) of the Constitution of the Republic of South Africa, 1996 (Act No 200 of 1993), should remit the sentences imposed on persons in respect of offences of the said nature.

(c) The proposals are under study.

The DEPUTY MINISTER FOR SAFETY AND SECURITY Mr Speaker, the Minister of Correctional Services was called away suddenly, but I understand that he is returning to the House I wonder if Question 8 could stand over until he arrives.

The DEPUTY SPEAKER If we have time

Certain person appointed as personal adviser

*9 Mr J A MARAIS asked the Minister of Defence†

(1) Whether a certain person, whose name has been furnished to the South African National Defence Force for the purpose of his reply, was appointed by him as personal adviser, if so, (a) what is the name of the person, (b) from what date is this appointment effective and (c) for what remuneration has the person been appointed?

(2) Whether this person has been involved in any criminal activities at any stage, if so, (a) who was the nature of the activities and (b) in respect of what date or dates is this information furnished?

The MINISTER OF DEFENCE

(1) Yes I have appointed a special adviser

(a) He is Adv Fana Hlongwane,
(b) with effect from 1 November 1994
(c) Regarding salary and qualifications I refer you to a letter sent to me by the hon member to my written reply to Question No 62 in the Senate on 5 May 1995, in which I provided comprehensive details.

(2) No I have not received any information from my adviser and according to SA National Defence Force records he has not been involved in any criminal activities, and (a) and (b) therefore fall away.

The DEPUTY SPEAKER Order! I note that the hon the Minister of Mineral and Energy Affairs has returned to the House. Perhaps he would now like to deal with Question 6.

Storage facilities for crude oil at Saldanha

*6 Mr A S BEYERS asked the Minister of Mineral and Energy Affairs†

(1) Whether Iran has indicated that that country wishes to acquire storage facilities for crude oil at Saldanha, if so, what are the relevant details?

(2) whether it has been decided to accede to this request, if not, what is the position in this regard, if so,

(3) whether it has been established whether such storage of crude oil will have an effect on the environment, if not, why not, if so, what are the relevant details,

Hansard 28/6/95

(4) whether he will make a statement on the matter?

The MINISTER OF MINERAL AND ENERGY AFFAIRS

(1) Yes Iran is interested in leasing storage facilities for crude oil in Saldanha. The negotiations are being conducted by SFF (South African French Federation) which are commercial negotiations and since other parties have expressed similar interest it would not be in the interests of South Africa to disclose the details before any agreement has been reached with Iran or with other parties.

(2) No agreement has yet been concluded with Iran or any other interested party. The current negotiations emanate from the Cabinet decision on 29 September 1994 that under-utilised storage facilities resulting from the reduction of strategic stock be leased to oil-producing countries.

The target level for strategic stock as approved by Cabinet is 35 million barrels, of which 10 million barrels are to be stored inland at Qgees, and 25 million barrels at Saldanha. Saldanha has a total capacity of 43 million barrels. Of the 25 million barrels of strategic stock planned for Saldanha, 15 million barrels will be under-utilised capacity, 17 million barrels after providing for the three million barrel capacity leased to a local oil company and 3 million barrels will be in the form of fixed accommodation.

(3) Crude oil has been stored in Saldanha since January 1980. Since this date 545 cargoes of crude oil of an average of 1.5 million barrels each have either been imported or exported from the harbour without any effect on the environment.

The handling of crude oil, however, remains a hazardous operation which can have serious detrimental effects on the environment in case of an accident.

The following measures are taken to prevent accidents and, should an accident occur, to prevent or minimise any damage to the environment:

- strict quality control policies, procedures and standards are applied to ships, their owners and crews before ships are allowed to enter the harbour. The performance of ships and crews is monitored during loading and discharge and ships that do not maintain the required quality standards are blacklisted.

Due to the possibility of increased crude oil traffic in the harbour resulting from an agreement with an oil producing country, an environmental impact study has been commissioned to determine the effect that increased traffic may have on the environment and what additional steps may be needed to minimise the impact on the environment.

A substantial amount (R5.25 million) has been invested in oil pollution control equipment in Saldanha. The responsible people are fully trained in handling this equipment and prevention as well as contingency plans are regularly reviewed. The equipment includes an oil pollution control vessel named Piesa C, a name implying a task that transcends the normal. The technical capacity of this ship compares with the best in the world. The skimmer which gathers oil from the surface of the sea is the largest of its kind in the world. Instead of importing a vessel or having one constructed in South Africa, SFF bought an existing vessel and had it refitted in Cape Town, saving about one million rand in doing so.

(4) I will make a statement on this matter at the appropriate time.

The DEPUTY SPEAKER Order! I note that the hon the Minister of Correctional Services is now available. Could he deal with Question 8?

Abolition of death penalty

*8 Mr G C OOSTHUIZEN asked the Minister of Correctional Services†

(1) Whether it has been established (a) that the implications are implicit in the long-term detention of prisoners whose death sentences were lifted by the Constitutional Court and (b) whether the abolition of the death penalty will lead to an increase in the number of prisoners to whom long prison sentences are handed down, if not, what is the position in this respect, if so, what are the relevant details.

Hansard 28/6/95
SA’s first public protector is appointed

CAPE TOWN — A joint sitting of both houses of Parliament has voted to appoint Goldstone commission member Selby Baqwa as SA’s first public protector, with only the NP opposing his appointment. Baqwa only just gained the appointment, with 75.5% of MPs present voting in favour yesterday. A 75% majority is required by the constitution.

According to the constitution, the functions of the public protector will be to investigate complaints concerning maladministration or corruption by government officials. The public protector also has the power to investigate "abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct" by government officials.

The public protector would have to ensure people were treated with respect and dignity when they dealt with government departments. DP senator James Selfe said unlike the ombudsman of the past, who had probed only government corruption, the public protector would be empowered to ensure government was more "user-friendly," he said.

The constitution provides for wide powers for the public protector, including an effective right of subpoena and to enter premises and seize anything deemed to have a bearing on an investigation.

The NP opposed Baqwa’s appointment because it considered him too closely aligned to the ANC.

The IFP opposed Baqwa’s original nomination a month ago, but the party withdrew its objection after talks between President Nelson Mandela and IFP leader Mangosuthu Buthelezi.
‘Amnesties no solution to serious jail overcrowding’

TYRONE SEALE
Political Staff

AMNESTIES are not a sustainable way of resolving the serious problem of overcrowding in South African jails, a parliamentary committee has warned.

The national assembly portfolio committee on correctional services said overcrowding could only be addressed through the development of a comprehensive release policy by the department of correctional services.

This had to be done in conjunction with other departments, such as the departments of justice, safety and security, and welfare.

The committee, chaired by ANC MP Carl Niehaus, made this recommendation in its report on the final report of Krieger commission of inquiry into unrest in prisons.

The commission, under the chairmanship of Judge Johann Krieger, investigated instances of death, violence and breakouts in prisons between April 26 and June 13 last year.

The portfolio committee was subsequently asked by Correctional Services Minister Sopo Mzimela to comment on the Krieger findings which found that amnesty, the department of correctional services’ new release policy and prison conditions had been the main causes of prison unrest.

In its report, adopted finally yesterday for presentation to Dr Mzimela, the committee said that if the Krieger recommendation that a general remission of one quarter of all sentences, subject to a maximum of three years, were to be granted, about 52 000 prisoners would have to be released.

It should be considered that amnesty was not a general part of the department of correctional services’ release policy, but a unique mechanism which was the prerogative of the president and usually marked an important event.

Indemnities granted by President Mandela on June 10 last year and April 27 this year had in the first instance been intended to mark the transition to a non-racial democracy.

“The amnesties were not intended to resolve the serious problem of overcrowding in our prisons.”

The crime wave and the high levels of recidivism (returning to jail) among prisoners who had benefited from previous amnesties, had mitigated against the granting of more substantial amnesties.

As amnesties were a presidential prerogative, it would be inappropriate to create an Amnesty Resolution Committee.

The committee acknowledged there were “very serious problems” in respect of the department’s general release policy.

It said the question of the actual time prisoners served in relation to jail sentences imposed by the courts should be re-considered with the development of a general release policy which was fair to prisoners, while keeping the protection and safety of the community in mind.
Selby Baqwa elected as Public Protector

May 29 1995

Former Goldstone Commission member Advocate Selby Baqwa was elected South Africa's first Public Protector by a special joint sitting of Parliament yesterday.

The first name will be submitted to President Mandela for signing into law.

Baqwa's nomination received 75.9% of the votes of the 353 MPs and Senators present, just missing the constitutionally required 75%.

Only the National Party voted against — constituting 83 votes — while the African National Congress's two MPs abstained.

The NP's Senator Atte Jooste said the constitution stipulated that the Public Protector had to be able to act without any whiff of partiality.

While Baqwa had made a good impression in the screening interviews, he had said he was a member of the ANC from which he would resign if elected Public Protector.

ANC MP Baleka Kgosietsile said her party had no doubt Baqwa stood head and shoulders above the other nominees and would be impartial.

Freedom Front Senator Roser de Ville said the NP did not think of the broader national interest and did not know what it wanted.

He added, to a chorus of angry interjections from NP members, that the party's opposition to Baqwa was also racist because he was black.

