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# Windows into a dark and gloomy past

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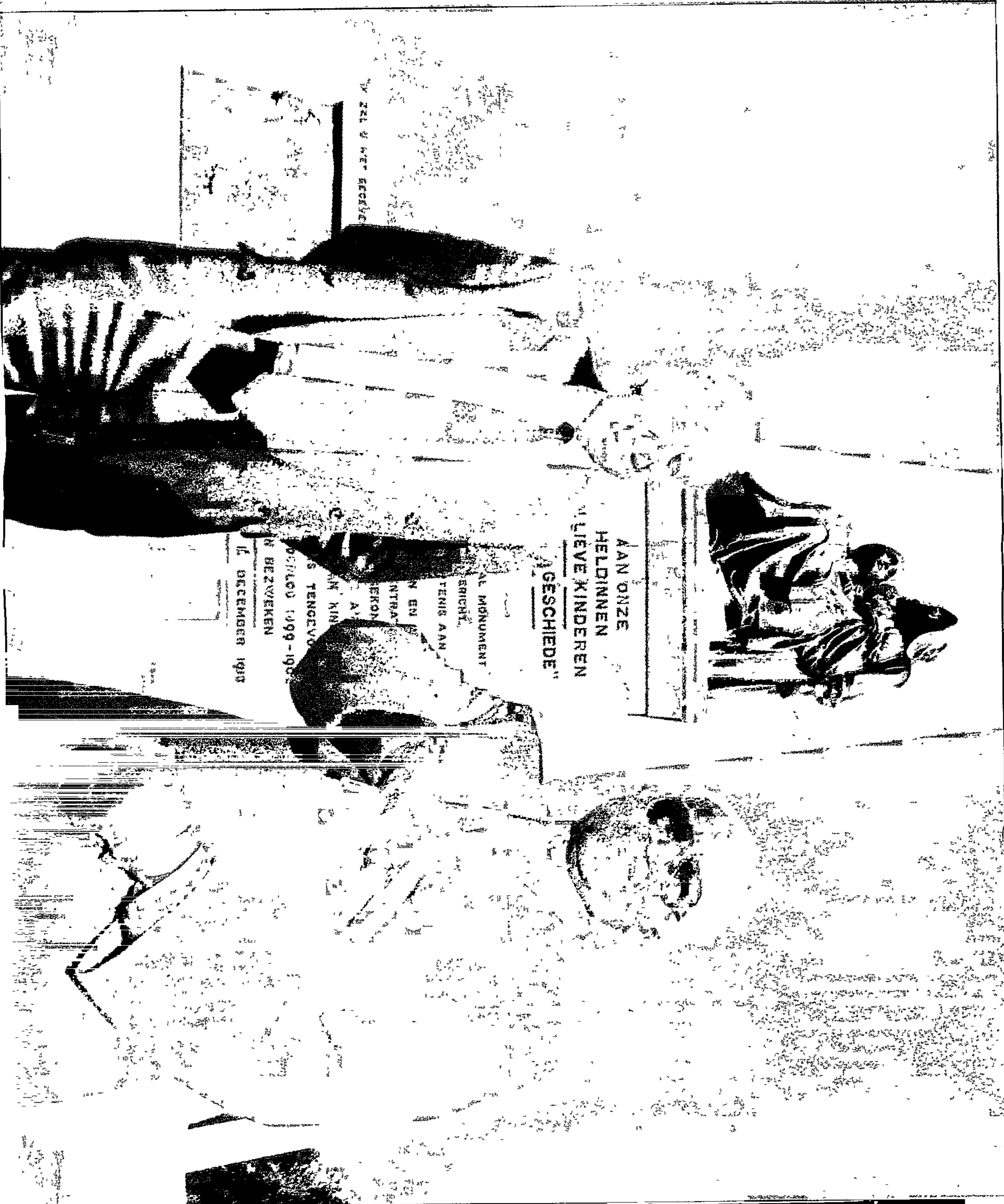
Forged as a compromise in the Codesa crucible of intense and often acrimonious political debate, it is inevitable that the Truth and Reconciliation Commission will continue to attract the attention of sharp-eyed critics and unconvinced sceptics – as well as the support of enthusiastic torch-bearers. While some of the criticism is undoubtedly valid – like any big organisation, the Commission is not immune to inefficiencies, tensions and human frailties – there must be an understanding of its preferred strategy, say those close to its heart. The commission's way to truth and reconciliation is through the deliberately structured opening of many windows rather than through a handful of spectacular, headline-grabbing revelations, commission deputy-chairman Alex Boraine suggested to Staff Reporter JOHN YELD.

**T**HE Truth Commission is opening a series of windows in a very dark and gloomy house. That's the metaphor which deputy-chairman Alex Boraine uses to explain how the commission is going about its task of revealing the truth about gross human rights violations in South Africa between March 1 1960 and December 5 1993, and – equally importantly – of recommending steps to ensure that such abuses never occur again.

Between April, when it really got going, and now, the commission has concentrated almost entirely on hearing testimony from victims of abuses, and the revelations of perpetrators – the "fireworks" which many observers were waiting for – have been conspicuous by their absence.

Is this a sign that the commission has lost its way? Or that it's battling to make headway?

Dr Boraine acknowledges the lack of testimony from perpetrators, but he's adamant this will materialise in due course – either voluntarily or through coercion. "If you think of the commission as a 'once-off' idea, then such crit-



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**PAST AND PRESENT: Truth Commission deputy-chairman Alex Boraine and chairman Archbishop Desmond Tutu visit the Vrouemonument in Bloemfontein during the TRC's sitting there.**

cism would be valid. But if you see it as a process, where we set ourselves certain objectives almost from day one, I think we've met those objectives," he said.

When the commissioners first sat down to plan their work, a number of options were open to them.

"A lot of people told us to start with the institutions and the politicians, and to get all the information that was already available from places like the Legal Resources Centre.

"But we turned away from that as an act of deliberate policy, choosing instead to say the first people who should be heard were those who have never been heard before.

"Political parties are always in the news, perpetrators are always in the news, there is always speculation surrounding them.

"But the powerless, the voiceless, have never been heard, and we felt very strongly that we should start there."

From the outset, the commission had also stressed that its second priority would be amnesty applications, taking into account the requirements of the Truth Commission Act that specified priority had to be given to those in custody.

The first two successful amnesty applicants were released on Friday last week.

Once that had been established, the commission would start approaching other people who

could help it in its quest for truth, Dr Boraine said.

"The vision we had was to constantly open windows in a very dark and gloomy house.

"The first window was people who have never been heard before, the second was people in jail and a third was the perpetrators.

"We always said we hoped perpetrators would make use of the Act's amnesty provisions, but if they didn't, then we would have to find other ways of securing information.

"So that's been part of the process. It's not a question of us throwing our hands up in horror and saying 'Oh my God, what next?' It's a question of bringing the next phase of a long process into operation."

Another "window" was that of the submissions of the political parties. "Here too many people have totally overlooked that this is also a process - a two-step process.

"They have judged all the submissions on only the first part of the process, which was the first hearing in the Good Hope Centre. It's when we bring these political parties back for a second session that the really probing questioning will take place. That will obviously be a great deal tougher."

The commission had also held

discussions with the Ministers of Defence and of Safety and Security, and had told them it wanted separate submissions from them, which was being done. This was because it had anticipated the political parties' submissions being incomplete, Dr Boraine said.

"We said we weren't sure how much the politicians would include in their submissions, and this was just as well, because as you know Mr De Klerk made the disingenuous suggestion that his National Party was just the political arm and that the others in government were quite separate.

"This was rubbish, as I tried to say gently to him at that hearing."

The commission was in the process of opening other windows through its approaches to the medical profession and the judiciary, and wanted any other groups and institutions to approach it - such as the business community and the media, Dr Boraine said.

"I think we have a very good idea of where we need to get to.

"First, we need to know what happened, and then we need to get to those accountable. And in this regard, the people whose names have been mentioned so many times already in testimony to the human rights violations hearings, must

either apply for amnesty or we will subpoena them. Of that there's no doubt whatsoever."

Critics were also ignoring a major significance of the political parties' hearing, Dr Boraine suggested. "Who would have thought that you would have a former president (F.W. de Klerk) sitting there and explaining and acknowledging and apologising, however inadequate some people might think that was? It's a damn sight more than he's ever said before.

"And who would have thought that the 'president-in-waiting' (Thabo Mbeki) would sit there and explain what the ANC did and why they did it, and give us a list of names of people who were killed or assaulted or tortured or whatever?"

"Who would have thought that the Inkatha Freedom Party would agree to testify?"

"These are momentous events, and I cannot see a parallel anywhere in the world.

"So without protesting too much, those who feel we are now getting desperate and are lunging out just don't understand that we've had a strategy with a number of options which we're taking one by one.

"It's an incremental process, and we will continue that until we've completed our mandate."

# Four years on, Bisho massacre comes under TRC spotlight

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Pik Botha, Ronnie Kasrils and Oupa Gqozo among those to testify from Monday

BY DAISY JONES

Tomorrow is the fourth anniversary of the Bisho massacre, which claimed the lives of 29 people and wounded almost 200

The Truth and Reconciliation Commission will hear testimony related to the incident on Monday, Tuesday and Wednesday

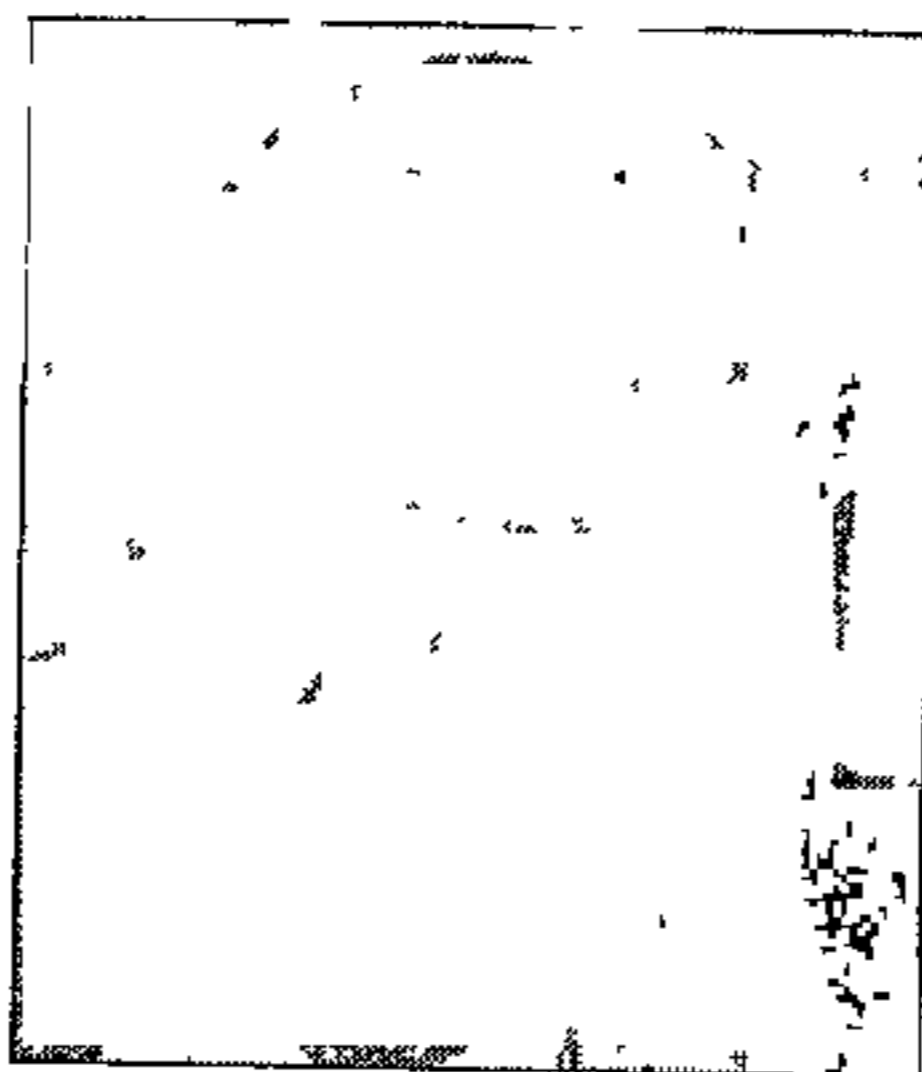
Among the witnesses to be called are former foreign affairs minister Pik Botha, ANC secretary-general Cyril Ramaphosa, Deputy Minister of Defence Ronnie Kasrils and former Ciskei ruler, Brigadier Joshua "Oupa" Gqozo

According to newspaper reports at the time, Kasrils, Ramaphosa, Chris Hanu (then SACP general secretary), Steve Tshwete (now Minister of Sport and Recreation), Gertrude Shope (current ANC MP) and about five other ANC-SACP-Cosatu alliance leaders led a group of about 80 000 marchers from King William's Town to Bisho at lunchtime on September 7 1992

**29 of the marchers were killed and almost 200 wounded**

When the marchers reached the SA-Ciskei border, which was heavily guarded by armed Ciskei Defence Force (CDF) troops, they were ushered by their leaders through a gap in the razor wire fencing which had been pulled across the road as the march approached the border

In terms of a ruling made by Ciskei magistrate D B Tali the previous week, marchers were prohibited from venturing further into Ciskei than the Independence



Signed treaty . Pik Botha

Stadium, just on the other side of the wire

Marchers entered the stadium. A car carrying ANC officials also entered, and left through a concrete exit tunnel facing Bisho