Sapa.
Police inexperience avoid courts

Only a capable homicide conviction faster than one for murder, could be obtained to obtain convictions for many serious crimes, including murder and rape. In a third case, the Supreme Court rejected two recent cases where the State failed.
Truth Commission gets go-ahead

BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town. — Parliament yesterday finalised its approval of a Bill to establish a Truth Commission, ending a protracted process of negotiations and consultation lasting about a year.

By contrast, the Remuneration of Traditional Leaders Bill was rushed through in such haste that legislators said they were being asked to sign a blank cheque to pay chiefed.

The Promotion of National Unity and Reconciliation Bill provides for the establishment of a commission to probe human rights abuses committed in the course of the political struggles.

This is not an arbitrary piece of legislation, but rather one that gives legal form to the constitutional provision of amnesty negotiated at the Kromfontein Park talks.

The Bill provides for amnesty for offences committed before December 5 1993. But amnesty will only be granted on disclosure of details of the deeds for which amnesty is sought.

And any deeds committed will have to be deemed to have been for a political purpose and the nature of those deeds will have to bear some similarity to the stated political purpose.

The Truth Commission is the judicial mechanism by which amnesty will be granted to allow the whole legal and constitutional system to start afresh.

The Truth Bill was debated for more than 300 hours in the portfolio committee on Justice. The Chief's Bill was rushed through Parliament in days.

It was tabled last Wednesday after an earlier acrimonious Cabinet dispute over whether the central Government could pay traditional leaders when the provinces have constitutional jurisdiction over traditional affairs.

The IFP charged that the ANC and the central Government were attempting to "bribe" traditional leaders while denying charges that it was trying to entrench its control over traditional leaders by resisting the Bill.

The Bill does not interfere with the right of provinces to pay their traditional leaders for "statutory" functions...
Public protector selected

FORMER Goldstone Commission member Mr Selby Baqwa has been picked as South Africa's first public protector by a special multiparty parliamentary committee.

The National Party was the only party to vote against the appointment, which must be ratified by a joint sitting of the National Assembly and Senate.

The role of the Public Protector will be to ensure that no maladministration or corruption occurs in government. Unlike the Ombudsman of the past, who only probed government corruption, the Public Protector will also have to ensure that people are treated with respect and dignity when they deal with government departments.

Breaking the deadlock

The Inkatha Freedom Party opposed Baqwa's original nomination a month ago after he had announced himself an ANC supporter during his interview for the post.

The IFP withdrew its objection after talks between President Nelson Mandela and IFP leader Chief Mangosuthu Buthelezi.

In an attempt to break the deadlock, the IFP agreed to the appointment on condition that a Constitutional provision that the Public Protector report once yearly to a multiparty, joint Parliamentary committee, be written into the Public Protector Act. Mr Abraham Mzizi said — Sapa.
Lawyers’ journal bids for change

DE Rebux, the journal of the Association of Law Societies, believes the legal profession would be better served if law societies held open disciplinary hearings. It says this in an editorial scheduled for publication in its forthcoming edition.

Law societies respond to complaints of expediency from the public

This follows the overwhelming public response to an investigation conducted by Spectr um, the investigative unit of Independent Newspapers, into claims of inadequate treatment of complaints against lawyers and attorneys by law societies.

Law societies said both complaints had been treated with speed and fairness. They believe the current system is the best way to handle complaints.

A feature on the future of disciplinary hearings in South Africa is set to be published in the forthcoming edition of De Rebux.

Law societies have a problem, however, in handling complaints efficiently. They believe the current system is the best way to handle complaints.

The investigation was published in a feature in the latest issue of Spectr um.

The public needs to see that the current system is the best way to handle complaints efficiently. They believe the current system is the best way to handle complaints efficiently.
Omar: Law must restore dignity of victims

Staff Reporter

JUSTICE Minister Dullah Omar said yesterday it was the duty of the state to achieve maximum social justice if it could not bring about individual justice in South Africa.

Speaking at a conference on "The role of law in transition", Mr Omar said South Africa should take part in the continued development of international law to bring about a just society.

He said the Promotion of National Unity and Reconciliation Bill was drafted on the basis of international law.

"International law says if someone is guilty of a violation of human rights he must be prosecuted and punished," Mr Omar said.

Mr Omar said the law was there to serve society and allow people to live in peace and harmony.

"To make this possible we should look at the plight of the victims of our struggle," he said.

"No discussion will be complete if we do not pay attention to the victims and what can we do to restore their dignity," Mr Omar said.

University of Western Cape Law Professor Medard Rwelamira spoke on "Punishment and Amnesty for violations of human rights".

He said South Africa's approach to punishment and amnesty should be seen against the background which the system of apartheid was created and its creation of desire for vengeance.

Professor Rwelamira said the Truth and Reconciliation Commission had three objectives:

■ To ensure those responsible for human rights violations were known and made accountable
■ To evolve strategies and mechanisms to make sure that such violations did not occur again
■ To ensure the dignity of the victims was restored.
Tearful activist says cops used baby as bait

By CHARL DE VILLIERS

A HUSHED conference this week heard a veteran anti-apartheid activist tell how police threatened to abduct his daughter to flush him from hiding during the 1986 state of emergency.

Choking back tears, Johnny Issel said he did not expect apologies from his persecutors, only the truth.

His brief, but jarring, outburst came during a panel discussion on the psychological aspects of the Truth and Reconciliation Commission, held under the auspices of the Fourth International Symposium on the Contributions of Psychology to Peace.

Mr Issel — a Western Cape provincial MP and banned and detained United Democratic Front stalwart — said activist friends were still suffering the emotional scars of their experiences in the 80s.

He said police had twice tried to kill him and had threatened to take his then six-month-old daughter, Ruschka, from his grandmother in a bid to force him out of hiding.

Recounting how police with dogs and machine guns nearly ran him to ground near Muizenberg one night in 1986, he said “If the truth commission comes about, those responsible for crimes must not apologise I’d just like my children to know.”

The audience, who earlier heard Justice in Transition representative Alex Boraine argue that disclosure was an act of healing, watched in silence as Mr Issel, 48, was led back to his seat wiping his eyes.

Brandon Hammer, a psychologist with the Wits University Project for the Study of Violence and Reconciliation, said trauma survivors would not escape their pain by trying to forget it.

“Psychological restoration and healing can only occur through providing space for survivors to feel heard, and for every detail of the traumatic event to be re-experienced in a safe environment.”

At the same time, retelling stories could not replace the need to address the causes of violence and develop mechanisms to prevent its re-occurrence.

The commission had to be capable of dealing with psychological trauma and mediating feelings of revenge, bitterness and anger. To do so it would need to be buttressed by a network of mental health-care specialists, he said.

Irrespective of whether the commission took place, South Africa’s 4,000 psychologists needed to develop a comprehensive mental healthcare plan, he argued.

Peace could only be achieved through constructive engagement with the past. It could not be brokered on paper, nor could stability rely on new national symbols or anthems.

The commission could provide an excellent opportunity to develop psychological services.

Ann Anderson, of Psychologists for Social Responsibility in Washington DC, said probes such as the United Nations Yugoslavia war crimes tribunal and South Africa’s own truth commission faced enormous expectations from victims and survivors.

In the case of the Yugoslav inquiry, now extended to Rwanda, the tribunal should perhaps choose cases which were symbolic enough to represent the many that would not be heard, she said.
Man who will keep the public service on its toes

By CARMEL RICKARD

A BITTER political wrangle over the appointment of a public protector ended this week when all MPs except those from the National Party gave their backing to Durban advocate Selby Baqwa.

One of two candidates for the post, Mr Baqwa now becomes one of the most powerful people in the country. The interim constitution mandates him to oversee the behaviour of civil servants. Acting on his own initiative or on complaints by the public, he must root out corruption, end bureaucratic red tape and speed up unduly delayed official decision-making.

Only the courts are off-limits for his investigations. Every other arm of government, at every level, must open their doors and their books when he asks.

No organ of state, no civil servant, no member of the government, even the president, can interfere with his work.

He can enter any building and see anything relevant to his inquiries. He can order anyone to answer questions and hand over any document which he may need.

The man who will wield these powers, Selby Alan Masabonge Baqwa, 44, freely concedes he checks a strong national profile and that it would be reasonable for the public to look blank when they hear his name.

His surname should not be unfamiliar, however. His sister Lillian Baqwa, also a lawyer, was a member of the Goldstones commission.

Mr Baqwa has never served on that body, despite reports to the contrary.

Within progressive legal circles he is known as the man who took over the presidency of the National Association of Democratic Lawyers when its previous head, Pus Langa, took up a seat on the Constitutional Court.

But while he may be relatively unknown to the rest of the community, he has recently made his name in the Eastern Cape.

Public servants in the region know him only too well as a member of the Brodie judicial commission of inquiry, he has been looking into bureaucratic red tape and the problems they have been strongly criticized by civil servants who want to maintain the independence they enjoyed under the previous government.

Mr Baqwa says his experiences on this commission have been very helpful in preparing him for the new job.

"When you see the abuses that have gone on — including overt dishonesty like getting into computers and changing salary figures — you realize how much can go wrong in government."

"What we have seen in the Browde commission should be a big warning. I hope the new government learns that it must put financial and other checks in place as early as possible."