A group of breakaway demonstrators followed the car, with Kasrils in the lead

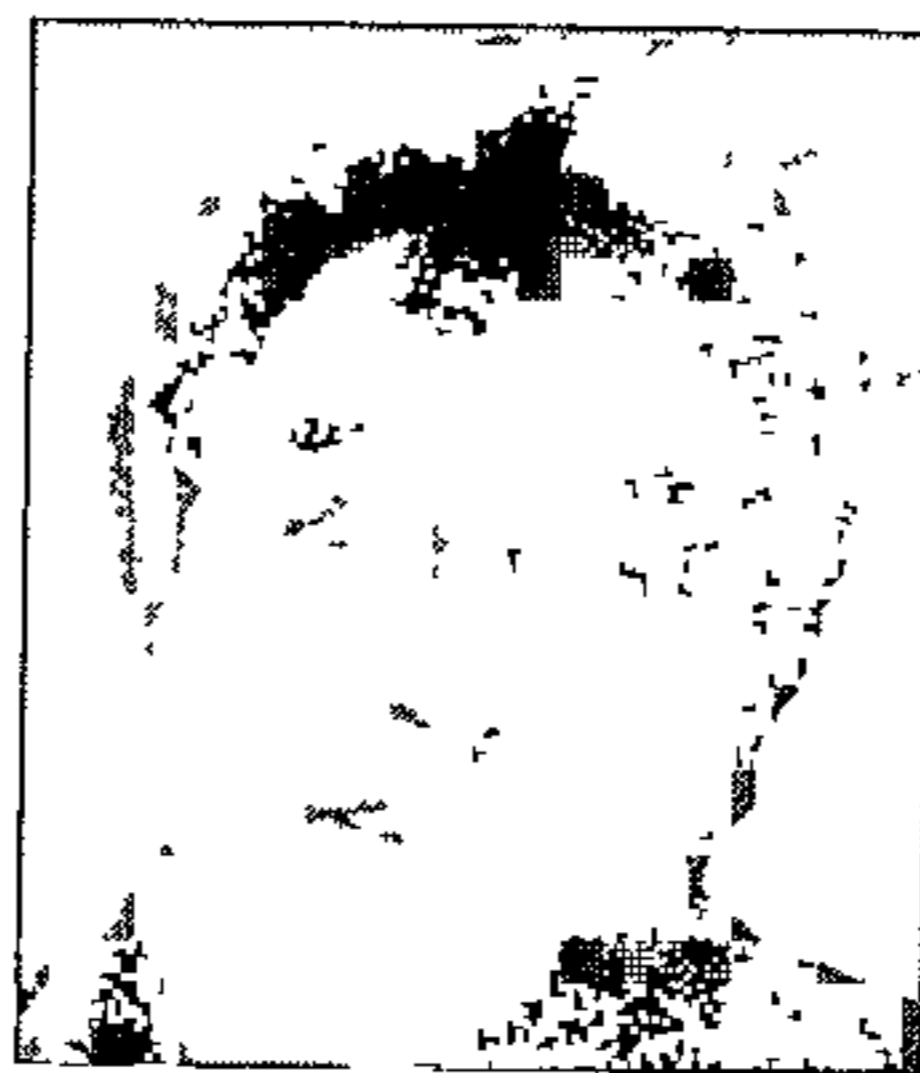
About 30m beyond the mouth of the tunnel, as Kasrils and his men, who were later described as "handpicked", dashed out from the stadium to make their apparently planned rush on Bisho, CDF soldiers opened fire

Many people lost their lives near the tunnel. Others were killed 300m away, at the break in the fence that was the front marchers' initial entry point to Bisho

The Goldstone Commission, which was appointed to investigate the incident, found that Ciskei's security forces had fired no warning shots above the marchers' heads, nor had they attempted to disperse the crowd with teargas followed by rubber bullets. And there had been no reason to justify almost two full minutes of rifle fire

Mr Justice R J Goldstone said the shooting by the CDF was morally and legally indefensible

Their conduct was "so disproportionate and deliberate that any mitigating factors there may have been are completely over-



'Handpicked'. Ronnie Kasrils

whelmed by the disregard for human life shown by the soldiers," he said

But Kasrils and other alliance leaders who were "responsible for the decision to lead demonstrators out of Bisho Stadium" did not escape Goldstone's attention

He said the ANC alliance should "publicly censure" the group who had led the crowd, "and thereby knowingly or negligently exposed them to the danger of death and injury"

The massacre was clouded with controversy

Eight of the 10 alliance leaders whose names were printed on a pamphlet publicising the march were known SACP members. Critics of communism at the time accused the SACP of controlling the ANC alliance, and deliberately sacrificing lives in order to derail the peace process

Their aim had been to overthrow Gqozo and heighten tensions between the ANC and NP, it was claimed

The NP in turn was accused of propping up the unpopular African Democratic Movement government of Gqozo

The year before the Bisho massacre, on April 27 1991, Pik Botha had signed a treaty with the Ciskei Council of State that allowed for more direct control by South Africa of the homeland's finances, and South African assis-

tance in maintaining law and order

Gqozo appointed a number of South Africans, including former SADF officers, to top positions, and his government was one of the eight political "parties" that sided with the NP at the Codesa talks

Ciskei's then commissioner of police, Brigadier Johan Viktor, and defence force chief, Brigadier Marius Oelschug, both present at the massacre, were South Africans and according to rumour, a former Vlakplaas commander and ex-SADF military intelligence officer respectively

Days before the massacre, at an NP national conference, Pik Botha said an NP alliance could win 51% of the vote, with the help of homeland leaders

The SACP said on the day of the march SAP troops who accompanied demonstrators from King William's Town "melted away" when the group reached Bisho, and commanding officer Brigadier Wynand van der Merwe from the SA Riot Police was lifted from the border by a

**Judge found shooting morally and legally indefensible**

helicopter, and only returned to the scene after the shooting

They said the troops' formation at the border had been practised beforehand, and according to an international publication which monitored military intelligence work, the SADF's MI department had sent a memo from Pretoria, which ordered the killings

The SADF vehemently denied prior knowledge of the CDF's intention to fire without warning

# Strike action hits KwaNatal courts

By CHRIS HLONGWA

THE KNIVES are out for the head of the former KwaZulu justice department, with magistrates, prosecutors and other employees going on strike tomorrow to demand that his head must roll

The call for the firing of justice ministry regional representative Vusi Ntshangase is coupled with another "non-negotiable" demand - that justice employees who were dismissed or forced to resign by the former homeland administration be re-instated.

The protest action by an estimated 5 000 employees could see about 30 magistrate's courts throughout KwaZulu-Natal coming

CP 1/9/96  
to a standstill, Themba Masinga, a prosecutor and secretary of the Ex-KwaZulu Justice Department, told City Press

In a strongly worded fax to Minister Dullah Omar, the employees demand that Ntshangase "be removed forthwith"

Among charges levelled against the senior official, are

- The victimisation of staff, arbitrary transfers and the failure to assess employee due for promotion

- The employment of unqualified people who are on friendly terms with senior officials

- That recommendations by a justice committee set up to attend to grievances have

been overruled or ignored

It has also been reliably learnt that over 100 people who it is said should have been promoted over the years only got the nod in the last two weeks after employees wrote a strongly-worded letter on August 13 to the justice department in Pretoria

And the payment of backpay - estimated in millions of rands in total and going back as far as four years ago - has been authorised since that date

A meeting between Omar's adviser and employees will be held in Umlazi on Tuesday

At the time of going to press Ntshangase had yet to respond to faxed questions

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# ANC leaders want rethink on hanging

BD 2/9/96

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CAPE TOWN — ANC national and provincial leaders yesterday recommended that the party review its policy on the death penalty as a possible way of addressing increasing crime and lawlessness.

Sapa reports that the call for an urgent review was made at a two-day party summit on peace, stability and security in Cape Town.

It was attended by cabinet ministers, national and provincial members.

Justice Minister Dullah Omar said it was "the view of the summit that the ANC, as a leading democratic force representing the will of the people, should not be afraid to reassess its position on the death penalty".

Delegates would recommend to the ANC's national working committee that the death penalty issue and the ANC's position should be reviewed as a matter of urgency. This was greeted by loud applause from the delegates.

The ANC is currently opposed to the death penalty as an appropriate sentence for serious crimes.

Speaking after his closing address, Omar said delegates were not saying they were in favour of the death penalty, but that the NEC should "revisit the matter. They must either restate ANC policy and explain why, or change its policy."

However, ANC MP Carl Niehaus stressed that the ANC was not saying that it would support the death penalty, but that delegates present had merely restated the intense debate in their constituencies about the matter.

"There is obviously a lot of discussion about it in our community and we in the ANC must be open to discuss it."

Should the national working committee believe a review was necessary, this would have to be discussed by the

party's policy forums.

NEC member and presidential aide Joel Netshitenzhe warned that "in the final analysis the Constitutional Court has interpreted that the death penalty is unconstitutional" based on the interim constitution's Bill of Rights.

He conceded, however, that the constitution could be amended should the ANC join opposition parties like the NP, Freedom Front and IFP in calls to reinstate the death penalty.

David Greybe reports that Netshitenzhe was at pains to play down any speculation that the ANC was about to reverse its position on the death penalty.

"The ANC has not called for a review," he said. Only the delegates at an ANC conference had.

The ANC had a duty to take into account "these calls from the rest of society" for the return of the death penalty to help deal with crime and lawlessness, and to consider whether it was necessary to reconsider policy.

Netshitenzhe said he did not think the ANC would change its policy on the death penalty. "That is my own sense of the matter."

He said reasons why the death penalty might not be brought back to help combat crime were that there was no certainty it acted as a deterrent, that the high level of crime in the country would result in "many, many executions", and SA's huge black/white wealth divide meant that most of those who would be executed would be black.

Asked what President Nelson Mandela's position was on the matter, Netshitenzhe said Mandela "concurs" with the ruling of the Constitutional Court against the death penalty.

Continued on Page 2

## Death penalty

Continued from Page 1

Omar also said that the Constitutional Court's judgment, which abolished the death penalty, meant that people who were on death row had effectively not been sentenced. "The state as the prosecuting authority must call for maximum sentences for people on death row," he said.

Delegates at the summit were of the view that there should be no short-term sentence or early releases and that life sentence would be the appropriate sentence.

Nearly 300 former death row in-

mates would be affected.

Ingrid Salgado reports that the NP welcomed the ANC summit's view and Omar's statement and called on Mandela to take the first step in amending the constitution to allow for the death penalty. NP media director Patrick McKenzie said the death penalty was not the only deterrent to crime but the majority of people were calling for its reinstatement.

The IFP also welcomed Omar's words but said it could comment fully only once the ANC made public its final position on the matter.

Gauteng provincial MP Musa Myeni said the reality of the high crime rate was "finally sinking in" within ANC circles.

# Support for ANC review of death penalty

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ANC to  
review death  
penalty

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between the Government and communities to combat the scourge would see the return of law and order in South Africa

Although summit recommendations will only be made public today, Omar broadly outlined some of the resolutions, stressing that these were not policy decisions

It was clear that legislation relating to the criminal justice system had to be reviewed, he said

"We need a rigorous re-examination of the law, to ensure that our legislation is adequate to combat crime"

This included the possibility of mandatory and minimum sentences for serious crimes to send a clear message from the ANC "that we can't allow criminality"

The intelligence service, "which is a very important element in any civilised society in the struggle against crime", had to be transformed, he said

In particular, ways had to be found to convert intelligence information to evidence so that effective criminal prosecutions could ensue

Delegates at the summit were also of the view that the causes of crime had to be dealt with

"If the ANC, as a liberation movement, is not prepared to address the socio-economic causes of crime, how can we expect that others will," Omar said

The ANC should therefore ensure that in mobilising people against crime, part of this mobilisation included the implementation of the RDP

## Other parties say ANC now accepts crime is out of control and urge Mandela to take steps to amend constitution

BY JUSTICE MALALA AND SABA

The decision by the ANC to reconsider its policy against the death sentence has been welcomed by other parties in Parliament

Their support will be necessary if the constitution is to be revised to reintroduce the death penalty

The Freedom Front says the recommendation by the ANC's top safety and security leaders indicates that "the ANC accepts that the Government is losing the battle against crime"

Renoster de Ville said yesterday the FF's position was that the death penalty was justified in some instances and it would support the ANC if it decided to reinstate the death penalty

And the National Party has urged President Nelson Mandela to take the first step in amending the constitution to allow for capital punishment as a deterrent, its spokesman Jan Bosman said yesterday

The recommendation announced yesterday is the ruling party's most radical yet in the fight against crime, following the Constitutional Court ruling that the death penalty was unconstitutional. The ANC leaders, who held a security summit in Cape Town over the weekend, want the national executive committee (NEC) to revisit the issue, on which it has so far sided with the

court.

The recommendation comes after two weeks of intense pressure on the Government to come up with solutions to a crime problem which Mandela has said is "out of control".

Speaking at the end of the two-day security summit yesterday, Justice Minister Dullah Omar said it was the view of the summit that "the ANC, as a leading democratic force representing the will of the people, should not be afraid to reassess its position on the death penalty".

The summit was attended by cabinet ministers, members of

Crime Initiatives

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provincial executive councils and leaders of ANC study groups on defence, safety and security, intelligence and defence.

The decision to make the recommendation was greeted by loud applause from delegates

Current ANC policy is opposed to the death penalty, and the party was vociferous in its opposition to the method in the past. Hangings were stopped in 1990 when the National Party introduced its political reforms, and no one has been executed in South Africa since then.

Omar said summit delegates were not saying that they were in favour of the death penalty, but that the NEC should revisit the

matter.

"They must either restate ANC policy, and explain why, or change its policy," he said.

Senior ANC leaders present at the summit tried to play down what appears to be a radical departure from party policy.

MP Carl Niehaus stressed that the ANC was not saying that it would support the death penalty, but that delegates had merely restated the intense debate in their constituencies about the matter.

"There is obviously a lot of discussion about it in our community and we in the ANC must be open to discuss it," he said.

NEC member and presidential aide Joel Netshitenzhe warned that "in the final analysis the Constitutional Court has interpreted that the death penalty is unconstitutional" based on the interim constitution's Bill of Rights.

He conceded, however, that the constitution could be amended should the ANC join opposition parties such as the NP, the Freedom Front and Inkatha Freedom Party in calls to reinstate the death penalty

Safety and Security Minister Sydney Mufamadi told the summit on Saturday that one of the Government's greatest challenges, and an urgent political priority for the ANC, was the reduction of crime

Omar said a close partnership

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# Ex-generals will testify before TRC

By Waghied Misbach  
Political Reporter

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Top cops and military to reveal their part in apartheid abuses

**T**OP FORMER South African Defence Force and South African Police officers are set to reveal their role in human rights abuses during successive apartheid governments to the Truth and Reconciliation Commission by September 15 at the latest.

On Friday TRC commissioners met former generals Johan Coetzee, Johann van der Merwe and Mike Geldenhuys, who assured them they would testify on their role in politically motivated human right violations. The three were to be subpoenaed today, along with retired generals Basie Smit, Krappies Engelbrecht and Johan le Roux.

Although they refused to comment on their meeting with the TRC,

it is expected that they will represent the top leadership of the former SADF and SAP.

The generals were expected to make a submission after National Party leader FW de Klerk told the TRC two weeks ago that his party would only take "political responsibility" for past human rights abuses. The generals and other top army and police leaders would fill in the details. TRC chairman Archbishop Desmond Tutu said the generals would make a "voluntary omnibus admission" and reveal about 50 incidents. He said the generals would represent all seven former police commissioners and many policemen

The generals have already supported 22 policemen who applied for amnesty earlier this year, and who admitted to a number of human rights abuses.

However, the TRC can still subpoena anyone.

There has been increasing speculation that one of the names on the list, to be announced by TRC investigative unit head Mr Dumisa Ntsebeza today, is that of former state president PW Botha.

The commission has remained tightlipped about the list all week, but did indicate last week that Botha could be subpoenaed if his evidence was required.



# Tutu's tough mission

(252) *rowe*  
2/19/96

**A**RCHBISHOP DESMOND TUTU IS not day-dreaming when he stares at the ceiling during Truth and Reconciliation Commission hearings, he is fighting to hold back the tears

These tears flow from listening to the anguish of witnesses. Much of their continuing pain arises from a blackout of the truth in apartheid South Africa.

Tutu, the TRC chairman, would be the first to agree that the best way to dry the tears would be to expose the truth since many witnesses are still desperate to know what happened to their loved ones.

"We have many pleas who killed my son and why? If a loved one is missing, what happened? Is he alive or dead? If he is dead, where are his remains?"

"We have decided to subpoena people to begin to answer these pleas. We do not have too much time and need to short-circuit the process," Tutu has said in an interview.

He says the TRC was hoping those with personal knowledge of atrocities would come forward voluntarily and tell their stories.

"We took a deliberate decision to emphasize first and foremost victims and survivors, and we thought the amnesty provisions would unlock their secrets. But it has not yet done so to any noticeable extent."

## Short shelf life

Tutu and his team of commissioners and committee members – are conscious of the TRC's short "shelf life" and their need to unravel the truth sooner, not later.

"By the time we are running smoothly, it will be time to be unwinding. I feel a little sad (about this) but agree entirely that this type of work should not be allowed to drag on."

Tutu says one of the TRC's strengths is a superb staff dedicated to their task. And he commended his deputy, Dr Alex Boraine, for the role he has played.

There have been tense moments in the TRC, particularly over security leaks, but there has not been the explosiveness he had anticipated.

Another positive aspect was the incredible "nobility of spirit" of the survivors of gross human rights violations.

"I can't get over how 99,9 percent of witnesses come before the commission and, despite horrendous suffering, say they are ready to forgive. This is an enormous plus."

Tutu says the opportunity given to so-called ordinary people to appear before the TRC has contributed to healing in the country.

Many witnesses have said a burden was lifted from their shoulders after appearing at hearings. One victim from Beaufort West said the TRC had

What has the Truth and Reconciliation Commission achieved so far – and what can it still achieve? How much time is left? Features writer **Claire Keeton** talks to Archbishop Desmond Tutu...



Archbishop Desmond Tutu ... the Truth Commission has contributed to healing in South Africa.

given him back "a key to his heart"

"Even if there was just one such person, we would be more than justified in what we were about."

In addition, the TRC has helped to remove the scales from the eyes of many – whether they were wilfully blinded or blinded by the system – through the devastation that has been revealed.

He welcomes the apologies from political parties for the damage they have done. "Where else in the world have you heard of a former head of state coming and saying 'we are sorry'?"

"The horror (of the violations) has hit most of us. It was almost as if we were dealing with statistics before and now there are real people of flesh and blood sitting in front of us."

Tutu says it was extraordinary what modest expectations most witnesses had of compensation from the TRC.

"We have no way of adequate compensation. Reparations will be symbolic. They will be an expression that we are very sorry but they will not be substantial."

"We mustn't end up creating expectations which are not fulfilled," he warned, adding that if the TRC failed it would have disastrous consequences for South Africa.

The Archbishop admits the TRC cannot offer "retributive justice" to witnesses. They may have to pay the price for freedom twice: firstly through their suffering and secondly, because the perpetrators will not be found guilty and sent to jail.

But there will be a "restorative justice" in line with the tradition of African jurisprudence.

"Someone may have to say they are murderers and that might be more traumatic (than prison). Their family and community might not handle the truth."

Tutu says he finds it painful to treat both sides of the apartheid conflict evenhandedly but is helped by his "theology of grace."

He feels the black community is finding healing and reconciliation through the TRC. However, he feels unable to assess the impact on the white community.

## Benefited from apartheid

"They may not be able to deal with the fact that they benefited from having a white skin. Acknowledgement is all that is required. A denial just adds to the pain."

He hopes to improve coordination between the human rights violations and amnesty committees although they "have not been at odds too much."

Tutu says the TRC was one of his most draining assignments, emotionally and physically. "Alex and I need to provide pastoral concern to each of the four offices and find out where people are."

A pastor at heart, he plans to spend a day in each region listening to staff concerns and checking on their medical and psychological health.

He says TRC members are soaking up so much anguish they needed an outlet or it would cause havoc in their lives.

He sometimes bites his hand to restrain his tears during hearings.

The TRC has finally exposed him, and South Africa, to the human cost of the country's violent past.

"I knew it in my head but now I know it in my heart and guts – and it's tough."

# ANC rethink on the death penalty

*Summit on 2/9/96 (252)*

**By Waghied Misbach**  
Political Reporter

**I**N A DRAMATIC policy shift, the African National Congress says it is prepared to review its stance on the death penalty

Speaking in Cape Town yesterday at the end of a major two-day summit on peace, stability and security, Justice Minister Mr Dullah Omar said the ANC would consider reviewing its policy on the death penalty in the interests of the people of the country and the fight against crime

Omar, who is known to be personally opposed to bringing back legislation on capital punishment, said "It is the view of the summit regarding the death penalty that the ANC, as a leading democratic force representing the will of the people, should not be afraid

## High crime rate forces review of party stance on capital punishment

to assess its position on the death penalty"

Speaking before several Cabinet Ministers and other top Government officials, he said the summit had recommended that the ANC's national working committee should as a "matter of urgency" look at the issue of the death penalty

### New position

The ANC's new position on the issue comes in the wake of the spiralling crime rate in South Africa and the formation of groups such as People Against Gangsterism and Drugs

The summit also discussed a number of issues, including commu-

nity policing, a new role for security companies in helping to combat crime, the vexing question of revamping the criminal justice system and formulating a new prosecuting policy

It is expected that a number of proposals will be made after the conference for discussion and endorsement by the ANC's NEC and will probably be turned into legislation later this year

The Government has already introduced a batch of new legislation before Parliament - a collection of Bills called the Proceeds of Crime Bill - aimed at strengthening its fight against crime

# ANC cool towards death penalty call

Staff Reporters

(252) ARG 2/9/96

IT was highly unlikely the African National Congress would change its policy on the death penalty, spokesman Carl Niehaus said today

Mr Niehaus branded as incorrect reports that the policy would be reviewed after the two-day party summit on security and peace at the weekend

He said Minister of Justice Dullah Omar had taken note of calls from the community to reinstate the death penalty and this needed to be discussed by the ANC's National Executive Committee, scheduled to sit in November

"We are not treating this as anything out of the ordinary. It is highly unlikely the ANC will change its position," he said

Mr Niehaus said he was against the death penalty

The spokesman for the president's office, Parks Mankahlana, said the government would not review its decision on the death penalty unless the constitution was altered

"The question of the death penalty was decided by the Constitutional Court on the basis of the provisions of the interim constitution. Until the constitutional position is altered and the Constitutional Court takes a different position, the status quo will prevail," he said

The ANC decision to refer

its stance on the death penalty to its NEC has met with mixed reactions from other parties

The National Party and the Freedom Front welcomed the move, while the Democratic Party criticised the ANC for sending out "mixed signals"

Anna van Wyk, speaking for NP leader F W de Klerk, said the party welcomed the new "realism" shown by the ANC

"It is a pity it took them so long though, because a lot of damage has been done to the economy of the country and investor confidence, as reflected in the latest international tourism figures," she said

The NP did not believe the death penalty was the only answer to the state of lawlessness. "Good and proper government would go a long way towards stimulating domestic and foreign confidence"

Freedom Front spokesman Rosier de Ville also welcomed the ANC's willingness to re-examine its stance on the death penalty, calling it "an acknowledgement that the government is losing the fight against crime and is powerless to halt the current wave of serious crime"

DP spokesman Robert Desmarais lashed out at the ANC for sending conflicting signals to the public. He said the ANC had to realise it was the government and had to lead from the front, not through a "public talk shop"

# Countdown to amnesty cut-off

(252) CJ 2/9/96

## THE TRUTH and Reconciliation

Commission's initial attempts to  
caress — rather than coerce — the



facts behind the  
apartheid-inspired  
conflicts of the past  
have not been huge-  
ly successful. But  
there are signs that  
it is on the thresh-  
old of a more  
aggressive phase.

This is the first in a series of three  
articles by **ROGER FRIEDMAN**,  
which examines the commission's  
work thus far, its hindrances,  
strengths and the promise it holds.

**D**EFIANT apartheid operatives who  
refuse to have anything to do with  
the Truth and Reconciliation Com-  
mission stand to gain nothing from their  
stubbornness.

The accusations of political or racial bias  
they level at the commission can only stem  
from their never having attended any of its  
sessions, or their not understanding the  
magnitude of the political compromise it  
represents between those wanting retribu-  
tion and those seeking a blanket amnesty.

They refuse to accept that more black  
than white victims of the apartheid conflict  
are appearing at the commission's public  
hearings because there were more black vic-  
tims; they probably do not know that the

law governing the commission does not dis-  
tinguish between perpetrators of human  
rights violations on either side of the  
apartheid struggle, and they evidently don't  
acknowledge the necessity of creating some  
national unity in our fledgling democracy.

Their reluctance to approach the com-  
mission voluntarily, to exchange disclosure  
for amnesty, represents the biggest single  
obstacle to it successfully uncovering the  
truth behind the litany of gross violations of  
human rights, which characterised the  
apartheid conflict.

If their attitude persists they can only  
lose. We will all lose. The clock is ticking for  
perpetrators of human rights abuses. There  
are only about 100 days left, until the  
December 15 amnesty application cut-off  
date, for them to ponder whether to go the  
commission-route or take their chances with  
the criminal justice system.

But the clock is ticking for the commis-  
sion too. A profitable 100 days for perpe-  
trators' lawyers, no doubt, but 100 days in  
which the commission will also have to reap  
some profit if its quest for truth is not to  
degenerate into a heard-it-all-before gambol.

This explains the noises emanating from  
the commission about the need for a new,  
more aggressive approach. Which, in turn,  
explains the on/off talk of issuing subpoenas  
to a number of senior apartheid security  
force officers. The commission has tried the  
gentle, patient, understanding — some  
might say liberal — approach in the hope  
that former operatives would recognise these  
traits and flock forward with their amnesty  
applications.  
It has tried being all things to all people

Issuing invitations rather  
than subpoenas, trying to  
work with, rather than  
against, attorneys-general,  
and hearing as wide a vari-  
ety of cases, involving as  
wide a variety of victims as  
possible, during the pro-  
ceedings of its Human  
Rights Violations Com-  
mittee.

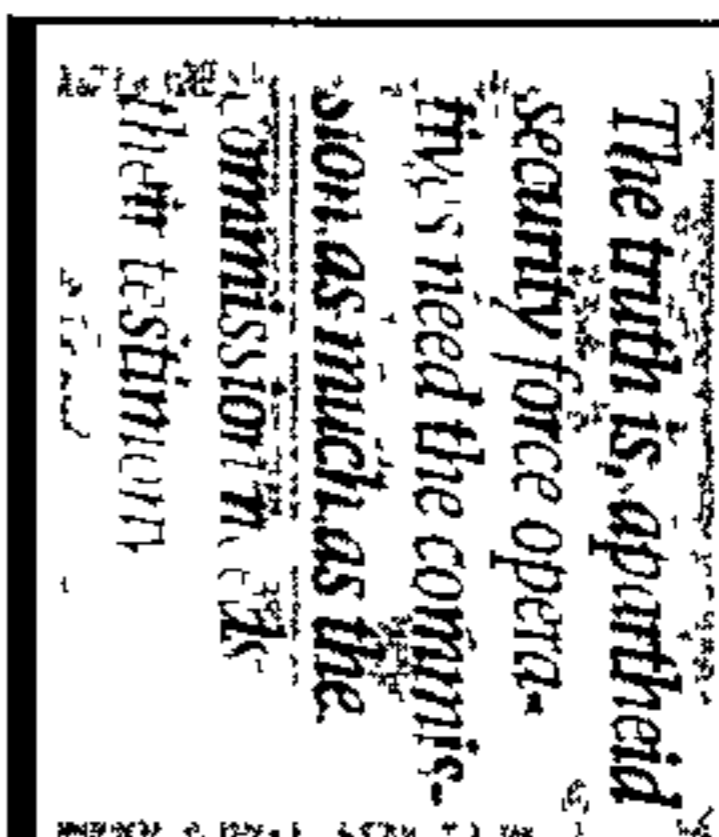
It is, after all, a statuto-  
ry body which evolved from a political com-  
promise between former sworn enemies.

But there has been no flocking to the  
Amnesty Committee, other than by thou-  
sands of prisoners claiming to have been  
politically-driven to commit an assortment  
of grisly crimes.

The truth is apartheid security force oper-  
atives need the commission as much as the  
commission needs their testimony. If they  
don't apply for amnesty they run the risk of  
going to jail. And if they go to jail they will  
probably never disclose the full truth of their  
actions.

Does that scenario allow any room for  
forgiveness, reconciliation, nation-building  
or restoring dignity? They might not like one  
another, but it seems it would be in every-  
body's interest that some sort of meaningful  
relationship is cultivated between commis-  
sion and operatives.

If the commission was hopeful that sub-  
missions by political parties would fill in  
some of the gaps, regarding the giving of  
orders and political accountability for excess-  
es committed between 1960 and 1993, those  
hopes were dashed when National Party



leader Mr FW de Klerk  
suggested that com-  
manding officers  
would have to  
account for their sol-  
diers' actions.

During the sub-  
mission presented by  
Deputy President  
Thabo Mbeki, the  
ANC made it clear  
that it viewed the  
commission's ability to determine political  
accountability for specific security force  
actions as being of paramount importance.

Which brings us back to those 100 days.  
If the commission is to become more  
assertive, it might subject the politicians to  
some rigorous cross-examination when they  
return, possibly this month, to answer ques-  
tions arising from their submissions.

Obviously, it will hope to gain as much  
truth as possible from the "voluntary sub-  
mission" by former police generals,  
announced at the weekend after interven-  
tion by Mbeki to prevent their being  
subpoenaed.

Although the commission has hummed  
and hawed over issuing subpoenas in the  
past, chairperson Archbishop Desmond Tutu  
has emphasised they would never be issued  
to punish or seek revenge.

Rather, they would be used to "get as  
much of the truth as possible" by carefully  
selecting candidates to subpoena. In this way  
the commission would hope to prompt  
more amnesty applications.  
The police generals' submission aside, the  
coming weeks are also expected to feature a

submission from a group of high-ranking  
soldiers, some of them retired. It should be  
remembered that submissions differ from  
amnesty applications in that in order to  
qualify for amnesty, applicants have to be  
judged to have made full disclosures.