Mr Baqwa started out as an attorney, then joined the Durban Bar in 1988. He has taught candidate attorneys at Natal University's School for Legal Practice and, for example, regular reports-backs to Parliament must include details.

GOVERNMENT WATCHDOG because I am Mister Nice Guy, I will use my powers most strongly" Public Protector Selby Baqwa

ST 27 7/95

In parts, the protector of law, has lectured on mercantile law at the same university.

He says his lack of profile will help him in the new job. "As far as the public is concerned, I won't bring a lot of baggage with me. They can get to know me in this context."

"There has also been concern about whether he is too close to the ANC. Mr Baqwa says the job and his own personality demand scrupulous fairness. In addition, the constitution lays down a system of checks and balances which would expose any tendency to favour any group. For example, regular reports-backs to Parliament must include details.

Says if people 'drag their feet' Picture: RICHARD SHOREY

of how each case is being handled. These and other safeguards appear to have won over the initially sceptical Inkatha Freedom Party. After grilling him at the initial hearings on his political history and its influence on his work, IFP MPs voted for him this week.

Some people ask whether the soft-spoken Mr Baqwa will be tough enough for the post. Will he ferret out the baddies with the ferocity and determination that the job requires?

The former university boxer throws a punch of his own. "If people drag their feet because I am Mister Nice Guy I will use my powers most strongly."

He envisions a team of provincial public protectors with whom he will work closely, although the public may approach his office directly if they choose.

He says he wants to start with a publicity drive which would inform the public about his office, its mandate and the treatment to which they are entitled from civil servants.

"I am not just looking for corruption or maladministration. We insist that the public be treated with dignity. Civil servants must be polite and realize they are the servants of the public and not the other way round," he said.
to protect witnessess

Ministries must work
Legal workers launch go-slow

Umtata July 3 — Workers in the justice department in all districts of the former Transkei have embarked on a go-slow in an attempt to force Justice Minister Dullah Omar to respond to their grievances. (252)

The convenor of the Workers' Crisis Committee and the president of the South African Civil Servants Association, Khadyeza Nqadala, said the decision was taken at last week's meeting after Omar failed to arrive to address them. Their grievances relate to promotions and poor working conditions. — Sapa.

[Editorial note 4/7/95]
Hearing for Land Court Judges
Death Row prisoners to stay put

Death Row prisoners reprieved by the scrapping of capital punishment will remain in maximum security and will not be transferred to other prisons or sections, the Department of Justice said yesterday.

They will be divided into groups like all other prisoners, spokesman Amanda Haairook said, adding that alternative sentences for them were under consideration.

The Constitutional Court recently scrapped the death penalty, saying it was unconstitutional.

There are 453 people on Death Row countrywide, including right-wingers Clive Derby-Lewis and James Walter sentenced to death for the murder of SA Communist Party leader Chris Hani.

Removing the gallows would, however, take some time, Correctional Services spokesman Brigadier Chris Oakes said.

A plan to dismantle the gallows was "on the table" and was in the process of being finalised.

The Commissioner of Correctional Services will, on receipt of the report, decide what action to take. — Sapa
The price you pay for justice

JEAN LE MAY
Staff Reporter

A VERY senior advocate once said that accepting an appointment to the Bench was the equivalent of committing an act of insolvency.

He was joking, of course — but there is an uneasy truth in his words, because judges earn about R250,000 a year while there are senior “silk” advocates in Cape Town who make R1,4 million a year.

The Cape Bar Council has recommended that a senior advocate may charge R16,000 for the first day of his appearance in court (this includes pre-trial work) and R8,000 on succeeding days.

Advocates’ fees in Johannesburg are said to be even higher — Karel Tipp, a member of the Johannesburg Bar Council’s fee committee, declined to disclose figures, saying he did not have the scale of recommended fees with him and could not remember them off-hand.

Fees are usually negotiated beforehand in court so nobody pays the maximum. But a tenth principle has been added to the classic Nine Principles of Law laid down by the jurists, and that is: How much money can you afford to spend on it?

The party with most money to spend has a much better chance of succeeding. The amount of money you have to spend is an absolute reality," a city lawyer admitted.

So questions are now being asked whether the new Hoexter Commission on the rationalization of the Supreme Court will achieve anything towards keeping down the enormous costs of litigation.

“Certainly, the question of legal costs will be looked at indirectly,” says Mr Justice Ramon Leon, a member of the commission, told Weekend Argus.

“We may well take the question of costs into consideration under the term of reference which deals with improved access to justice for civil litigants.”

Gerald Josman, a member of the fees committee of the Cape Bar Council, said the fees charged by silks were not the issue.

“What is relevant is the fees charged by juniors,” he said (averaging R6500 for the first day of a trial, including pre-trial work). “We are working on proposals which will make juniors available through the Legal Aid Board at substantially lower cost to the client.”

Mr Tipp said the Johannesburg Bar Council had not touched at all on costs in its submission to the commission.

The council had concentrated on the commission’s other terms of reference, he said.

The commission has been asked to decide whether the jurisdiction of existing courts should be extended or whether each of the nine provinces should be given an extra court.

It has also been asked to look into the need, if any, for specialist courts for civil cases (such as the one operating in Johannesburg) and for circuit courts for civil cases (like the one operating in the Western Cape).

Supreme Courts countrywide are discussed up where they are now because of historical divisions of the country into provinces and, later, into “homelands.”

There are four provincial divisions with courts in Cape Town, Kimberley, Johannesburg, Pretoria, Durban, Maritzburg, Grahamstown, Port Elizabeth and Bloemfontein, and four formerly “independent” homelands with courts in Umtata (Transkei), Bisho (Ciskei), Thohoyandou (Venda), Mmabatho (Bophuthatswana).

The Western Cape, the Northern Cape, the Free State and KwaZulu-Natal will be little affected, but the difficulty could be over the placing of courts in the former Transvaal and the former Eastern Cape.

The Transvaal has now been split into four provinces — Gauteng, North-West, Northern Transvaal and Eastern Transvaal — but the only Supreme Courts are in Johannesburg and Pretoria.

The question is, will new courts be established in new provincial capitals such as Pietersburg?
Hugo Verdicht Pains Public
Lawyers' pay hikes 'lawful'

OWN CORRESPONDENT

EAST LONDON—Salary increases and lump-sum payments to former Department of Justice officials in Transkei were lawful and should not have become the subject of a public probe, the Browde Commission of Inquiry heard yesterday.

Eight state advocates, attorneys and law advisors who benefited from the 1994 salary increases, backdated to 1991, also questioned the validity of the inquiry.

"This commission has no jurisdiction, as the complaint was brought by the provincial finance minister and not by the national minister," their legal representative, Mr Dawid van Zyl said.

He claimed a 1994 Transitional Executive Committee resolution that halted upgrading of public service positions was "null and void".

The commission, headed by Mr Justice Jules Browde, was appointed by President Nelson Mandela in February this year to investigate irregular promotions and salary increases in the South African and former Transkei civil services between April 1993 and September last year.

The commission's investigator, Mr Wolke Wolmarans, said eight senior officials had received substantial salary increases in February last year.
ANC call: 'Out of line - Nuremberg-style trials not policy.'

The ANC's head office has dismissed reports from a call by its Krugersdorp headquarters for the death penalty to be imposed on those convicted of apartheid crimes.

ANC members in the National Executive Committee have been instructed to refer to the ANC's policy on capital punishment.
Most South Africans favour the retention of hanging, despite the Constitutional Court ruling abolishing the death penalty.

This is the finding of a new survey by Marflom conducted in major metropolitan areas of Gauteng, Durban, Maritzburg, Bloemfontein and East London.

Of the 2,000 people interviewed, half were asked if they supported the death penalty in principle. The remainder were asked the same question but with “qualified scenarios” — rape, child abuse, murder or treason.

In principle, 62% percent wanted capital punishment and women backed it more than men. Three quarters of the white people, 55 percent of black people and 58 percent of coloured people voted in its favour.

“Support for the death penalty in black metropolitan areas has increased by 30 percent since the 1993 survey. Only 26 percent of all people are against it,” said Willem Coetzee, who co-ordinated the study.

When capital punishment is linked to a villainous act a different scenario emerges. High treason stands as the exception. Only 35 percent of respondents thought death was fair punishment.

Murdering a child gained the highest vote for the death penalty at 78 percent, while 70 percent thought it was fitting punishment for the murder of an adult.

Rapists should die, said 63 percent of those interviewed. But murdering a policeman was more serious — 65 percent were convinced criminals guilty of this should die. For serious child abuse, 61 percent voted for capital punishment.

Mr. Coetzee said all interviews were conducted “face to face” and with adults over 16. The 2,000-strong sample was made up of 1,000 black, 640 white, 240 coloured and 120 Indian people.

The respondents came from a comprehensive range of housing environments, including squatter communities.
Most South Africans back capital punishment – poll

By TROYE LUND

South Africans favour capital punishment despite the Constitutional Court’s ruling against it, according to a new survey.

The study by Marlinor was conducted in Gauteng, Durban, Maritzburg, Bloemfontein and East London, and of the 2,000 people interviewed, half were asked if they supported the death penalty in principle. The remaining half were asked the same question but with qualified scenarios — rape, child abuse, murder or treason.