At least one high-profile amnesty appli-  
cation — that of Dirk Coetzee and his co-  
accused in the Griffiths Mkenge murder — is  
on the menu, which could have a ripple  
effect leading to further applications.

And let's not forget the matter of recent-  
ly-convicted mass murderer, apartheid oper-  
ative Eugene de Kock, who is expected to  
start spilling the beans when he takes the  
stand in Pretoria later this month to speak in  
mitigation of sentence.

Whatever he says could result in a surge  
in demand for amnesty application forms.  
De Kock himself intends applying for  
amnesty.

The bottom line is the commission needs  
to communicate the fact that the vast major-  
ity — some suspect all — amnesty applicants  
who are found to have been politically moti-  
vated and to have made full disclosures  
regarding their crimes WILL BE GRANTED  
AMNESTY. Amnesty means they are indem-  
nified for life from criminal or civil action.

It is said that many who are considering  
applying for amnesty are holding back, wait-  
ing for the Amnesty Committee to show its  
hand.  
Many victims of horrific abuses appear-  
ing before the commission have expressed a  
willingness to confront and forgive their for-  
mer tormentors.  
Perhaps these next 100 days might be a  
good time to put this to the test.

## CRIME SUMMIT ASKS FOR REVIEW

# Uproar over ANC death penalty call

**AN ANC SUMMIT'S** call for the party to review its policy on the death penalty is likely to win the support of South Africans who see it as the ultimate deterrent, but will spark furious debate, Political Writer **HENRY LUDSKI** reports.

**A**N ANC summit's surprise resolution calling on the party to review its policy on the death penalty has drawn fierce opposition from some members

The recommendation — announced yesterday at the end of the two-day summit in Cape Town on peace, stability and security — was applauded loudly

The death penalty had been presented to ANC national and provincial leaders as a possible answer and ultimate deterrent to rampant crime and lawlessness

Minister of Justice Mr Dullah Omar said "it was the view of the summit that the ANC representing the will of the people, should not be afraid to reassess its position (on) the death penalty"

It is the first time the ANC has shown signs of willingness to depart from its strong stance against the death penalty

Several ANC cabinet ministers have threatened to resign if this

position is ever reversed

"Opposition to capital punishment is a bedrock of ANC policy," a minister said "I'm surprised that the proposal was even considered because there is no possibility of the party's rethinking its position"

The conference brought together influential ANC committees that are studying such issues as policing, crime, defence, prisons and intelligence. The death penalty and abortion remain the most contentious issues

The ruling a year ago by the president of the Constitutional Court, Mr Justice Arthur Chaskalson, that the death penalty was unconstitutional has not blunted calls for it to be reinstated

In a recent survey, 81% of people questioned in the Western Cape supported its reinstatement

Although the summit's resolution is likely to find support among the growing number of South Africans who consider it one of the most effective deterrents against

## (252) 2/9/96 Laws and rulings

- Death penalty allowed for under the Criminal Procedures Act
- Between 1910 and 1987 4 110 prisoners were executed
- 1990 — then President F W de Klerk imposes a moratorium on hangings
- 1995 — Constitutional Court president Mr Justice Arthur Chaskalson rules that capital punishment is **unconstitutional**
- 1996 — The **Criminal Law Amendment Bill, deleting all references to the death penalty, is scheduled to go before Parliament.**
- An estimated 450 prisoners sentenced to death and transferred from death row, are awaiting resentencing pending legislative changes

crime, it will take more than public pressure to bring about a change

Even if the ANC lobby persuades the ANC to revise its stance, reinstating the death penalty would require a two-thirds majority in Parliament to pass it into law

The ANC would then face a tough battle getting the legislation past the Constitutional Court

Omar said the Constitutional Court's ruling abolishing the death penalty meant, in effect, that people on death row had not been sentenced. They had been transferred from death row, but the courts had yet to resentence them

The socio-economic causes of crime had to be addressed and legislation tightened, Omar said

"We want to send a clear signal from the ANC that we cannot allow criminality to prevail. The death penalty is an issue of concern to communities throughout our country. We are saying it has to be discussed"

Delegates to the summit believed there should be no short sentences or early releases and that life sentences would be appropriate. Legislation should convey the clear message that serious crime would not be tolerated

# DP's Gibson slams ANC death penalty turnabout

BD 3/9/96 (252)

Wyndham Hartley

CAPE TOWN — The DP has attacked the ANC and the NP for "playing politics" with the death penalty after an ANC conference on crime at the weekend urged the party's leadership to review its policy on hanging.

The conference asked the ANC's national executive committee to review whether the death penalty should remain outlawed.

Yesterday ANC spokesman Carl Niehaus said the conference had not recommended that the death penalty be reintroduced.

DP justice spokesman Douglas Gibson said the ANC did not know what it was doing. He said no sooner had Justice Minister Dullah Omar announced the ANC was reconsidering its position on the death penalty than Niehaus was announcing that this did not mean the policy would change.

"The NP, too, plays up to the public by asking for the reimposition of the death penalty, hoping the public will forget that it was the NP which stopped hangings and which failed to make the death penalty a sticking point in the constitution," Gibson said.

Gibson said while there was overwhelming public support for the death penalty, it had to be

remembered SA's major problem was its failure to arrest criminals and bring them to court.

The courts also failed to prosecute crimes properly and "the chances of someone who commits a crime actually being punished are remote." The criminal justice system needed to concentrate on arrests, convictions and appropriate punishments, because one did not hang people except for the most serious "aggravated" crimes.

"While the possible reimposition of the death penalty is being studied and considered, the fight against crime must be intensified," Gibson said. Management problems in the SAPS and justice department must be solved and the deterrent of an efficient criminal justice system re-established.

Gibson's statement came as members of the ANC attempted to downplay the call from its weekend conference. If the ANC decides to reimpose the death penalty, the constitution will have to be changed if the Constitutional Court refuses to certify it. A formal amendment to the constitution would have to be approved by two-thirds of Parliament.

Deborah Fine reports that police commissioner George Fivaz welcomed the call emanating from the ANC, saying the step recog-

nised the importance of "harsher and realistic" punishment for violent crimes such as murder and hijacking. However, Amnesty International yesterday expressed its "dismay", saying the government was being "sidetracked" from its human rights reforms by the public and other political parties who wanted "revenge for the high levels of unacceptable crime".

Amnesty said SA society could not be "further brutalised by institutionalising state-sanctioned murder." The death penalty was not a deterrent, it said.

Fivaz said yesterday while he and the SAPS fully accepted human rights principles, there was a public perception that "human rights apply only to criminals".

This perception threatened to erode the credibility of the SAPS, the courts and the prisons as the public felt that criminals were "literally getting away with murder".

Appropriate punishment for criminals was also crucial in maintaining SAPS morale in the fight against crime.

Fivaz also welcomed recent steps by Omar and Correctional Services Minister Siphon Mzimela to impose longer jail sentences, tighten parole conditions and restrict bail for suspects under certain circumstances.

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# ANC divided over reintroduction of death penalty

By Justice MALLALA  
Political Staff

The ANC has moved swiftly to stem the rising furore over its security leaders' call for a review of the death penalty.

The review plan, taken in the face of spiralling crime, has prompted condemnation from human rights organisations. Various political parties, and National Police Commissioner George Fivaz, however, welcomed the initiative, saying it showed an appreciation of the crime problem in the country.

Detailing its peace and security summit's resolutions in a statement yesterday, the ANC took a softer stance than when delegates

at the Cape Town conference applauded Justice Minister Dullah Omar's announcement that the party's national executive committee (NEC) would be asked to review the policy position.

It said the delegates had emphasised that the time had come "to act harshly against criminals, and that the velvet glove must be removed".

"It was, however, also emphasised that this must be done with due respect to our human rights culture and the various provisions of the constitution. It was in this context that the often-heard call from some sectors of the public, that the death sentence must be reintroduced, was noted by delegates.

"The summit recommended that the NEC should discuss these calls and decide whether the ANC's opposition to the death penalty should be reassessed.

"There was, however, no recommendation from the summit that the death penalty should be reintroduced," it said.

MP Carl Niehaus said it was "highly unlikely" the ANC would change its policy on the death penalty. "We are not treating this as anything out of the ordinary. It is highly unlikely the ANC will change its position," he said yesterday, adding he was personally against the death penalty.

But the call for a review by the ANC's own security ministers has thrust the issue into the forefront

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of public debate.

And the process to adopt the constitution could provide supporters of the death penalty with an opportunity to renew their constitutional challenge.

The death penalty was suspended in 1990. Last year the Constitutional Court ruled it unconstitutional. Should the court refer the final constitution back to Parliament for the redrafting of any clauses, it is possible some political parties and some lobby groups will use the chance to reopen the debate over the right to life guaranteed in the Bill of Rights.

The court is expected to give its ruling on the final constitution this week. To change the clauses affecting the death penalty in the inter-

im constitution's Bill of Rights, parties in favour of the penalty would need a two-thirds majority in the Constitutional Assembly - which they cannot get without the ANC's support.

However, the ANC cannot get the final constitution adopted without the support of the National Party or the smaller parties, because on its own it does not have a two-thirds majority. A stalemate in the constitutional negotiations can then lead to a referendum.

Lawyers for Human Rights (LHR) and Amnesty International yesterday slammed the call for a review.

Fivaz said it recognised the importance of harsher punishments for violent crimes such as hijacking

# Police captain under scrutiny at Nelspruit TRC hearings

(252)

A victim gets a chance to tell his story  
before his alleged torturer retires from  
the police service due to poor health

**SAPA**  
Nelspruit

A former regional police spokesman, who has been on leave for the past year due to work-related stress, featured prominently during testimony about police torture at the Nelspruit sittings of the Truth and Reconciliation Commission (TRC) yesterday.

According to one of his alleged victims, Captain John Walters personally headed torture and beating sessions involving detained school pupils and other protesters in 1986, African Eye News Service reported.

"This man would lead us to the fifth floor of Nelspruit police station and blindfold us before his friends would join him. Our hands would be tied behind our backs and we would be tortured," said Neville Shabangu.

"We could not protect ourselves or even see our assailants. They said we were not co-operating and that the only way we would be able to get out was to die or escape."

On one occasion a group of policemen led by Walters entered a cell containing five detainees

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and ordered each prisoner to choose a policeman to beat them, he said.

Insisting he had not been an MK member and had never left South Africa for training of any sort, Shabangu told the TRC the police had not believed him and had put him in prison for three months.

Shabangu and almost 50 other detainees were released only after a visit from Mr Justice Richard Goldstone, who advised them to lay charges against the police.

"We were released just days after his visit, but I did not lay charges as the very same people who had beaten me were the people I was supposed to report the matter to," he said.

Walters was transferred into community policing structures after leaving the security branch and served as a taxi industry negotiator and press liaison officer in Nelspruit until 1995.

Although no one at the Nelspruit police station would comment on his current status, the station's human resources department said he was leaving the SAPS at the end of this month for health reasons.



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(252)

# ANC to discuss death penalty calls

## Political Staff

THE African National Congress has moved swiftly to stem the rising furore over its security leaders' call for a review of the death penalty as condemnation pours in from human rights organisations, previously the ANC's allies on the issue

But various political parties and national police commissioner George Fivaz have welcomed the initiative, saying it shows an appreciation of the

crime problem in the country

Detailing the peace and security summit's resolutions in a statement yesterday, the ANC seemed to be taking a softer stance than when delegates at the Cape Town conference applauded Justice Minister Dullah Omar when he said that the ANC's national executive committee would be asked to review the policy position

The ANC said the delegates had emphasised that the time had come "to act harshly

against criminals, and that the velvet glove must be removed"

"It was, however, also emphasised that this must be done with due respect to our human rights culture and the various provisions of the Constitution

"It was in this context that the often heard call from some sectors that the death sentence must be re-introduced was noted by delegates

"The summit recommended that the NEC should discuss these calls and decide whether

the ANC's opposition to the death penalty should be re-assessed. There was, however, no recommendation from the summit that the death penalty should be re-introduced," the organisation said

Should the Constitutional Court refer the final constitution back to Parliament for redrafting, it is possible some political parties and lobby groups will reopen the debate over the right to life guaranteed in the Bill of Rights

# 453 death row inmates await resentencing

DAN SIMON

(252)  
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MORE than 450 prisoners are technically still on death row despite the moratorium on executions in February 1990 and the subsequent abolition of capital punishment by the Constitutional Court in June last year, the Department of Correctional Services said yesterday.

Among the inmates who were sentenced to hang and who must still have their death sentences changed, are Sydney Andile Mkhosana, 24, who was sentenced to death five times in the Cape Supreme Court in May last year for the brutal axe murders of the Orffer family and their domestic servant in Stellenbosch in July 1994.

Triple killer Antonie Wessels is also waiting for his death sentence to be reviewed after he was sentenced to hang in December 1992 for the "brutal, callous and cold-blooded killing" of American tourist Mr Eddie Perlmutter, whose throat was slit on the Outeniqua hiking trail.

Another notorious city trial in which the death penalty was handed down was that of three Belhar men who were sentenced to death in April 1990 for the "most heinous acts committed during a horrifying reign of terror".

Mr Justice D M Williamson sentenced Jerome Pienaar, Roderick Bock and Steven Smith to death for rape after they kidnapped, robbed, raped, sodomised and indecently assaulted two women and a man.

Correctional Services spokesman Mr Barry Eksteen said that, following the last execution in November 1989, there are 453 prisoners who had been sentenced to death and who have not yet had their sentences changed.

# Reconciliation without the truth

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**IN THIS THE SECOND** article of a three-part series on the state of the Truth and Reconciliation Commission, **ROGER FRIED-**



**MAN** questions how much "real truth" about the apartheid conflict can we expect the body to deliver.

**O**NE recent frosty morning in the Boland, an old man who had been badly beaten and tortured told the Truth and Reconciliation Commission of a doctor's whispered instructions to a policeman to shove portidge up his nose and make his death appear to be by asphyxiation.

That afternoon several townsfolk rallied to the doctor's defence, telling commissioners and whoever else would listen that he was actually one of the few verligtes (enlightened Afrikaners) in the area, and a damn fine bloke to boot.

That evening, addressing a press-conference, a commissioner said the old man's statement required thorough investigation. The old man had acknowledged that he was only verging on consciousness at the time of the alleged whisping, the allegation was damning, and locals had vouched for the doctor's integrity.

The next day a commissioner read a short statement on behalf of the doctor, flatly denying knowledge of the existence of the old man or the alleged incident.

Should the doctor apply for amnesty? A few weeks earlier, in Kimberley, a young man confessed to throwing a grenade during a demonstration outside the Bophuthatswana consulate in the town. The two men serving lengthy jail sentences for the crime were innocent, he

said. Yet, in his written statement to the commission made prior to his appearance before it, the young man denied throwing the grenade.

A day after his appearance the attorney-general of the Northern Cape issued a statement to the effect that the young man was talking nonsense. Should the young man or the allegedly innocent convicted twosome apply for amnesty?

It gets more complicated. Take the case of Jacob Mogorotsi. Thipe of Kroonstad. Thipe was hacked to death by members of the Three Million Gang in Kroonstad in 1985. The said gang was not unlike the Hard Livings Gang in the sense that it enjoyed a measure of support from elements in the security forces, it differed from the Hard Livings in that its members targeted UDF and ANC supporters. The apartheid state apparently sponsored many such vigilante outfits in one way or another.

Were the Kroonstad police instructed to conspire with the gang? If they were instructed by their senior officers in the Free State, were they acting on instructions? If national headquarters issued the instructions, was this purely a police decision or were politicians involved? Did the Minister of Law and Order know? Did the State Security Council know? Did the State President know?

What is the truth? Does the country have the political will to uncover it?

"The truth of the matter is we may never know the truth in the form of saying in chapter and verse exactly what happened; the who, the why and the where," said commissioner and head of the commission's investigative unit Dumisa Ntsebeza during an interview.

"To know the truth is not necessarily to know what has happened. It may be to know that what we have been unable to get at points in a certain direction, or was obstructed by a variety of specific factors.

"The commission does have a limit. We just don't have the capacity."

To be fair, the 60 people Ntsebeza's

unit can muster nationally — aided and abetted by a research department of similar size, but with separate functions — are simply spread too thin on the ground. Were they perceived as threatening by perpetrators of human rights violations, would there not have been some amnesty applications from that quarter?

About 100 witnesses are appearing before the commission's Human Rights Violations Committee in various parts of the country each week. And most of them have specific requests for further investigations to be conducted.

Where are the remains of my son? Who killed my daughter, who tortured my father, who shot me, why they ask. Then there are the broader areas demanding investigation questions regarding control over the security forces, special units, dirty tricks, front companies, political authorisation and accountability. None is an easy question to answer, particularly now that those in the know have done their best to destroy evidence and cloud the truth.

But, for now, Ntsebeza remains unbowed. "I'm not ready to agree that there could have been so many random acts of violence without some kind of political sanction. Much of the violence was publicly exposed through criminal trials and inquests.

"Any government, if not party to the activities, would have said 'Look, we cannot accept that there can be so many deaths in detention from hanging or jumping from windows'."

He will, however, draw cold comfort from the musing of South American and East European truth commission follower Ms Tina Rosenberg on the special human abilities to "rewrite the past to suit the present — and especially to recast our individual complexity with a shameful past". These abilities, she wrote, bore testament to the creativity and ingenuity of the species.

"It is a phenomenon that surfaces whenever one official orthodoxy gives

way to another. Citizens must now explain their adherence to the old ways in the light of the new ones.

"South Africans announce retroactive lifelong opposition to apartheid. Argentine directors of torture camps testify that in fact they were running rest spas, and they cannot recall a single camp guest who did not remain of his or her free will.

"Yes, we saw the Jews in our town loaded into boxcars," say the Germans. "But who could imagine their ultimate fate? We didn't know! We saw nothing! We did nothing wrong — in fact, we were victims ourselves!"

Ntsebeza said the investigative unit conducted three forms of investigation: corroborative, collaborative and special investigations. Corroborative work focused on checking facts contained in statements and following leads presented in the commission's public hearings. Collaborative investigations were essentially those requiring the co-operation of investigators working in different regions.

"Where our investigations show an international dimension such as cross-border raids, or that persons or institutions at the highest level were involved and that there has been an organised endeavour to obliterate or obscure the truth, then that qualifies as a special investigation," Ntsebeza said, adding that investigations into the workings of the State Security Council and the Civil Cooperation Bureau were under way.

The bottom line, as Ntsebeza admits, is that the commission and the country are unlikely ever to learn the full truth. "Reconciliation through truth," the commission proclaims on banners at public hearings. A tall order. General Constand Viljoen of the Freedom Front has suggested that what South Africa really needs is a reconciliation commission — regardless of the truth. Where has he been? That's what we have at present, and what Ntsebeza is doing his utmost to avoid.

□ Tomorrow: Is there the political will to uncover the truth?



**DON'T BRING BACK HANGING:** Ms Gcobisa Mtshabe, of Langa



**MURDER TOO EASY:** Ms E Ismail, of Gatesville



**THEY MUST PAY:** Ms Lorraine Ngungane, of Langa



**NO RIGHT TO TAKE LIFE:** Mr Mark Robinson, from England

# Death sentence favoured by 80%

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**CYNTHIA VONGAI**

ALMOST 80% of people polled by the Cape Times on city streets yesterday said the death penalty should be reinstated

An exception was Ms Gcobisa Mtshabe, of Langa, who said she did not want it back because "no one had the right to end a life"

But Ms E Ismail of Gatesville disagreed, saying there was too much crime around and murder was too easy to commit because there was no fear of receiving a death sentence

"Bring it back because life is too easy for criminals and sometimes their sentences are too light," she said

Ms Lorraine Ngungane, of Langa, said she felt the death penalty should be reinstated so that criminals could get a tougher sentence and pay society for their crimes

Ms Angela and Mr Mark Robin-

son, British tourists on holiday in Cape Town, said they felt the death penalty was wrong and should not be brought back

They felt life sentences should be imposed instead as they believed no one had the right to kill

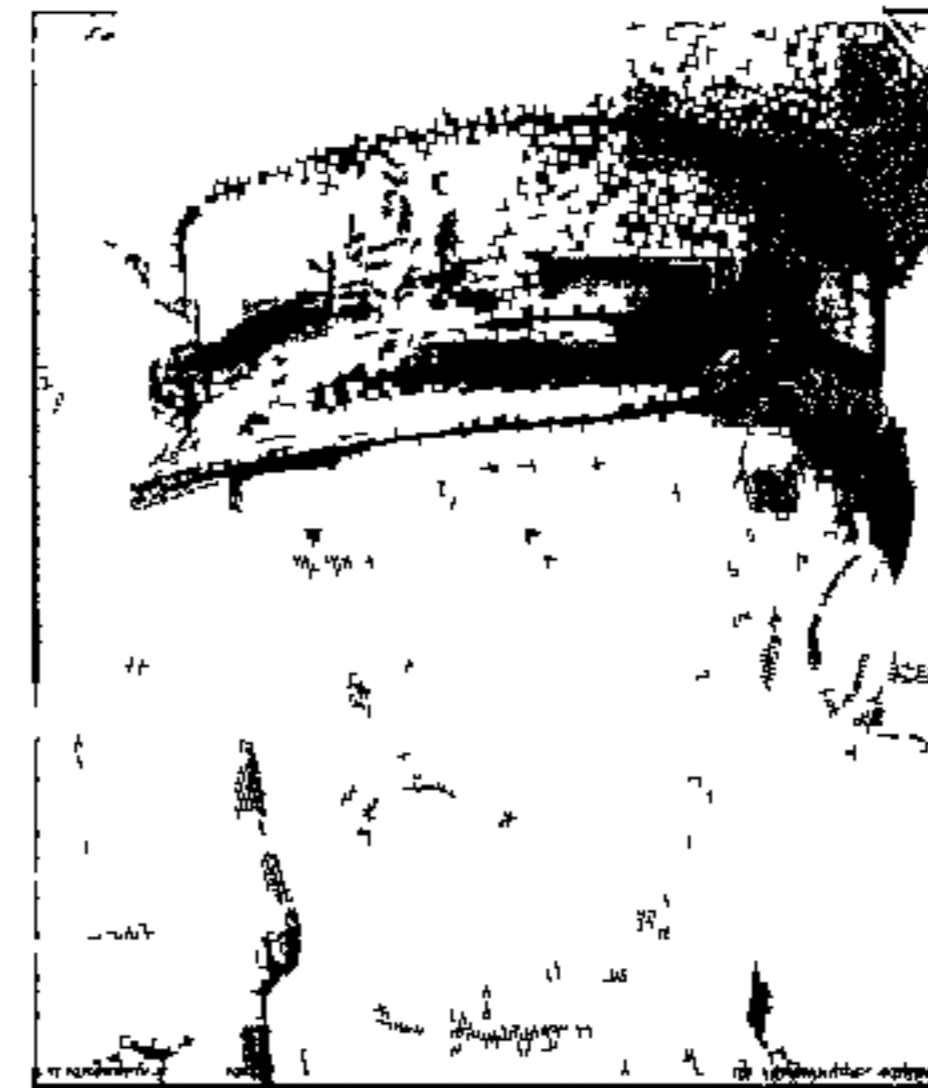
Members of the police service Sergeants Marius Williams and Jacobus Hendricks felt there was a need to bring the death penalty back

They believed it would be a way to decrease serious crimes and perhaps also lead to a drop in the crime rate

"Serious crimes like rape and murder should get an automatic death penalty," Williams said

Ms Millicent January, of Sea Point said the justice system was letting criminals off lightly and that there was a need for tougher sentences for serious offenders

She felt this was particularly important, because of the high lev-



**IT DETERS SERIOUS CRIME:** Sergeant Marius Williams

els of corruption she believed there were in the police force

Mr Tom Spring, of Camps Bay, felt the death penalty should be brought back

"This country needs a deterrent to put people off committing all these crimes and prevent the situation getting worse," he said

Ms Valentino Glovacki, of Sea Point, said "People are not punished enough and never learn from being in prison"

She also felt that there should be stiffer sentences, especially for child murders

"And they should be executed immediately," she said



**CRIMINALS GET OFF EASILY:** Ms Millicent January of Sea Point



**EXECUTE IMMEDIATELY:** Ms Valentino Glovacki, of Sea Point

PICTURES THEMBINKOSI DWAYISA

# Legal profession takes issue with judge's reasons for resigning

Susan Russell

MEMBERS of the legal profession, including the Association of Law Societies, yesterday took issue with reasons given by Witwatersrand Judge Rex van Schalkwyk for his resignation, saying the judiciary had to accept it was not exempt from transformation.

Lawyers were critical of Van Schalkwyk's reasons for resigning. Among Van Schalkwyk's reasons were unhappiness with the way affirmative action on the bench was being implemented, the undermining of the judiciary by some ANC members, including Justice Minister Dullah Omar, who described the bench as illegitimate, as well as frustration at flouting of court orders and inability to ensure that sentences were carried out.

Van Schalkwyk's resignation and the reasons were made public yesterday in an interview in The Citizen. He also said the Constitutional Court was expensive and unnecessary and that the decision to establish it had been a political move by those who did not trust the judiciary.

Advocates and former colleagues at the Bar expressed surprise at Van Schalkwyk's decision. Association president Michael Pinnock said the resignation was a pity as he was able and fair-minded. "I cannot, however, agree with many of his reasons for resignation. The judiciary is not exempt from the transformation process and it is quite clear that judges cannot simply be drawn from the ranks of senior advocates. Those days are gone."

Pinnock also disagreed with Van Schalkwyk on the Constitutional Court, saying it was not superfluous and was already proving its worth. He said he could understand the frustration judges felt over the defiance of court orders. "The judiciary does, however, carry baggage from the past and there is a perception of illegitimacy," he said. Pinnock said the only answer was to go through transformation in the hope that the perception would be eliminated. "Transformation touches every

branch of the legal profession and the judiciary must accept it is not exempt." Lawyers said his decision could be read as smouldering unhappiness about affirmative action on the Bench. A senior member of the Bar said he found Van Schalkwyk's decision "not only surprising but frankly imperficient. What offends me about his stance is that he took appointment in 1986 when the country was not only governed by apartheid laws, but also a set of emergency decrees which entirely emasculated the courts."

BD 419196

(252)

# Commission told of police whim to bury youths alive

(252) BD 7/9/16

POLICE ordered nurses not to treat four badly injured ANC youths who had been ambushed by soldiers and instead suggested they be buried alive, the truth commission heard in Nelspruit yesterday.

Phendile Ngobe was only 15 years old when the soldiers ambushed her and fellow comrades during a midnight meeting on a mountaintop in Kanyamazane outside Nelspruit, African Eye News Service reported yesterday.

Phendile said after the soldiers told nurses at Thembisa Hospital that the "comrades must not be treated", they took her and her friends to the Nelspruit police station, where they were beaten.

"We stayed there for two weeks without any food except what our families brought us," she said.

"We were never treated for our wounds."

Phendile said they were once taken to the police mortuary to identify corpses but were unable to do so.

After two weeks, the youths were released.

Phendile, who had been shot in the knee, asked the commission to compensate her for medical expenses over the past 10 years because her knee is "not working" to this day.

The sister of a man who was allegedly killed by police told the commission that police kicked her brother's corpse several times after a stranger brought his body to their house.

Mildred Mthethwa said a man arrived at their home carrying a corpse and asked if someone could identify it.

"It was my brother," Mthethwa said.

Mthethwa said the man found Bethuel Mthethwa's body after Mthethwa attended a secret ANC meeting on a mountain in Kanyamazane.

She said a group of youths sang freedom songs on the way home and were attacked by police and members of the Kabasa gang.

She said the stranger had gone to several houses with the corpse, trying to find his family.

Her father phoned undertakers who arrived with policemen, she said.

"When the police kicked my brother's body, my family armed themselves with anything they could find in the house."

She said the driver of the hearse was terrified and would not put her brother's corpse in the vehicle.

"My father said he was prepared to carry my brother to the mortuary, but the hearse driver agreed to take Bethuel," she said.

Mthethwa said her family had always warned Bethuel not to get involved in politics. "But he said if he would die, it would benefit the community."

Mthethwa asked the commission for a tombstone to commemorate her brother. "Dead comrades were always given tombstones," she said. — Sapa.