In principle, 62% wanted capital punishment, and women backed it more than men.

Three-quarters of whites, 55% of blacks and 58% of coloureds voted for it.

"Support for the death penalty in black metropolitan areas has increased by 30% since a 1998 survey," Willem Coetzer, who co-ordinated the study, said this week.

When capital punishment is linked to a villainous act, a different scenario emerges. High treason stands as the exception.

Only 39% of respondents thought death was fair.

Murdering a child gained the highest vote for the death penalty at 78% while 78% thought the noise was fitting for murdering an adult.

A total of 63% of those interviewed said rapists should die.

But murdering a policeman was more serious — 65% were convinced criminals guilty of this crime should go to the gallows.

For serious child abuse, 61% voted for capital punishment.
Omar supports more pay demand

THE proposed five percent increase for magistrates was not enough and their disappointment was appreciated, Justice minister Dullah Omar said at the weekend.

Omar was reacting to reports last week that some magistrates were threatening to embark on a go-slow which could lead to a full-scale strike if their salaries and conditions of service were not improved.

About 40 magistrates from Pretoria reportedly signed a memorandum threatening a strike and another from Durban voiced a similar warning.

In a statement, Omar said his department had been trying to address magistrates' grievances in spite of being given only one percent of the national budget.

Issue discussed

He said he had discussed the issue with the minister responsible for the Public Service Commission and the Minister of Finance, as well as the cabinet.

He also had the support of all political parties.

"The cabinet reaffirmed its recognition of the independence of the judiciary and its commitment to the improvement of salary and service conditions of all professionals in the Department of Justice.

Matter of agency

"To this end I am promoting, as a matter of urgency, the rationalisation of the magistrates' profession, and the restructuring of the Magistrates' Commission, in consultation with all stakeholders," he said. - Sapa
But some changes coming

in the world,

equal to best,
SA courts

Microphone, Ford Headquarters – Justice
The Argus Correspondent

HRD/14/11

The change proposed

This has already been agreed in

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The argument in the department

is the one.
JOHANNESBURG: Thirty-one human rights groups and religious organizations yesterday called on President Nelson Mandela to ensure no political figures were appointed to the truth commission to probe human rights crimes under apartheid.

Mr Mandela earlier signed the Promotion of National Unity and Reconciliation Bill into law.

Justice Minister Mr Dullah Omar said yesterday that his department’s indemnity office had already received about 2,000 applications for indemnity. He said this number was expected to increase.

Mr Fody Kollepe, a spokesman for the organisations and a representative of Lawyers for Human Rights (LHR), said “The truth and reconciliation commission will be required to ask politically embarrassing questions and may be forced to make politically unpopular recommendations.”

It was essential that commissioners were chosen on the basis of their track records in working for human rights. The names of nominees should be published for public scrutiny, he said.

Mr Mandela said he would announce the names of truth commissioners soon, adding that they would be people of good standing but not of high political profile.

• The Freedom Front yesterday expressed its “disappointment” that the amnesty date had not been changed to May 10, 1994. — Sapa-Reuters
Mandela puts signature to 'truth' law

Adrian Hadland

PRETORIA — President Nelson Mandela signed truth commission legislation into law yesterday but warned "South Africans everywhere" to prepare themselves for participation in the process.

After signing the Promotion of National Unity and Reconciliation Act, Mandela said organisations, victims and all of SA "must join the work that lies ahead".

The Act's passage marked a moment of enormous significance in SA's history "We can now deal with our past, establish the truth that has so long been denied us, and lay the basis for genuine reconciliation." Only by knowing the truth could SA hope to heal "the terrible open wounds that are the legacy of apartheid". But that process could not be allowed to rest only with the truth commission and its three committees — the amnesty committee, the human rights violations committee and the reparations and rehabilitation committee.

People and communities across the country should begin to organise so that they could also be part of the initiative, Justice Minister Dullah Omar said. More than 2,600 applications for amnesty had already been received by government. "No doubt there will be many more." If human rights violators did not apply for amnesty, they would be subject to prosecution.

At a news conference, representatives of 31 non-governmental organisations called on Mandela to appoint to the truth commission only those who had a long track record of working for human rights. The commission's effectiveness would depend on the calibre and integrity of its commissioners, a spokesman said. It would need to be accountable to the interests of citizens and the ideals of human rights "rather than to politicians and political parties".

The organisations called for a transparent process of appointing commissioners, free of "political horse-trading." Nominees' names should be publicised for comment, the backgrounds and track record of every candidate should be checked while public hearings should be held so that the candidates' commitment to human rights could be questioned and their past evaluated.

Speaking on behalf of Amnesty International, human rights activist Sheena Duncan said if the commission was to be accepted as credible and capable, commissioners had to be selected by a process which raised public confidence and ensured commissioners had been chosen on the basis of "their demonstrated commitment" to human rights advocacy.

Mandela said the procedure for appointing commissioners was under discussion and an announcement would be made. But he stressed government was committed to transparency, hinting that a more public process than was originally envisaged could be adopted. According to the Act, the President appoints the commissioners in consultation with the Cabinet.

The truth commission as expected to be up and running within two or three months.

The Freedom Front — the only party to vote against the Bill in Parliament — said it was disappointed the 'legislation' had been signed without postponing the December 3 1993 amnesty cut-off date.

© Picture: Page 3
2 000 ask for Truth Commission amnesty

PRETORIA — About 2 000 applications for amnesty received so far will come before the Truth and Reconciliation Commission, says Justice Minister Dullah Omar.

"I have no doubt there will be many more applications," he told journalists at President Mandela's official Pretoria residence yesterday.

Mr Mandela earlier signed the Promotion of National Unity and Reconciliation Bill into law. It provides for the setting up of the Truth and Reconciliation Commission.

Mr Omar said Mr Mandela would determine a deadline for applications.

"It is very important that the process envisaged by the commission be completed expeditiously. If persons do not submit applications within the time fixed by the president by proclamation, they will forfeit the right to amnesty."

Mr Omar said the Act made provision for the suspension of criminal trials pending applications for amnesty, but this would not be automatic.

"There are many things which have happened which are clearly not political in character. Where that is clear, the trials will continue."

Mr Omar said the cut-off date of December 6, 1993 for political crimes could not be changed easily. There would have to be a "very, very good reason" relating to "the issue of violence."

Moving the cut-off date would also require an amendment to the constitution.

Mr Omar emphasised that people did not have to fear the Truth Commission. It was not designed for a "witch-hunt."

"At the same time, it is very important that the truth about our past should be known."

No attempt would be made by the commission to cover up for anyone who had committed gross violations of human rights.

Mr Omar said the Act did not preclude prosecutions if evidence of serious violations of human rights emerged, the attorneys-general of the country were duty-bound to prosecute.

"The African National Congress gave its full support to Mr Mandela's signing of the Promotion of National Unity and Reconciliation Act."

Art. 20/795 (252)

"The Act could not have been signed at a more appropriate moment than when there are revelations of the National Party government's conspiracy to undermine the ANC and its allies prior to the elections," ANC spokesman Ronnie Mamoepa said in a statement.

He said the NP and its proxies should take advantage of the climate created by the enactment of the legislation "to confess to the world in general and our country in particular the crimes against humanity."

The Gauteng provincial cabinet also gave its support to the signing of the bill.

Premier Tokyo Sexwale said it would make South Africa "come to terms with our past, current existence and prepare us for the future."

He added "The underpinning essence of national soul-searching remains reconciliation, hence the passing of the Act."

— Sapa
Bar Council decision favours wealthy, claim advocates

Row over Sandton chambers

BY TAMSEN DE BEER

The Johannesburg Bar is facing a revolt by some of its members following a decision by the Bar Council in favour of opening legal consultation facilities and an arbitration centre in Sandton.

The Bar’s 530 members are due to vote on the issue after 40 Bar members signed a petition calling for a general meeting, circumventing normal procedure whereby members present their views to committees which make recommendations to the council.

The dissenters say the move will favour wealthy practitioners able to afford the cost of opening offices in Sandton.

"How I foresaw the outcome is that it would be buried in the committees. The Bar Council would go ahead anyway," said one of the signatories, a Johannesburg advocate who asked not to be named and expressed serious concerns about the "undeveloped nature" of the council’s decision.

The advocate said the council had been prompted to take up the matter to avert a fragmentation of the Bar after certain senior members implied they would move their consultation come with or without the Bar’s agreement.

Bar Council chairman Michael Kuper said the decision was not final and would “ultimately depend upon the view of the Bar as a whole.” According to Kuper, existing chambers in Johannesburg’s central business district were inconveniently situated for many clients and attorneys located in the northern suburbs.

But the advocate who signed the petition said he was not convinced the move had been properly investigated or debated, or that Sandton was the right place for the facilities.

"Why not Baragwanath, or the East Rand, or the West Rand? There are clients all over. The Bar is starting to dismember itself from its chambers," he said.

He said limited space in Sandton would result in a loss for those who could not afford to pay for consultation facilities there, and claimed the move would favour only certain wealthier legal practitioners.

The advocate said that while the move might ultimately be a "good thing”, he and other practitioners had not been able to express their opinions.
It won’t become a witchhunt

Mandela signs law for truth commission

BY MONDILI MAKHANYA
POLITICAL REPORTER

President Nelson Mandela yesterday signed legislation to establish a truth commission to inquire into human rights abuses under apartheid.