ARG 4/9/96

# A judge who says he is one of many who would like to resign clashes with Minister of Justice Dullah Omar. DAVID YUTAR reports:

**A** SENIOR judge who resigned from the Witwatersrand Local Division of the Supreme Court because of the government's "undermining of the judiciary", warned today that the judiciary was in danger of becoming a "toothless bulldog", unable to curb rampant crime

Rex van Schalkwyk, a judge of the Rand Supreme Court for the past 10 years, said comments by Minister of Justice Dullah Omar and other African National Congress members that the judiciary was "illegitimate" had seriously undermined the courts' authority and credibility

Mr Van Schalkwyk warned that like him, many judges were deeply worried about the deterioration of the criminal justice system and wanted to resign - but were forced by financial constraints to remain

Mr Van Schalkwyk had severe criticism for Mr Omar, who "on more than one occasion" had remarked that the increasing crime rate was a result of the "increasing illegitimacy of the judiciary"

He said Mr Omar had also stated that "racial prejudice" among judges was one of the reasons the ANC was against the re-introduction of the death sentence

He referred to an address by the Mr Omar in Lenasia in which he said there had been "white judges who did not give a damn if 100 black persons were hanged each day"

Mr Van Schalkwyk said "That's not merely wrong and provocative. I think it amounts to an abrogation of his responsibility as minister of justice"

He said the minister's comments incited racial hatred by suggesting there were white judges who would use the death sentence to exterminate black people

The authority of the judiciary was also being eroded by the contempt with which its orders were often treated

"We've all had the experience of having to deal with ex parte applications brought urgently to prevent striking people from damaging property or from intimidating others, to eject tenants who refuse



Dullah Omar

to pay their rental for months on end

"Of course these are emotive issues, but one has to apply the law and so you make the order, but with the knowledge that the order will probably be defied - and defied with impunity

"The court has no authority other than the authority a civilised society has to impart to it, and if the society does not recognise its authority the court has very little authority at all"

Mr Van Schalkwyk said Mr Omar's comments about the "illegitimacy" of the judiciary were particularly irresponsible and inflammatory because of volatile recent history

"He must have appreciated that it was most important to support the judiciary rather than to do the opposite"

Mr Van Schalkwyk said affirmative action appointments had been made recklessly and had undermined the effectiveness of the judiciary

A spokesman for Mr Omar said he had decided not to respond to Judge Van Schalkwyk's statement

Judge Van Schalkwyk said affirmative action appointments had been made to ensure the "presence of black faces and a quota of women, at all costs"

He said he recognised it was important to promote the careers of lawyers from traditionally underprivileged backgrounds who had been prejudiced in the past, but that should not mean "appointing unqualified and underqualified people to the bench"

Mr Van Schalkwyk raised the issue in a letter to Mr

Omar, to which Mr Omar had replied "Clearly you were quite happy in apartheid South Africa and find the new democracy distasteful"

In a subsequent letter Judge Van Schalkwyk described the reply as "reckless, abusive and demonstrably false"

Mr Omar had not responded to this letter

Judge Van Schalkwyk said Mr Omar's remarks reflected the "increasingly ominous tendency" among ANC officials to label as "undemocratic and racist" anybody who

dared to disagree with their point of view

Another concern was the untimely and irresponsible release of prisoners

South Africa had been "paying the price" ever since the National Party government initiated its policy of releasing "political prisoners" indiscriminately to solve a political problem of how to define a political prisoner

The ANC had merely perpetuated the problem and had included common criminals among those released

Judge Van Schalkwyk said he had been opposed in principle to the establishment of the Constitutional Court, which had been a "political decision"

"Those who wanted it did not trust the judiciary with the final determination of constitutional disputes"

Those disputes could and should have been resolved by the ordinary Supreme and Appeal Courts, he said

The Constitutional Court was "the ANC's own selected court, superfluous, expensive and one dimensional and failed to reflect the diversity of opinion within South African society"

Judge Van Schalkwyk, who said he was in favour of the death sentence in certain cases, described the Constitutional Court's decision to outlaw the death sentence as "the best example" of its one-dimensionality

Sheila Camerer, National Party spokeswoman on justice, said Mr Van Schalkwyk was expressing publicly fears many officials involved in the administration of justice expressed privately

Toothless bulldog' warning on judiciary (252)

# Playing hide and seek with the TRC

(252) CT 4/9/96

CONSPIRACY theories abound when discussion turns to whether the Truth and Reconciliation Commission has the political will — or, if it has the will, whether the politicians will allow it — to expose the heart of the beast which was the apartheid machine.

Given the magnitude of the political compromise the commission represents, between the apartheid government's clamour for a general amnesty for perpetrators of human rights violations and calls from the liberation movements for Nuremberg-style trials, might the politicians not have extended the compromise a little further? To the extent that certain matters, too delicate to be exposed, will not be?

Is it traitorous to suggest that the National Party and the African National Congress could each possess its own little Pandora's box of compromising secrets?

If that's too conspiratorial for your liking, then stop reading now. The theories extend beyond formal political parties to institutions, groups of people and individuals — each of which (or each of whom), it has been suggested, could have its (or their) own agenda to stymie the commission's work.

Take the military, for instance. We already know that all documentation pertaining to secret South African Defence Force activities undertaken in the course of its war against communism/black people has been shredded.

Many top-ranking officers in the new South African National Defence Force are products of its apartheid predecessor. Is it in their interests that anything approaching the truth come to light?

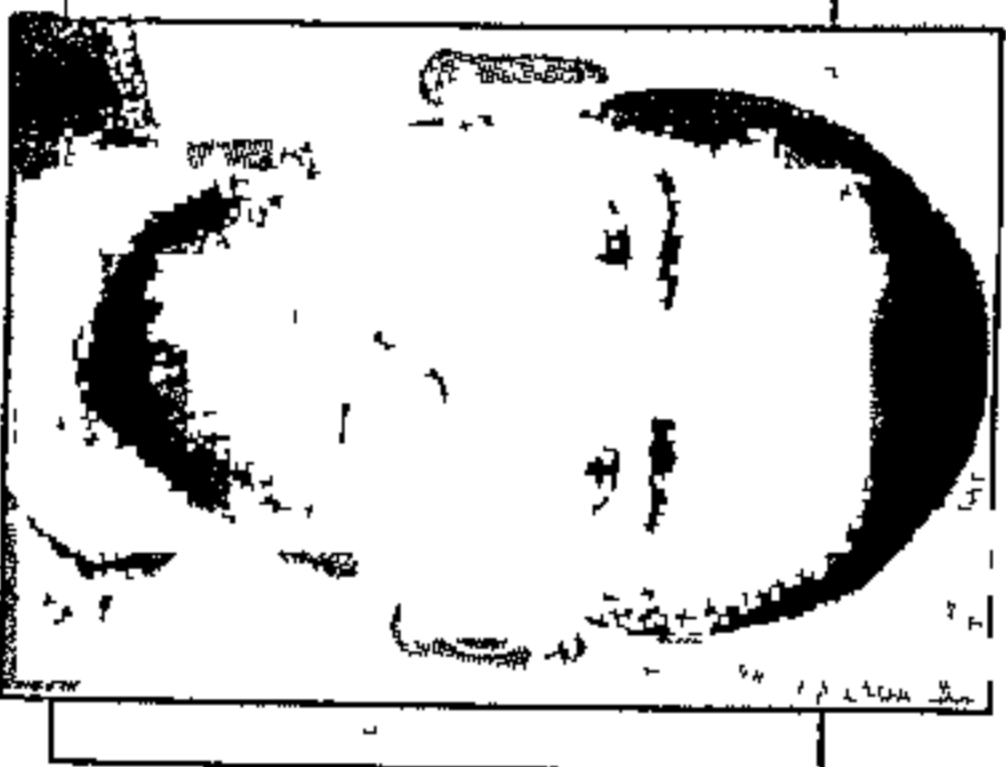
Or take the strange case of the police generals. After much cajoling by the commission had failed to inspire them to volunteer information — and in view of the fact that amnesty applications from members of the security forces were not exactly pouring in — elaborate plans were made to subpoena them.

However, 11th-hour intervention by Minister of Safety and Security Sydney Mufamadi and Deputy President Thabo Mbeki late last week, swayed the commission from this course. Now the generals are to make a "voluntary" submission concerning the role of the police in human rights violations of the past.

The wisdom of this new direction was questioned by the head of the investigative unit, Mr Dumisa Nisebeza, during a press conference on Saturday.

If the generals follow the lead of the politicians their voluntary submission will be a fairly sanitised version of events — although, as commission chairperson Archbishop Desmond Tutu

**IN the final article of a three-part series, ROGER FRIEDMAN questions just how much truth is likely to emerge from the Truth and Reconciliation Commission.**



has pointed out, even if they were subpoenaed they could not be forced to talk.

Whatever the case, the December 15 cut-off date for amnesty applications is around the corner, and if the commission is to be able to provide answers to at least some of the "Who killed my son?" or "Where are her remains?" questions, something has to happen soon.

Then there is the matter of former police killer Mr Dirk Coetzee and several subordinates who, surprisingly, were recently charged with the murder of ANC lawyer Griffiths Mxenge by Kwazulu-Natal Attorney-General Tim McNally. "Surprisingly" because Coetzee et al had already applied to the commission for amnesty. Even more so when one

considers that McNally vehemently disbelieved confessions from the same gentlemen to the same crime several years ago, TWICE.

Amnesty International had this to say of McNally, and the Harms Commission appointed by then-President F W De Klerk in February 1990 to investigate unsolved "hit-squad" or third-force murders: "A key weakness of the commission lay in the failure of its investigative team Counsel to the commission was Tim McNally, an advocate and Attorney-General of the Free State.

"In late 1989, at the request of the government, advocate McNally conducted an investigation

into allegations by three former security police officers — Dirk Coetzee, Butana Almond, Nofomela and David Tshikalanga — that they had been involved in a 'death squad' based at Vlakplaas. At the time of his appointment, he had already completed this investigation.

"The McNally Report, which was not made public until November 1990, had concluded that there was no truth in these allegations.

It is difficult to see how McNally managed to conduct an impartial investigation into allegations of police 'death squad' activity for the Harms Commission so soon after concluding in a previous investigation such activity did not exist.

Six years ago MacNally and the Harms Commission concluded there was no evidence of police death squads.

But Coetzee's telephone-book-thick amnesty application a few weeks ago, evidently changed MacNally's mind why? Was he reacting to the self-confessed

participant in at least 30 killings (including Mxenge's) — Mr Joe Mamasela, who confessed all on national television?

Or that Mamasela is apparently a well of information to the Attorney-General of Gauteng, Mr Jan D'Ohveira, who is said to be close to prosecuting other perpetrators of apartheid's dirty tricks?

Was it coincidental that the timing of McNally's decision to prosecute led directly to a rash of anti-TRC sentiment expressed by the very people the commission was trying to attract apartheid-era members of the security forces — led by Coetzee?

It looked to them as if applying for amnesty could result in criminal charges, reinforcing precisely the false perception the commission was/stug-gling to combat. It looked like a witch-hunt.

The commission's seemingly uneasy relationship with the attorneys-general extends beyond the Mxenge case. What it boils down to is that the attorneys-general appear to have information the commission needs. But they don't want to give the commission information which could prejudice prosecutions.

"The tension is there," said commissioner Nisebeza, in a recent interview. "And it is a tension we must deal with responsibly. We want to say that we realise that the TRC is not a substitute for the criminal justice system.

"But I'd be dishonest if I said the criminal justice route will deliver the truth, unless all those who go that route plead guilty."

Subsequent to the interview, the commission took a decision to hear the amnesty applications of all suspects the attorneys-general try to prosecute for politically-motivated crimes — before their trials, starting with Coetzee's.

If the suspects are granted amnesty, there will be no trials. But, the theory goes, the country should have extracted some truth and reconciliation. If it has the will.



# ANC urged not to court disaster by reviving noose

(252)

CT 4/9/96

**WILLEM STEENKAMP**

IF the ANC adopted a suggestion that it review its policy on the death penalty, this "could have disastrous consequences" for the maintenance of human rights in South Africa, a broad range of prominent organisations said yesterday.

In a joint statement, they urged the government to "direct its energy (towards) finding real and lasting solutions" in curbing crime.

The statement was issued by Amnesty International in South Africa, the Western Cape branch of the National Association of Democratic Lawyers, Lawyers for Human Rights, the Society for the Abolition of the Death Penalty, the Human Rights Committee, the Human Rights Commission, the Black Sash and the Catholic Justice and Peace Commission.

If the ANC reviewed its position, this would undermine the Constitutional Court ruling in terms of which the death penalty was abolished.

"Every society seeks protection from crime," the statement said.

"Far from being a solution, the death penalty is not a deterrent and gives the erroneous impression that 'firm measures' are being taken against crime."

The cabinet should focus its attention on solving the country's problems and "desist from political point-scoring", the statement said.

The international community had welcomed the abolition of the death penalty, it added.

It would undermine international confidence in South Africa if the ANC decided to consider reintroducing capital punishment, the statement said.

# ANC and AWB supporters to seek amnesty in North-West

CT 4/9/96

(252)

SEVEN ANC supporters jailed for killings in gold-mining centres in North-West Province are to appear before the TRC's amnesty committee next week.

Four brothers, all alleged AWB supporters, will apply for amnesty at the same hearings in Potchefstroom.

In a statement yesterday, the commission's amnesty committee said the brothers — Adriaan, Willem, Gideon and Dawid van Straaten — were convicted of murder and robbery and sentenced on May 14, 1991. They were found guilty of murdering Mr Wanton Matshoba and Mr Sazise Qheiso in Vereeniging in June 1989.

Willem van Straaten was sentenced to 15 years' imprisonment, and his brothers to 13 years each.

The amnesty committee will also hear applications from Mpayipheli Falten, 23, and Johnson Ncube, 25, who were sen-

tenced in September 1993, to 12-year prison terms for the murder of Vigilantes Gang member Mr David Mayeko in Khut-song, Carletonville. The two claim to be members of the ANC Youth League.

The other applicants include

● Peter Lebona, 24, and Solomon Lekatlane, 29, two self-described ANC marshals, who were sentenced to 10 years' imprisonment in October 1992 for the murder of J Z Dlamini in Orkney in July 1991.

● Mosiwa Popane, 29, Gcnisizwe Dlanjwa, 26, and Thamsanqa Mkontwana, 25, who were convicted of killing Abednego Mazi at the Khuma taxi rank in Stilfontein in October 1990.

The three, who say they were members of the SA Youth Congress and the ANC, were sentenced to terms of imprisonment ranging from eight to 12 years for murder and attempted murder. — Sapa

# Dramatic increase in number of child abuse cases forecast

CF 4/9/96

## POLITICAL WRITER

AVAILABLE figures on child abuse represented the "tip of the iceberg" and understated the problem, Parliament's portfolio committee on welfare heard yesterday.

National Council for Child and Family Welfare resource officer Ms Ros Halkett said there were no reliable statistics on the scourge of child abuse.

As child welfare organisations extended their activities into unserved areas, she expected a "dramatic increase" in available statistics.

Figures provided by the South African Police Service Child Protec-

tion Unit showed there were 19 805 cases of reported child abuse in the first six months of this year, compared with 28 484 for the whole of last year.