The president’s signing of the Promotion of National Unity and Reconciliation Bill marks the final step in the tortuous establishment of the commission, which has become a centrepiece of the Government’s programme.

Pledging that the commission would not become a witchhunt against any parties or individuals, Mandela said the body would be used “to deal with our past, establish the truth that has so long been denied us, and lay the basis for reconciliation.”

Mandela told a media conference at his Mangaung residence that the Government would strive to appoint non-political people to the body. He said the commissioners would be “persons of good standing, highly respected and not of a high political profile.”

“There is a strong and urgent call from communities and human rights organisations that these critical appointments should not be tainted by political horse-trading, but that the commissioners should be people known and respected for their proven commitment to human rights and reconciliation.”

The composition of the truth body is likely to be a thorny issue as various parties, particularly the Freedom Front and the Inkatha Freedom Party, fear it may be turned into a witchhunt of the ANC’s enemies.

In terms of the Bill, the president appoints commissioners in consultation with the Cabinet. Mandela said he would make the process transparent and would announce what procedure he intended following.

Yesterday a coalition of human rights lobby groups and non-governmental organisations warned against making “political appointments” to the commission. The coalition, which includes Lawyers for Human Rights, the South African Council of Churches and the South African National Council Organisation, called for the names of nominees to be made available for public comment and for candidates to be subjected to public hearings.

Coalition spokesman Graeme Simpson said commissioners would have to be of a high calibre and integrity as they would have to “ask politically embarrassing questions.”

“The commission will also have to be trusted by survivors of human rights abuses and by the families of victims before they agree to testify before it.”

“It will not get this support if the appointees are chosen on political considerations rather than on their integrity and ability.”

The commission will be comprised of an amnesty committee, which will hear applications for amnesty, the committee on gross human rights violations, which will hear from victims and make recommendations on how to ensure the violations do not happen again, and the committee on reparations, which will look at compensating and counselling victims.

Justice Minister Dullah Omar ruled out the possibility of changing the December 5, 1993 cut-off date for amnesty. There would have to be “very good reasons” for shifting the date as this would entail amending the constitution.
The dotted line ... President Nelson Mandela, watched by Justice Minister Dullah Omar, signs the Bill which will establish the Truth Commission. PICTURE ETIENNE ROTHBART
Pretoria court is raising a big stink

All authorities deny responsibility for filthy court, says McKeed Kotolo

The always packed Mamelodi Magistrate’s Court in Pretoria has been described by local residents and by relatives of awaiting-trial prisoners as a “death trap.”

A visit this week by Sowetan to the court buildings revealed the unhealthy conditions that members of the public and awaiting-trial prisoners have to endure during court hearings.

The building has two courtrooms, with cells in the basement for awaiting-trial prisoners before and after their court appearances.

When Sowetan arrived at the court before 8am on Monday, only one security guard was on duty at the entrance, but the building was already busy at his desk. The public remained outside to avoid the strong stench from flooded sewage and a broken water pump.

The judge’s room, which is used for court proceedings, is located in the basement.

When a janitor from the Department of Public Works was asked what he was doing, he said he was cleaning the floor.

The water in the basement overflowed about a third of the floor, leading to the cells in the courtrooms. One could even hear the sound of running water while sitting in court.

Sources told Sowetan the floods in the cells started last week, but nothing was done until Tuesday morning when plumbers cleared the water and fixed the broken pump.

During the flooding, awaiting-trial prisoners were kept in a police van outside the building despite the heavily cold winter weather.

The matter was first reported at least two years ago. At the time, authorities promised to do everything in their power to fix the building.

An elderly mother, whose son was due to appear in court on Monday, was worried that members of the police and waiting-trial prisoners were kept in the vans from about 9am until about 5pm when the prison adjourned for the day.

A woman who visited a house at 10am said the smell was intense.

When the public was asked if the building was safe, they said they had no idea.

A spokesman for the Department of Public Works said the building was safe and that the court was still in operation.

The building was declared unsafe by the Department of Public Works on Monday.

But at the court, the judge ordered the court to be adjourned until Wednesday.

A Department of Justice spokesperson confirmed that the building was declared unsafe, but added that the court was still in operation.

"I came here to the pretoria court myself but I have heard of the occasion flooding, etc. I am here, everything is fine," he said.

He told Sowetan that the past was not an issue and that the building was safe.

However, the spokesman for the Department of Public Works said the building was unsafe and that the court was still in operation.

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The new Police Bill balances human rights with the need to combat crime, writes Azhar Cachalia

Police vs human rights

It is probably true that crime has become the foremost concern of the minds of South Africans more than any other issue in our new democracy. As the police, courts and communities battle to deal with the problem, we constantly hear arguments for the need for more police powers to combat crime. Calls for the reimposition of the death penalty and the denial of bail for arrested suspects are now commonplace. This, of course, raises the question as to whether we will succeed in creating the human rights culture so many people have fought for.

It should be borne in mind that South Africa is not the only country that has grappled with the tension between creating a human rights culture and combating crime effectively, on the one hand, and combating crime effectively, on the other. Our Constitutional Court has, in two inspired judgments, outlawed the death penalty and declared unconstitutional a provision in the Criminal Procedure Act which imposed a burden of proof on an accused person to prove that a confession made in a magistrate was not made voluntarily.

In this latter case, the Court found that, by placing the burden of proof on an accused person, his right to remain silent as well as his right not to be compelled to give evidence against himself was violated. However, it was emphasised that the Court recognised the pressing social need for the effective prosecution of crime and noted that, in some cases, the prosecution may require reasonable presumptions of law to assist it in this task.

In so noting, I believe the Court sent out the correct signals for the need to maintain a human rights culture while acknowledging the need of the authorities (police and prosecutors) to have sufficient powers at their disposal to combat crime.

In assessing whether the legislature has got the balance right and not conferred excessive power on the authorities, a court will scrutinise a law to ensure that it is reasonable and justifiable in an open and democratic society based on freedom and equality and, further, that the essential content of the right has not been negated. In some instances, such as where the fundamental rights of accused persons are involved, the authorities will have to show that, in addition to being reasonable, the intrusion into the accused person’s rights is also necessary.

The about-to-be-published Police Bill confers certain powers on the police to deal with various problems. In assessing whether these powers will survive constitutional scrutiny, the Ministry of Safety and Security will, if required, have to persuade the Constitutional Court that these problems are of pressing social concern and that the way the laws have been drafted meets the requirements set out above (reasonableness and justifiability).

Section 1(3) of the Bill requires a member of the SAPS to use “only the minimum force which is reasonable in the circumstances” to exercise any power or perform any duty under the Act. While this is no more than a restatement of the common law position, its inclusion in the draft will perform an important educative function within the service.

Section 10(9) of the draft Bill empowers the National or Provincial Commissioner “where it is reasonable in the circumstances to restore public order or to ensure the safety of the public in a particular area” to effect the cordonning off of a particular area. The area may be cordoned off for a period of 24 hours, during which period the police may, without warrant, conduct searches in the area.

This section empowers the police to deal with the problem that has been confronted many times in areas where large numbers of armed police come into the area and virtual war zones develop, which makes policing impossible and the safety and security of persons become seriously threatened.

The drafting team has built in certain safeguards to minimise the abuse which may occur when the police are compelled to use this power. Firstly, only the National or Provincial Commissioner may order the cordoning off. Secondly, the cordoning off period cannot exceed 24 hours. It is to be expected that the National or Provincial Commissioner will only use such a wide power if there is a request from the community or a community policing forum in the area and the National or Provincial Commissioner accepts that there is no other way to restore public order or to ensure the safety of the public in the area.

Section 13(7) and section 13(8) empower the police to set up roadblocks to assist in the detection and combating of crime and to conduct searches at such road blocks. These powers also infringe the rights of persons under the Constitution, which guarantees freedom of movement and privacy.

Again, it is the view of the drafting team that these powers are necessary for the police to effectively perform their duties. An important provision and safeguard is that where any member executes a search at a road block, such member “shall, upon demand of any person whose rights have been affected by any search or seizure” exhibit to such person the written authorisation for the setting up of the road block.

The police have power under numerous pieces of legislation to deal with various other problems. The Criminal Procedure Act, the Drugs and Drug Trafficking Act and the Arms and Ammunition Act confer certain powers on the police. The powers set out in the Bill are in addition to the powers which exist in any other legislation.

In conferring additional powers upon the police in the draft Bill, the drafting team looked very carefully at whether these powers were required. Having decided that they were, the drafting team had to ensure that these powers would survive constitutional scrutiny. In so doing, we were consciously alert to the guidelines set by the Ministry of Safety and Security of building a human rights culture on one hand, while effectively combating crime on the other.

Whether the drafting team achieves this delicate balance will be left to Parliament in the first instance and, ultimately, if necessary, the Constitutional Court.

Azhar Cachalia is adviser to the Ministry of Safety and Security and chairperson of the Police Bill drafting team.
Social and economic rights demanded

Tim Cohen

CAPE TOWN — More than 200 organisations are gearing up for a campaign to lobby for the inclusion of social and economic rights in the constitution and for the scrapping of the current property protection clause.