Child welfare societies were attending to 9 398 children each month. Of these, 7 268 children fell into the "severely neglected" category. Neglect was "the most serious child protection issue" facing South Africa, said Halkett.

Staff were becoming increasingly despondent about the growing workload, and this was likely to increase as the reporting of incidents became more prevalent.

At present there was one social worker to every 20 400 children

and this was a major limitation

The survival of the voluntary child welfare sector was under threat and the government needed to rethink its approach to welfare services. Until now, the system had focused on the perpetrators of crime against children, rather than on the abused children.

Halkett's presentation coincided with figures released in Parliament and provided a breakdown of the 28 484 cases she referred to.

Topping the list is rape of children, of which there were 10 037 cases, followed by indecent assault, with 4 044 reported incidents last year and common assault, of which there were 3 768 cases

# Omar urged to answer 'undermining' charge

(252) CF 4/9/96

IF SILENT Minister Mr Mullah Omar should answer allegations by Witwatersrand Supreme Court judge Mr Justice Rex van Salkwijk that he was stepping down from the bench because Omar was allegedly undermining the judiciary opposition parties said in Parliament yesterday.

Judge Van Salkwijk charged earlier this week that Omar had undermined the judiciary by saying judges appointed before April 1994 were illegitimate. He was stepping down as a result.

DP justice spokesman Mr Douglas Gibson has asked the portfolio committee on justice to give the judge a hearing. He told the committee that Judge Van Salkwijk was not a tainted apartheid judge.

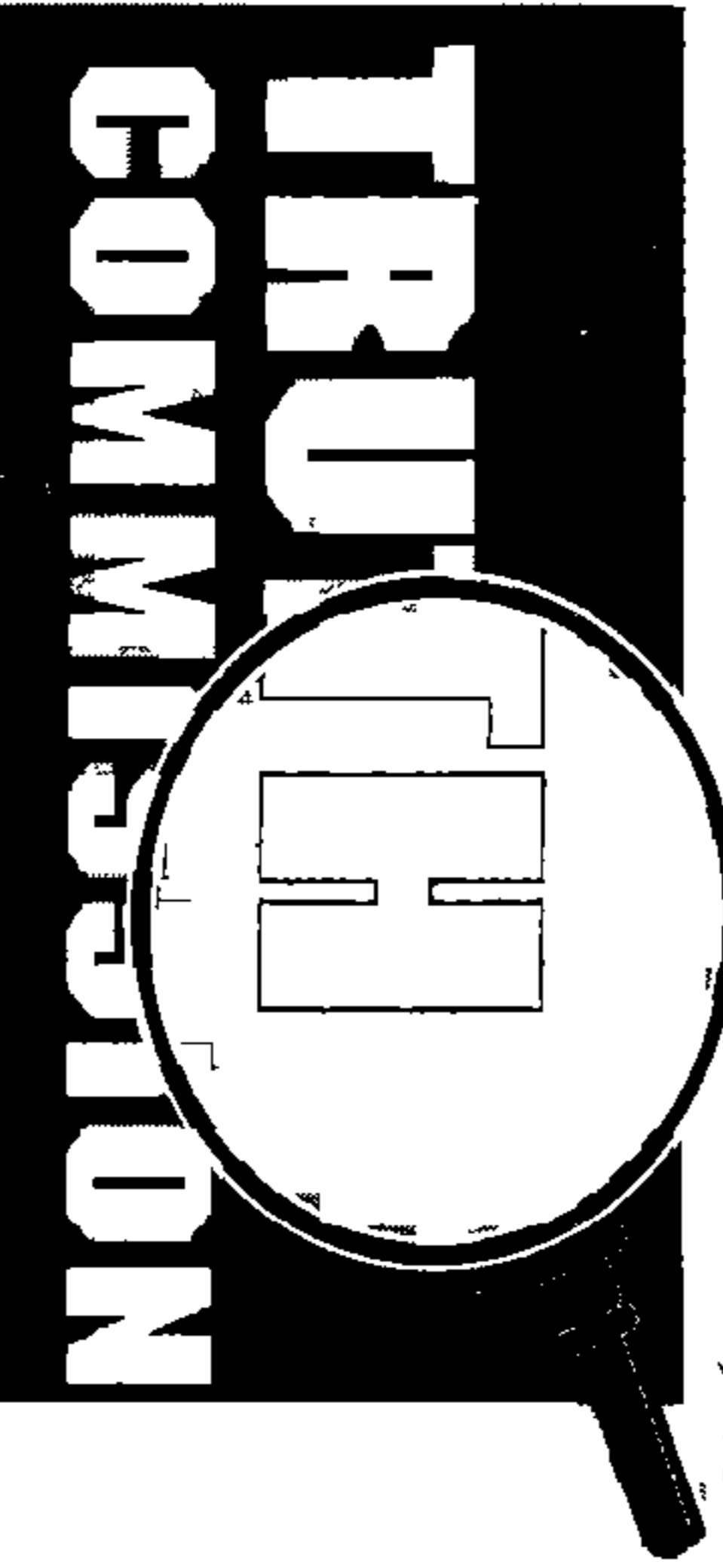
On the contrary he had impeccable liberal and democratic credentials before his appointment to the bench, he said, adding that SA could not afford to lose judges of his calibre.

MP Justice speaks man Ms Sheila Camerer said the reputation was a matter of serious concern. Omar owed the public a full and substantive answer to the claims — Political Staff

By Mzimasi Ngudle

# The TRC entangled in a web of intricacies

*Reviewed by Mzimasi Ngudle*



The TRC is a political body that has been set up to investigate human rights violations that took place during the apartheid era. It is a body that has been set up to investigate human rights violations that took place during the apartheid era. It is a body that has been set up to investigate human rights violations that took place during the apartheid era.

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No political motive

Quality for reparation

# Brits in same boat as SA

Lawton 5/9/96 (252)



As South Africans contemplate the national crime crisis and whether or not to reintroduce the death penalty, Britons are slowly moving away from libertarian policies which shield young offenders.

By Alan Robinson

WHILE SOUTH AFRICANS wrestle with the dilemma of whether to bring back the death sentence in a desperate attempt to stop serious crime spiralling out of control, Britons, too, are deeply troubled by increasing lawlessness

While this country thankfully does not have anything like the Republic's horrendous toll of hourly murders and rapes, there is increasing concern that it may yet come to that in Britain

Over the past 20 years or so, the British have listened to the siren voices of the libertarians urging sympathy for the criminals, finding excuses for their deeds and demanding forgiveness rather than punishment

Teenage crime, the most worrying aspect of this descent into lawlessness, has been blamed on poverty, on unemployment, on discrimination, on a feeling of despair

On anything but personal and parental responsibility Now, politicians in all parties are coming to realise that the country has ended up with a massive social problem in which crimes like burglary, car theft, fraud, drug-dealing, mugging and vandalism have become endemic

## Jobs move from petty criminals to serious thugs

Inner city areas in Liverpool, Manchester, Birmingham, London, Bristol, Newcastle and Glasgow have long been breeding grounds for yobs who move easily from petty criminals to serious thugs

But now the problem has spread into the suburbs and even rural villages

The Home Office is currently testing public opinion on new ways to root out the offenders Earlier attempts to make parents financially responsible for the wrongdoings of their offspring have failed miserably

### Complete collapse

Partly, because those attempts were less than half hearted and partly because the almost complete collapse of the family structure in parts of the country has made parentage difficult to prove and almost impossible to trace

Now, Home Secretary Michael Howard is said to be considering a new tactic to shame the under-age criminals by removing their legal right to anonymity

Latest statistics show that under-18s are responsible for one fifth of all crime in Britain and 40 percent of burglaries and there is a feeling that if these yobs were subject to public identification and humiliation they would refrain from re-offending

There is, of course, nothing new in the tactic Virtually every public park and village green in Britain once had its stocks in which law breakers were clamped by the wrists and put on display, thereby being identified as deviants and earning the derision of the community

And in an age in which anti-social behaviour brought deep shame upon the miscreant and his/her family, it probably had some effect

But would it work now in communities where the thief is too often the hero, where the mugger walks tall, where the spoils of crime so often supplement the family budget and where parents, if they can be found, turn a blind eye or even approve?

### Role models

Probably not, for Brits live in a society in which television makes role models of the rebel, in which campaigning journalists too often concentrate their all on trying to prove the innocence of the guilty and show no such enthusiasm about protecting the victim, and in which so many politicians and do-gooders find it fashionable to denounce the establishment and its norms

Speaking of television, an academic study of more than 20 000 teenagers has shown that those classed as television addicts - they watch TV a minimum of four hours a day - are more prone to rebellion, drug-taking, crime and failure at school and work

University of Wales researchers found that 25 percent of teenagers fell into that category, and Professor Leslie Francis said "We are dealing with young people who in some sense or other feel socially isolated I fear for some of them"

The TV addicts are apparently quite happy that they may not find work and certainly prefer social security

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Beasley declared a state of emergency, and issued a mandatory evacuation order affecting beach-front properties and those in low-lying areas in six counties. — Reuter

Trouble looming: Hurricane Fran seen on a monitor, showing the centre of the category 3 storm south-east of Charleston, South Carolina, moving northwest

# Truth Commission told of plot to murder Buthelezi

JOHN YELD

ON THE TRUTH COMMISSION

(252)

ARC

Details of an alleged plan by the ANC's military wing, Umkhonto weSizwe, to assassinate Inkatha Freedom Party leader Mangosuthu Buthelezi in 1986 have been given to the Truth Commission by the IFP.

An IFP delegation led by Chief Buthelezi, and including IFP national chairman Frank Mdlalose and Kwazulu-Natal minister Ben Ngubane, submitted more than 700 pages to the Truth Commission at its Adderley Street offices today to the effect that it was well known that

there had been "very real" assassination threats against Chief Buthelezi.

"These threats have been denied by the ANC on many occasions. It is fundamentally important to once and for all establish the facts of the matter," said a spokesman.

Chief Buthelezi told the Truth Commission that the IFP leadership had never made any decision to use violence for political purposes.

But he knew that IFP members and supporters had been drawn into violence

"I say I am sorry to South Africa for this because, although I have not orchestrated one single act of violence against one single victim of the political violence that has cost

us many lives, I know as the leader of the IFP that the buck stops in front of me."

The IFP spokesman said the information on the plan to assassinate Chief Buthelezi came from a Reverend Londa Shembe, who was a leader of the Church of Nazareth.

Mr Shembe had been drawn into discussions with a Terence Tyrone, who was alleged to be the MK commander in charge of all operations in Kwazulu Natal and who had been charged with the responsibility for assassinating Chief Buthelezi.

To back the allegations, the IFP submission included a letter from Mr Shembe to Chief Buthelezi, dated March 3 1986, about

a meeting with MK and ANC members in February 1986 at the Foresters Arms Hotel at Mhlambanyathi in Swaziland.

According to the letter, assassination plans had reached the stage of MK delegating the task itself to Mr Tyrone, MK commander in charge of all operations in Kwazulu Natal.

Chief Buthelezi said the IFP decided to testify to the commission because at least 420 IFP supporters had been victims of "a crime against humanity"

Francis Meli, the ANC's representative in Germany, had said the ANC would necklace Chief Buthelezi and would use a tractor tyre to do so.

# Federation demands death penalty

(252)

By Shirley Jones

OT (BR) 6/9/96  
Durban — Black business yesterday demanded the reintroduction of the death penalty to combat a number of violent crimes, including murder, robbery and hijacking.

At a press conference which followed Nafcoc's 32nd national conference, Nafcoc (National African Federation of Chambers of Commerce and Industry) representatives said black businessmen had suffered at the hands of criminals.

Nafcoc members welcomed the government's national crime prevention strategy and called for its speedy implementation. It pledged to assist and participate in community policing forums.

The 21 resolutions, on which Nafcoc members battled to agree at the close of a conference marked by confusion and disorganisation, covered a number of controversial issues.

They called to maintain a 48-hour working week, demanded the restructuring of the Diamond Board and other boards which are exclusively white, and requested formulation and implementation of a policy for the transfer of ownership of minerals to black business.

## Most favour death penalty

PRETORIA. More than 71% of South Africans favoured the reinstatement of the death penalty, the Human Sciences Research Council said

This had emerged from a survey in July, an HSRC senior researcher said

He said the ANC's decision to review its stance on the death penalty reflected a groundswell of support for capital punishment

Studies in 1994 showed 67% of the population thought the government would be able to curtail crime. In July this year only 44,1% held this view — Sapa

(252) CT 5/9/96



# ANC stalls hearing on judge's charges

Wyndham Hartley

(252)  
B005/9/96  
CAPE TOWN — The ANC has used its political muscle in Parliament's justice committee to stall a hearing with Judge Rex van Schalkwyk over his charges that he resigned from the bench because Justice Minister Dullah Omar was undermining the judiciary.

Van Schalkwyk hit the headlines yesterday when he justified his resignation by saying that statements by Omar and other ANC members that the judiciary was not legitimate were undermining the authority of the courts.

DP MP Douglas Gibson said yesterday that he had approached Van Schalkwyk to ask if he was prepared to tell the justice committee about his problems, and he had agreed. He suggested to the committee that a special hearing be convened.

ANC committee chairman Johnny de Lange and his colleague Wilhe Hofmeyr resisted the suggestion, and said Van Schalkwyk had been appointed in the period of the worst human rights violations by the state, the mid-1980s, and his voice had not been heard then. He asked whether it should be heard now. The NP's Jacko Maree and Sheila Camerer suggested the ANC was attempting to "sidestep" the issue that Van Schalkwyk had serious problems with the way the government was handling the judiciary.

The ANC component of the committee suggested, as a compromise, that the occasion of the Justice 2000 public hearings in November should be used to hear Van Schalkwyk's opinions. De Lange said that the committee would be hard pressed to complete its legislative programme this year and this militated against a special hearing.

It was agreed that De Lange would invite the judge to address these hearings on his views on the role of Omar, the Constitutional Court and affirmative action in the justice department. ANC members told the committee Omar was prepared to take questions on Van Schalkwyk's objections today.

# Majority favour return of capital punishment

PRETORIA — More than 71% of South Africans favoured the reinstatement of the death penalty, the Human Sciences Research Council found in survey results released in Pretoria on Tuesday.

This had emerged from a survey in July, senior researcher Mandla Seleokane said. He said the ANC decision to review its stance on the death penalty reflected a groundswell of support for capital punishment.

"It indicates that the organisation is coming into tune with the

views of the majority of people in SA," Seleokane said. He said another recent study by the University of Stellenbosch had found that 64% of ANC members were also in favour of the death penalty.

Support for capital punishment had grown significantly since last year, when only 62% of the population came out in favour of the death penalty.