Organisers say the campaign will consist of pledges of support, including some from regional premiers and church officials, a petition and a street march in Cape Town.

The march is to take place on August 1 and will coincide with the Constitutional Assembly debate on social and economic rights.

Social and economic rights, or second- and third-generation rights, include such rights as housing and social welfare.

The organisations include civic and development organisations and trade unions. Development Action Group director Jacques Rolle said the ad hoc campaign on social and economic rights hoped to gain the support of Cosatu unions, although Cosatu had expressed support for the inclusion of social and economic rights as directives only.

The campaign is specifically pressing for the full inclusion of social and economic rights to make these rights justiciable, which they would not be if they were directives.

It has already made submissions to the Constitutional Assembly.

As the right to free speech did not entitle citizens to go to court to demand government financed the establishment of newspapers, development rights would not entitle anybody to demand government fund their homes.

But the enforcement of these rights would ensure that courts protected them from being stripped away and ignored by the state.

The campaign wants the property clause in its current form scrapped from the final draft.

It says the existing property clause would entrench existing property rights, especially rights to land — often gained illegitimately.

See Page 10

the fight at tourists

The department was planning to pull out of restrictions on safety and other stakeholders would be asked to withdraw a request for effective strategy that crams against tourists.

Establishment last week of a tourism directorate in the municipality, government’s initiatives to promote tourism would be bolstered,

Directorate consisted of about three different directorates: policy — which would focus on analysis, policy and strategy; international liaison and investment and training — which would focus on incentive schemes, resource development.

Police capacity should contribute to the number of initiatives under way.

Include the preparation of a report on tourism, the development of strategies and schemes, as well as schemes for the industry.

Development section of Saps also held a conference on safety for the Taung region on the guestlisting.

Details would be available later.

Malay group wants fill-ups

A CAPE Town-based Malay cultural group has launched a bid to have the writings of Shams Yusuf, the Indonesian exile who brought Islam to SA in the 1600s, returned to SA.

The 29 manuscripts, written in an undecipherable ancient Malay script, are stored at Jakarta’s Central Museum in Indonesia and Leiden University Library in the Netherlands.

Forum for Malay Culture in SA spokesman Taseem Kalam told a parliamentary committee yesterday.

The committee is hearing public submissions on draft legislation on proposed new South African language board.

Kalam said the forum wanted the board, which has not yet been set up, to help secure the return of the documents.

If red tape makes this impossible, the forum requested certified copies of the manuscripts be made available, — Saps.

Free electric fill-up ‘could curb pollution’

FREE urban city ‘fill-up’ points for electric vehicles would curb pollution, Eskom suggested yesterday.

Environment Minister Dawid de Villiers, at a recent international global environmental conference, had mooted taxation or subsidies for those responsible for urban pollution, the utility company said.

De Villiers felt a road fuel duty and other penalties could lead to faster development of electrical transport and better use of other options for private transport and deliveries.

Eskom national electric vehicle programme head Carel Smyman said: “It’s encouraging to see our government representatives adopt a positive attitude.

While we are not a vehicle manufacturer, we have for several years conducted an awareness programme to alert the public to the environmental and cost benefits of electric transport options.”

Eskom was facilitating a process to deliver affordable electric vehicles and the government’s infrastructure, said Smyman.

“For example, service stations could accept the concept of selling electric fuel for the traditional petrol pump.”

A free ‘electrical fill-up’ would cost the government less than combating greenhouse gases. It could also be an effective way to subsidise the taxi industry.

Home owners could have “smart plug” recharging systems that automatically topped up vehicles during less expensive off-peak periods at night.

Eskom expected that most electric vehicles would be likely to be charged by low-demand times, helping to contain the electricity price at peak usage times.

California had found that by the age of 12, children had lost about 15% of their lung capacity because of air pollution — Saps.
The race is on to appoint Truth Commissioners
Let human rights lead SA foreign policy.
Mogoba emerges as new favourite to head the truth commission

By Carmel Rickard

Serious lobbying has begun over the appointment of members to the truth commission, after President Nelson Mandela signed the controversial bill into law this week.

Methodist Bishop Stanley Mogoba, a former Robben Island prisoner, is widely regarded as likely to head the commission.

The new Promotion of National Unity and Reconciliation Act requires a panel of between 11 and 17 commissioners to examine gross human rights violations since 1960.

While the new law details the functions and powers of the commission, it does not say how its members will be chosen.

The non-governmental human rights community wants an open process, with an opportunity for the public to comment on nominees — who should all have a long track record of working for human rights.

More than 30 human rights groups, including the Human Rights Committee and the Centre for Applied Legal Studies, said this week that they would not cooperate with the commission if the government did not heed their demands.

In response, Mr Mandela and the Minister of Justice, Dullah Omar, promised there would be no political horse-trading.

Mr Mandela has also undertaken to announce the selection mechanism as soon as possible.

A Cape Town-based inter-faith group has already submitted a list of nominees to Mr Mandela, among them Bishop Mogoba; Anglican priest Michael Lapsley, who lost an eye and both hands in an anti-ANC bomb attack; Hindu lawyer Yasmun Sooka of the World Conference on Religion and Peace; and psychologists Tom Winslow, who heads the Trauma Centre for the Victims of Violence and Torture.

Further lists are likely to follow from other groups as soon as the president announces the selection procedure.

Other possible nominees include the former general secretary of South African Council of Churches, Frank Chakane, Alex Beraine, the director of Justice in Transition, Black Sash and human rights stalwarts Sheena Duncan and Mary Burton; and Anglican Archbishop Desmond Tutu, who retires soon but who is likely to be unavailable because of overseas commitments.

Attorney Lilian Basha, of the Goldstone commission, the head of Lawyers for Human Rights, Jody Kollberg, Johannesburg Methodist minister Myra Mandela; the former executive director of the Institute for Multi-Party Democracy, Oscar Dibombo, Catholic priest and ANC MP, Simon Mokhotlane; and the former general secretary of the Southern African Catholic Bishops' Conference, Brother Jude Pitre, are also mentioned.

Other church-connected possibilities include Catholic Archbishop Denis Hurley, Peter Kerchoff of the Maritzburg Agency for Christian Social Awareness, and Faddy Keaney, director of the Durban ecumenical social-justice organisation, Daikonia Council of Churches.

A difficult slot to fill is that of the judge or retired judge to head the Truth Commission's Amnesty Committee. Among those tipped for this job is Mr Justice Andrew Wilson of Durban, highly regarded because of his handling of cases on emergency regulations and, more particularly, the Trust Feeds case, involving attacks by security forces on members of the United Democratic Front. The newly appointed Mr Justice Edwin Cameron, and Mr Justice Willem Heath of the Supreme Court in Bisho, are also likely to be nominated.
Attorneys head for highest court

DRAFT legislation enabling attorneys to represent clients in the Supreme Court and Constitutional Court was tabled in Parliament yesterday.

The Right of Appearance in Courts Bill confirms the right of advocates to appear in any court and extends the right of audience in the superior courts to attorneys.

An attorney who wishes to represent clients in the Supreme Court is required to apply to the registrar of the provincial division of the Supreme Court.

An attorney who has acquired the right to appear in the Supreme Court may also appear in the Constitutional Court.

Only attorneys who hold the Baccalaurés Légum (LLB) or an equivalent degree and who have at least five years’ experience may acquire right of audience in the Supreme Court.

A memorandum to the bill said the rule that only advocates may appear in the Supreme Court was obsolete, as it hampired competition between the professions. Such competition served to raise standards and resulted in a stronger Bar and Bench.

The bill also provides that the Supreme Court may suspend or withdraw an attorney’s right to appear in the Supreme Court if it is satisfied that the attorney is “not a fit and proper person to appear” in the higher court. — Sapa
The Legal Resources Centre is challenging the male right of succession under South African customary law which, if successful, will have far-reaching implications for millions.

Legal proceedings have been instituted on behalf of Mildred Mhembu, whose husband died intestate in August 1993, and her seven-year-old daughter.

He was gunned down by an unknown attacker.

His widow and her daughter lost not only their sole breadwinner, but found that under customary law they were not entitled to inherit his estate, which became property of the eldest male child or his heir.

In this instance, the sole heir to the estate is the child's grandfather.

The LRC's constitutional litigation unit is taking the case to court on the grounds that the customary law of succession infringes on the right to equality guaranteed by the constitution because it discriminates on the basis of gender as well as race.

LRC candidate attorney Ron Paschke said customary law is an important and valid element of the legal system, and is adhered to by millions.

He said, however, that some elements were discriminatory and particularly affected black rural women who were arguably the most oppressed group in South African society.

In terms of the Black Administration Act, succession was generally governed by "black law and custom."

Paschke said there were certain exceptions.

These were when a person had been married in community of property or under anti-nuptial contract, or where the relevant minister had given a special directive that the property of a particular individual should devolve "as if the said black had been a European."

In practice a directive of this sort was, however, seldom given.

He pointed out the constitution recognised customary law, but like all other laws of the country, was subordinate to the chapter on fundamental rights as far as it was inconsistent with those provisions.

Some lawyers believe that while the tradition of male inheritance, with its built-in obligation to maintain female family members, might have worked in a tribal system where women did not earn money, it was arguably outdated in modern urban life where traditional family structures had become fragmented by the migrant labour system.

Section 31 of the constitution gives everyone the right to participate in the culture of his or her choice.

Paschke pointed out, however, that black women did not have much say in customary law.
Court rights Bill is tabled.

CAPE TOWN.—Draft legislation enabling attorneys to represent clients in the Supreme Court and Constitutional Court was tabled in Parliament yesterday.

The 'Right of Appearance in Courts Bill confirms the right of advocates to appear in any court and extends to attorneys the right of audience in the upper courts.

Any attorney who wishes to represent clients in the Supreme Court must apply to the registrar of a provincial division of the Supreme Court. An attorney who has acquired the right to appear in the Supreme Court may also appear in the Constitutional Court.

Only attorneys who hold an LLB or equivalent degree, with at least five years' experience, may acquire right of audience in the Supreme Court.

A memorandum to the Bill said the rule that only advocates could appear in the Supreme Court was obsolete and had become a milestone.

The Bill also stipulates that the Supreme Court may, suspend or withdraw an attorney's right to appear before it, if it is satisfied the attorney is "not a fit and proper person to appear". — Sopa.
PRETORIA: President Nelson Mandela has appointed former National Peace Secretariat chairman Dr Antoine Gildenhuys as a Land Claims Court judge, the president's office said yesterday. Land rights activist Mr Alan Dodson and former Black Lawyers' Association legal educationist Mr Justice Molets are also appointed as judges.
Go hand in hand
human rights and socioeconomic conditions.
KADER ANSAL AND RONALD ROBERTS

Go hand in hand

human rights and
economic and
social rights are
interconnected in
the context of human
development. They are
essential for the
fulfillment of the
right to development
and for the
realization of all
human rights.

The right to
development is a
fundamental right
that is enjoyed by
all. It is a
comprehensive right
that encompasses
all aspects of life,
including economic,
social, cultural,
and political
development.

Economic
development is
fundamental to
human
development.
It provides the
means to satisfy
basic needs and
improve living
conditions.

Social
development is
fundamental to
human
development.
It promotes
equality,
freedom,
and dignity.

The
human rights
framework,
which includes
economic and
economic and
social rights,
is
designed to
保障 individuals
and groups from
human rights
violations and
to promote social
equality and
justice.

Economic and
social rights are
fundamental
to human
development.
They are
crucial for the
achievement of
sustainable
development.

The
interdependence of
human rights,
including economic
and social rights,
means that
advancing one
right can aid in
advancing
another.

In conclusion,
economic and
social rights
are crucial
to human development
and should be
fully respected
and protected.

The
GFDR, which
is
fundamental to
human
development,
should be
treated as
integral
to the
promotion
of all human
rights.

The
implementation
of economic
and social
rights
requires
embracing
the
principles of
equality,
freedom, and
dignity.

In
sum, economic
and social
rights are
integral
to human
development
and
should be
protected
and
respected
at
all costs.
Extra judges are appointed

Bonile Ngqiyaza

THREE additional judges had been appointed to the Land Claims Court after consultation between President Nelson Mandela and the court's president Fikile Bam, the president's office said yesterday.

The three appointees were Alan Dodson, Antoine Gildenhuys and Justice Moloto. A further judge would be appointed after consulting the Judicial Services Commission and Bam.

The president said the anticipated workload of the court made it "desirable" that up to five new judges be appointed.

"The Land Claims Court has a critical role to play in ensuring we deal effectively and fairly with the sensitive issue of redressing past discrimination in respect of land ownership and occupation," Mandela said.

Dodson, an attorney in a Cape Town firm, has experience in the field of human rights. He has been involved in land development matters as an advisory board member of the Western Cape-based Surplus Peoples Project.

Gildenhuys, a practising attorney in Johannesburg, is an acknowledged expert in property law, water law, the law regarding town and regional planning, and general commercial law. He is also a leading authority on expropriation law.

Moloto is an attorney with experience in contract and property law, constitutional matters and the administration of estates.

Embassies represent

This announcement appears...
Fears that parties may ‘hijack’ process

Strong lobby ahead of Truth Commission

The commission is expected to begin its work in October.

The names of clerics Bishop Stanley Mogoba and the Rev Frank Chukane are being bandied about in human rights circles as potential candidates for the chairmanship of the body.

There are also strong lobbies in the human rights field that want lawyer Lillian Balse and Graeme Simpson of the Centre for the Study of Violence.

Human rights activists Sheena Duncan and Mary Burton, and Catholic cleric Brother Jude Pietersen, are also in the running for nomination.

Already non-governmental organisations (NGOs) have submitted a proposal to Mandela and Justice Minister Dullah Omar mapping out a “transparent” way of selecting commissioners.

The organisations are concerned that the process may be hijacked by political parties wanting to get their “own people” on to the body.

“We want a commission that will be, first and foremost, accountable to the truth, human rights and victims,” said a spokesman.

The process advocated by NGOs would be driven by a panel of five people consisting of representatives of the Office of the President, the Justice Ministry, a human rights lawyer and the NGOs.

The panel would preside over a six-week-long process that would include public nominations, a period for public comment and open hearings.

This proposal is likely to be rejected by the Government, which wants to get the deliberations off the ground soon.
It was revealed at the workshop that a

Witness

Improve protection advocated for Truth Commission

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3 more land court judges named

President Nelson Mandela has appointed three additional judges to the Land Claims Court after consulting the court's president Mr Justice Fikele Bam.

The court's expected workload made it desirable that five judges be appointed, Mandela said.

The three are Alan Dodson, Dr Antone Gildenhuys and Mr Justice Moloto. A further judge would be appointed after consulting the Judicial Service Commission and Bam.

Mandela said the names submitted did not include women and he hoped suitable candidates would come forward. He added: "The court has a critical role to play in ensuring we deal effectively and fairly with the sensitive issue of redressing past discrimination in respect of land ownership and occupation." — Sapa.
More judges for LCC

MR JUSTICE Bakone Moloto, a veteran lawyer and activist, is one of three judges who were appointed to the Land Claims Court yesterday.

The other two, announced by President Nelson Mandela, are former chairman of the National Peace Secretariat Dr Antoine Goldenhuyx and Cape human rights lawyer Mr Alan Doshon.

The appointments will complete the composition of the court to be presided over by Johannesburg lawyer Mr Fikile Bam.

Goldenhuyx and Moloto, a former national executive director of the Black Lawyers Association, were picked from a short list of five nominees.

The other two were KwaZulu-Natal advocate Mr Frank Sithole and Mr Dimpleletse Moshodi of Johannesburg who is also a BLA executive member.

While it was expected that an affirmative appointment would be made, the absence of a woman in the final selection would impact negatively on the legitimacy of the court, according to earlier expert opinion.

However, the only woman candidate, Mrs Vuyiswa Ramphele, withdrew shortly before the interviews of nine candidates in Cape Town yesterday.
FW urged to confess crimes

JOHANNESBURG: The ANC pro-tempore Deputy President FW de Klerk and other leaders in con¬
verse to adhere to the codes of conduct that would be in force there.

They would be in force there because the truth would emerge.

"We have to make sure that the truth is told. The truth is the only way to achieve the truth," ANC Deputy Secretary General M. M. de Klerk said.
Lawyers feel new law will enhance Bar

BY HELEN GRANGE

The Association of Law Societies (ALS) has welcomed the draft legislation extending rights of audience in the Supreme Court and Constitutional Court to suitably qualified attorneys.

ALS president Tony Hardy said the draft legislation contained in the Right of Appearance in Courts Bill was a vindication of the association's standpoint and in the public interest.

The Bill was tabled in Parliament on Monday, and says, the rule that only advocates may appear in the Supreme Court is obsolete and has become a "millstone".

"Greater competition between the professions, together with more experience, can result in higher standards; and a stronger Bar and 'side Bar'," it says.

The Bill also provides that the Supreme Court may suspend or withdraw an attorney's right to appear in the Supreme Court if it is satisfied that the attorney is "not a fit and proper person to appear" in the higher court.
FW urged
to confess
'crimes'

The ANC urged Deputy President FW de Klerk and other leaders to come
together to resolve a scuffle at a Durban meeting last week.

The ANC said that de Klerk should draw the lessons from the incident.

The party called on ANC members to avoid further scuffles.

President Nelson Mandela said that the ANC would consider
the incident.

The ANC's National Executive Committee decided to press
for a peaceful resolution to the issue.
Sitting targets': Slack supreme court security slammed by attorney
(252) ARG 29/9/95

JOHANNESBURG — Advocates, attorneys and court officials are jittery about inadequate security at the Rand Supreme Court, according to an attorney who initiated an investigation into the matter.

"There is absolutely no effective supervision. There are frequent gatherings outside the court. Witnesses and court officials are sitting targets for fanatics with grievances of any kind," the attorney, who wishes to remain anonymous, said.

"A few months ago someone walked into one of the courts wearing poaches of petrol, which he threatened to set alight. Often the judge himself is in court."

The Department of Justice, however, said that while the safety of judges, court personnel and the public was important, this had to be weighed against the accessibility of courts to all people.

Justice Department chief liaison officer Charles Rabe said the Department of Public Works had been asked to boost security by training staff regularly and by getting more metal detectors and X-ray machines.

"The limitation of the public's access to the building was considered five years ago and the cost was estimated at R3 million," he said.

"Due to financial constraints and the fact that we consider it more viable to spend this money on building more courts where there are none, this project was placed on hold."

The Johannesburg attorney approached a security company to investigate the security situation at the supreme court.

Above all, security at the main entrance of the court, the security spokesman and attorney said, was outdated. They claimed the X-ray and metal detecting device people were supposed to walk through, could not recognise all metals.

"Some people do not even go through the machine. If and when they do, the screen is so jumpy and snowy it is impossible to establish an accurate reading. People wearing guns, especially the new ceramic ones, can just walk through it," said the security company's spokesman.

Other points of concern included the 30 unmanned entrances to the building and "an explosion enhancing" room beneath the building which is left open as old papers awaiting recycling are stored in it.

"Officials at the court are so demoralised at the lack of response to requests to upgrade the system that they are on the point of resigning. In the present situation they can really do nothing to secure the rambling old building."
People at Supreme Court are sitting targets for fanatics, says attorney

Advocates, lawyers and court officials are concerned about inadequate security at the Rand Supreme Court in Johannesburg, according to an attorney who initiated an investigation into the matter.

"There is absolutely no effective supervision. There are frequent gatherings outside the court. Witnesses and court officials are sitting targets for fanatics with grievances of any kind," the attorney said.

"Often the judge presiding in court is found in court," the attorney pointed out.

"A few months ago, someone walked into one of the courts wearing pouches of petrol which he threatened to set alight."

The attorney approached a private security company to assess the situation. He and the head of the security company approached the 'Saturday Star' with their findings but asked to remain anonymous because they had received co-operation from, and gained the confidence of, officials who could lose their jobs for participating in the investigation.

The attorney and the security company have provided the 'Saturday Star' with details of numerous security weaknesses at the court.

The Department of Justice said in response that, while the safety of judges, court personnel and the public was important, this had to be weighed against the accessibility of courts to all people.

Justice Department chief liaison officer Charles Rabie said a request had been made to the Department of Public Works for security to be upgraded, by training staff regularly and by getting more metal detectors and X-ray machines.

"Limiting the public's access to the building was considered five years ago and the cost was estimated at R3-million," he added.
Advice for the not-so-rich

By TONY HUTCHINSON
Deputy Director
Legal Aid Board

FREE legal assistance is provided through the Legal Aid Board for those people who cannot afford to pay for a lawyer.

In the past it was available only to those who qualified as "indigent" in terms of a strict legal definition, but our new constitution changes this substantially.

Section 25 of the interim constitution obliges the state to provide legal aid to an accused person where the person would be subjected to a "substantial injustice" were the legal services not provided.

If there is any danger of a person being sentenced to imprisonment without the option of a fine, he is automatically entitled to legal representation.

The question asked is simply: Can the accused afford to engage the services of an attorney or not?

Until now an accused wishing to obtain legal aid would have to pass a means test, which still applies in civil matters.

The term "indigent" means a single person whose calculated monthly income does not exceed R600.

'Calculated income' is someone's income after deductions for income tax, UIF, medical and pension payments.

If the person is married, calculated income increases to R1,000 for the couple, with an additional R150 per dependent child.

What is the Legal Aid Board?

It is a statutory organisation, established by its own Act of Parliament in 1969 and funded largely by central government.

The Legal Aid Board has 12 members, one of whom must be a judge of the Supreme Court and who acts as chairman. The others are members of the legal profession or otherwise knowledgeable in legal aid matters.

The administration of legal aid is done in Pretoria although the board has 11 regional offices throughout the country.

What legal aid is available?

Legal aid is available for most legal problems, with a few exceptions.

It is excluded in civil matters such as defamation claims.

But otherwise any ordinary matter which comes before a court, including labour disputes, can qualify for legal aid.

Who can represent you?

In civil matters, the person suing has the freedom to choose his own attorney.

If the client does not have an attorney, legal aid officers have a list of qualified attorneys who are appointed on a rotation basis.

In criminal matters the appointment of attorneys has been done largely on a rotation basis.

How does one get legal aid?

In all major centres the board has its own offices manned by its own staff.

In the Cape Town area it has three offices.

There is also a legal aid officer at every Magistrate's Court.

The board also operates legal aid through law clinics established in cooperation with most universities and some non-governmental organisations.

How can one get more information?

Any legal aid officer will be able to answer any questions on the legal aid scheme.

The Legal Aid Head Office may be contacted in Pretoria on 012 341 8751.
Patricia de Lille

PAC wants 'Nuremberg' trials in South Africa

PAN-AFRICANIST Congress MP Patricia de Lille has rejected the Truth and Reconciliation Commission and has called for Nuremberg-style trials in South Africa.

Addressing more than 1,000 people at a rally in Guguletu yesterday, she said the commission was flawed and the PAC did not recognise it. Not a single member of the PAC or the Azanian People's Liberation Army would confess to the commission.

Mrs De Lille said PAC members should invade farms and take them by force.

She accused the government of corruption, claiming more than 36 provincial government cheques had mysteriously disappeared.

No benefits had been forthcoming from the government's reconstruction and development programme and people were becoming disillusioned.

She urged South Africans not to vote for empty promises in the local government elections.

"The honourable minister without portfolio should make an honourable exit," she said.

Her statement that housing policy was a disaster was greeted with applause. — Sapa.
SEXUAL HARASSMENT IS NOT TOLERATED. ALL EMPLOYEES OF THIS COMPANY ARE COVERED BY THE SAME POLICIES AND ARE EXPECTED TO COMPLY WITH THEM. SEXUAL HARASSMENT CAN OCCUR IN ANY WORK ENVIRONMENT AND CAN HAVE A SIGNIFICANT IMPACT ON THE WORKPLACE CLIMATE.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that creates an intimidating or hostile work environment. It can also include sexual harassment that occurs off-the-job, such as during company-sponsored events.

Sexual harassment can be both verbal and physical, and can include inappropriate touching, unwanted sexual comments, and other forms of sexual harassment. It can happen to anyone, regardless of gender, race, ethnicity, or other factors.

Sexual harassment can have a severe impact on the victim, causing stress, anxiety, and even depression. It can also have a negative impact on productivity and morale within the workplace.

If you or someone you know has experienced sexual harassment, it is important to report it to a supervisor or human resources representative. The company has a policy in place to address and resolve reports of sexual harassment.

Sexual harassment is taken very seriously, and the company will take appropriate action against anyone found to be engaging in sexual harassment.

But harassment can be fought.

BY MANAGER HEDGE, SENIOR

UNIVERSITY OF DUBIN,

LETS UNIFORMS OF PUBLIC

TECHNOLOGY CENTER
Proposed fees rule attacked

BY HELEN GRANGE

Laws allowing only lawyers to charge fees for legal services are being challenged by a Durban-based mediator, who has taken the matter to the Constitutional Court.

Stan Posthumus of the Mediation Foundation contends in documents before the court that provisions in the Attorneys Act and a rule in the Uniform Rules of Court effectively close the legal profession off to non-practitioners.

Discriminatory

This state of affairs, he says, is discriminatory and unconstitutional in terms of the right of an individual to free economic activity.

The offending provision in the Attorneys Act reserves to attorneys the right to draw up civil court documents. Says Posthumus in his affidavit, "The effect of this provision is to discriminate against me and all other individuals who cannot afford to pay for the services of an attorney to draw up court documents for use in a civil court."

It also allows a monopoly for the attorneys," he adds. "The constitutional right to equality, fairness and justice was also offended by the provision in that the individual's right to free choice regarding who can be consulted and paid for assistance with civil cases was limited.

Posthumus was convicted in 1993 in the Natal Provincial Division of contravening the Attorneys Act on the grounds that he was charging for mediation services in divorce matters, despite having no LLB degree.

After completing his degree last year, Posthumus applied for admission to the Society of Advocates but was rejected because of the convictions against him.

'I'll emigrate'

Posthumus said that if the Constitutional Court did not adequately address the current 'discriminatory and inaccessible' legal system, he would leave the country.

The Constitutional Court has yet to set a date for the hearing.
Invade farms — De Lille

Cape Town — PAC MP Patricia de Lille yesterday rejected the Truth and Reconciliation Commission and called for Nuremberg-style trials in South Africa.

Addressing more than 1 000 people at a rally in Guguletu, Cape Town, she said the commission was flawed and the PAC did not recognise it.

Not a single member of the PAC or Azanian People's Liberation Army would confess to the commission, she said.

De Lille said PAC members should invade farms and take them by force.

She accused the Government of corruption, claiming more than 36 provincial government cheques had mysteriously disappeared.

De Lille said no benefits had been forthcoming from the Government's Reconstruction and Development Programme and people were becoming disillusioned.

She urged South Africans not to vote for empty promises in the local government elections.

"The honourable Minister without Portfolio should make an honourable exit," she said, adding that Minister Jay Naidoo employed countless white consultants who were unproductive.

De Lille's statement that SA's housing policy was a disaster was greeted with applause.

PAC general-secretary Maxwell Nedzvhamane said in a letter read on his behalf that the PAC had no intention of forming an alliance with the Inkatha Freedom Party, but would offer it moral support. — Sapa