Seleokane said research into crime in July this year clearly indicated people felt criminals were treated too leniently by the courts.

Of 2 000 respondents, 69% felt criminals needed harsher sentences. Scepticism about government's ability to curb crime had also grown.

Studies in 1994 showed 67% of the population thought government would be able to curtail crime. In July this year only 44,1% held this view.

People who considered themselves safe in the country had dropped from 73% in 1994 to 38% in February, rising to 51% in July this year. — Sapa.

(252) BD 5/9/96

# IFP testifies 'because of many deaths'

Wyndham Hartley

CAPE TOWN — The IFP had decided to testify before the truth commission because the murder of thousands of supporters was being ignored, leader Mangosuthu Buthelezi said yesterday

Buthelezi began his submission to the commission with a blistering attack. He said it was doomed to fail in its search for truth and reconciliation because of the way it was composed and its terms of reference.

"I have decided to come here because we cannot remain silent when no effort is made by this commission to question who has killed 420 of the IFP's leaders and murdered thousands of its supporters," he said.

Buthelezi, assisted by IFP national chairman Frank Mdlalose and central committee member Ben Ngubane, levelled the charge that few South Africans knew of the extent of the ANC's involvement in violence because of a conspiracy between the previous government and the ANC. The IFP was "paying the price for this complicity of silence with the death of its members."

The 700-page submission contains a list of IFP leaders the party claims have been murdered as well as hundreds of quotes from ANC publications and Radio Freedom "demonising" Buthelezi and calling for his destruction.

There is also a section devoted to an alleged ANC plot to assassinate Buthelezi in the late 1980s, which names the alleged assassin as Umkhonto we Sizwe (MK) member Terence Tyrone

Mdlalose, who opened the IFP team's submission, said the conflict was sparked by differing strategies on how to overcome apartheid, which came to a head at the 1979 London summit between the two parties.

Because the IFP was not prepared to accept the armed struggle and the destruction of the SA economy, it became a target for destruction, he said.

"It is a matter of public record that the IFP and its predecessor have never embarked on a course of violence to overthrow the state in SA.

"Its whole strategy was and has remained getting hold of apartheid structures the government sought to create, thus ensuring that the policy could not be implemented and that the structures themselves could be used as measures against apartheid," Mdlalose said.

Ngubane charged in his part of the submission that the NP government had conspired with the ANC to allow MK to continue operations against the IFP from Transkei.

He said the former government and the ANC's intelligence services had cooperated in seeking to ensure the demise of the IFP.

The ANC declined to comment on the IFP submissions, saying that it had always seen the struggle in SA as one between the forces of democracy on the one hand and "the system of white minority rule in all its manifestations" on the other.

See Page 9

BO 6/9/96 (252)

# Wrestling with amnesty

Two successful applications reflect liberal interpretation of the law, writes Robert Brand

Star 6/19/96

Criteria

**O**n December 29 1990, Glad Mokgale was hauled from his friend's home by a group of men. The 84-year-old tribal councillor was assaulted and killed. Boy Diale (35) and Christopher Makgale (52) were convicted of the murder and sent to Odiprison for terms of 12 and 15 years.

Few outside the Bafokeng stronghold of Phokeng heard about the murder, or cared about the drawn-out dispute which preceded it. But now, more than five years later, the case has made legal history. Diale and Makgale last week became the first political offenders to be granted amnesty under the Promotion of National Unity and Reconciliation Act, South Africa's unique attempt at settling the divisions of the past.

The decision to grant or refuse amnesty rests solely with the commission's five-member amnesty committee, headed by Mr Justice Hassen Mall. The committee have to satisfy themselves about two things: whether the crime could be classified as an act "associated with a political objective",

and whether the applicant had told the full truth. Any notion of malice or personal gain immediately rules out amnesty.

To decide whether a crime could be classed as "associated with a political objective", the law gives the committee a set of objective criteria, based on the Norgard principles, against which to evaluate an application. They have to look at the motive of the offender, the context and objective of the act, whether it was committed on the orders or with the approval of an established political organisation, and whether it was in proportion to the objective it was intended to achieve.

**T**here has been much speculation in legal circles about the interpretation of the amnesty law, and some lawyers openly admitted that, without a precedent, they were unsure how to argue an amnesty application. Although the law attempts to provide a set of objective criteria against which to judge an application, much of it remains open to interpretation.

The dispute which led to the killing of

Mokgale had its origins in the tensions between Bafokeng chief Edward Mololegi and Bophuthatswana president Lucas Mangope. The tribe owns some of the richest platinum reserves in the world, and they are mined in terms of a lease agreement by Impala Platinum, a Gencor subsidiary.

The tribe's trust fund was administered by the Bophuthatswana government, with Mangope as one of the trustees. Although no impropriety has ever been proved, Mololegi became convinced Mangope was acting against the interests of his tribe, leading to a dispute about the calculation of royalties and an attempt in the late 1980s by Mololegi to cancel Impala's leases.

In 1988, Mololegi and members of his family were detained. After their release, the chief fled to Botswana. Against the wishes of the tribe, Mangope appointed Mokgale, whom he knew to be supportive of his government, as chairman of the tribal council.

The tribe formed an action committee to oppose the new tribal administration. The group of men who kidnapped Mokgale belonged to the action committee, and they

der itself did not have an immediate political motive - the kidnapers were trying to save their own skins - but the events leading up to it (the kidnapping and assault) clearly had, could the murder be classed as an "act associated with a political objective"? The committee's answer, in both cases, was yes.

Although the ruling did not discuss the Norgard principles point by point, it also seems as if membership of an established organisation (the action committee) counted in the applicants' favour, as well as the fact that they had showed remorse (not re-

had been sent to obtain from Mololegi the keys to the Phokeng civic centre, seat of the tribal administration. They intended to occupy the civic centre, thus symbolically wresting governance of the tribe from Mangope and his supporters.

**W**hen Mokgale refused to hand over the keys, he was kicked, punched and beaten. Then, Diale and Makgale testified at their amnesty hearing, he was killed because they were afraid he would report them to the police. The trial judge accepted that they had been driven by a political motive, and that personal malice or personal gain had played no part in the killing.

After perusing the trial judgment and hearing testimony by Diale and Makgale, the amnesty committee accepted that the two had been truthful, that they had had a political motive in kidnapping and assaulting their victim, and that they had done it on behalf of the tribal action committee.

The application raised two specific questions: first, is murder too serious a crime to qualify for amnesty? Second, since the mur-

quered by the law) and that the victim's relatives had supported the application.

The first ruling falls short as a solid precedent because it lacks a point-by-point evaluation of the case against the Norgard principles. But an analysis at least confirms what many human rights lawyers suspected: that the committee would be inclined to interpret the act fairly liberally and grant amnesty rather than not.

The crucial elements, it seems, are proof of a political objective and full disclosure of the truth.

# The wheels of justice

## Caught in a time warp

ET 6/19/96

**A CRUSH** of uncertainty isn't Magistrate reports.  
 Date: You'll be waiting.  
 Eugene Hugo reports.



THIS is not an imposing palace of justice, this place in Mitchell's Plan, where the silences of crime are heard daily and the punishment for it meted out with gun regularity.

The 2.5m-high off-yellow face-rick walls and barbed-wire-topped fences, the towering iron-barred gates and anti-bomb-hooded windows, the bullet-proof glass of anti-hexagonal sentry boxes, all lack of the bygone apartheid era. But the fortress that is the Mitchell's Plan Magistrate's Court will well have been designed for what is happening on the Cape flats among the poor home developments and the shack settlements high surround them.

A new South African flag flutters bravely enough above — a bit tattered at the leading edge, perhaps. Tattered as the ANC election poster outside carrying the promise "make it happen where we live". Inside is a crush of humanity tugging, crouching, standing, staring, smoking — waiting for justice to be done. A chaotic vector of physical, mental and moral disorder waiting for an equally chaotic motor of the criminal justice order to make sense of the system? Four or five fresh cases a day are

(252)

16-year-old brother Lionel "Please Mister, report on his case. We're charging the police. Four of them beat him up. He's only in Std 8".

A "joller" suddenly bursts from the crowd holding his ear. In hot pursuit is a man intent on landing another cuff on the head of his now howling prey. The crowd bays "follow them", they skid round the corner, a policeman stops them. A passing prosecutor says that an uncle has caught his nephew playing truant from school.

One can almost sympathise with the magistrate who quietly longs for the return of corporal punishment.

Upstairs, mothers and children await their turn in the maintenance and interdicts courts. Mrs Gloria van Wyk has her four-year-old grandchild Tamzyn Harris on her lap. It is 10:30 am and she and Mrs Marion Meyer, across the packed passageway with her daughter, have been there for 2½ hours.

Other not-so-patient children frolic, poking mischievous heads into open offices. Prosecutors sigh being pursued. A man is remanded until December for further investigation of charges involving the rape of children aged six and 10.

Another in chains and wearing a prison garb gets a lecture from the magistrate — the country is on the brink of chaos. There is no respect for the law. Everyone is doing as he likes. "Another rapist, armed robber, murderer?"

No, not this one. He shoplifted a tube of Bostik (Value R3,95) from Shoprite. "You start small, you end up housebreaking, robbing even murdering." R900 or 90 days suspended for four years.

A pigeon flutters down from a missing panel in the ceiling. You catch yourself hoping it will accurately unload a messy missile. But I suppose Bostik is a luxury item — you can't eat it, only sniff it.



**LONG QUEUE:** This youth, who would not give his name or say why he there, heads a long queue of people waiting for justice to be done. **RIGHT:** Mitchell's Plan Magistrate's Court prosecutor Mrs Ruth Dawds sorting the mass of documents and case files which are dealt with at the court each day

PICTURES: GARTH STEAD AND EVELYN HOLZHAUSEN

## System of lay assessors 'is a waste of money'

**EUGENE HUGO**

THE system of lay assessors at Mitchell's Plan Magistrate's Court is a waste of money, according to a senior official.

He said that assessors — appointed to help magistrates on the factual assessment of cases — were paid R100 a day. Their only qualification was "being laymen". Should two be appointed in a case they could overrule the magistrates on the facts.

He said assessors knew nothing of the law and often ruled on an emotional basis. Also, a chief coordinator of assessors had been

arrested for fraud and another was suspended because she had criminal charges against her.

It had happened that assessors had tried to influence the course of justice. One tried to manipulate a case because he "did not believe" that a person he knew was capable of committing such a crime. Another had tried to put pressure on a magistrate by telephoning women to pack the court during a bail hearing in a rape case.

"The system is open to corruption. The sooner it is ended, the better. We (Mitchell's Plan) would prefer to see lawyers acting in rotation as assessors."



The courts where justice is strangled ET 6/19/96

"That, in itself, is intimidation they have to go back to the neighbourhood and people will be waiting for them. I can't pursue gangsters if witnesses don't turn up."

Similarly, his deputy, acting assistant senior prosecutor Mr David Jacobs, is also not quite sure for whom he is standing in or who might be appointed.

But Jacobs knows his job. Jacobs told the Cape Times that documents had not gone missing over the past few months because he had introduced a new security system.

The angry magistrate filled in the missing detail, two translators are being prosecuted in connection with mislaid documents.

He (Jacobs) said that on Mondays, Mitchell's Plan handled between 60 and 70 new criminal cases, while there were never less than 15 on "slow" days. This did not take into account all of the withdrawals, postponements and remands.

It also did not take into account those people at the maintenance courts and those seeking interdicts against family violence.

Jacobs said a number of other factors contributed to the untenable conditions.

These included delays in processing cases, investigations not properly done, instructions from prosecutors not followed by police, police going on leave and locking up their dockets.

"Something has to be done to speed up investigations and to streamline the system," he said.

The angry magistrate has the last word. "Supreme Court judges must stop overturning our cases when we seek severe and punitive punishment for crimes.

"The entire system must be revised to suit the current situation."

## A case study

Example:

DOCKET: Theub in Fish... Case No. 17/573 96

1973 — ... 1974 — ...

1975 — ... 1976 — ...

1977 — ... 1978 — ...

1979 — ... 1980 — ...

1981 — ... 1982 — ...

1983 — ... 1984 — ...

1985 — ... 1986 — ...

1987 — ... 1988 — ...

1989 — ... 1990 — ...

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2007 — ... 2008 — ...

2009 — ... 2010 — ...

2011 — ... 2012 — ...

2013 — ... 2014 — ...

2015 — ... 2016 — ...

2017 — ... 2018 — ...

2019 — ... 2020 — ...

2021 — ... 2022 — ...

2023 — ... 2024 — ...

2025 — ... 2026 — ...

2027 — ... 2028 — ...

2029 — ... 2030 — ...



**TARGET TILES**

**STOCK CLEARANCE**

**DUMPING CURRENT**

**SHAW**

**SUPREME COURT ROLL**

**THIRD DIVISION**  
Court No. 16  
Divorces

S V R I Abrahams, D V H J Adams, F V M Adams, N G V J April, D C V B M Arr...  
T, C, A, ust, E, J, V

Z Jainoodien and another v The State  
**DIVISION TWO**  
Criminal appeals  
(2 Judges)  
G Claassen and two others v The State

**Advertising their form**

# Now consumer faced with 14% VAT on bank charges

DWN CORRESPONDENT

**JOHANNESBURG:** The government is planning to take advantage of the high service fees banks charge customers by slapping on a further 14% VAT from October 1.

The move, signalled in the March budget, will take an extra R100 million from consumers for government revenues over the next year.

The VAT charge adds to the 20 cents the government already

charges for each bank transaction.

While local banks persist with changing fees that are among the highest in the world for routine transactions, South Africans will have no choice but to pay.

Big business will not be affected. It will simply claim the VAT back from the government.

The levying of VAT charges on bank services has been made possible by the level of sophistication of modern banking systems. Computers are able to distinguish

between interest and service charges, said Econometrix economist, Mr Tony Twine.

"The sky is the limit for people who write checks for a carton of milk. South Africans are going to have to learn to bank more wisely," warned a Nedcor banker.

Although bank service fees are very negotiable, indications are that annual bank charges for an average, middle-income household with a cheque account, bond and a few debit orders will

increase by almost R500 from R3 260 to about R3 716.

The VAT charges will apply to a vast range of services, from deposits and withdrawals, cheque payments to debit orders and transfers. Bankers have compiled a 12-page list of services which will become taxable.

Economists said the informal sector would be hard hit as it relied on daily cash transactions. The South African Council of Banks (Cosab) confirmed that

banks had not been told how to convey the VAT charge to customers on statements. But three of the country's major banks — First National, Nedcor and Standard —

said statements would distinguish clearly between the bank's service fee, the VAT added to that fee and the government levy, which is not taxable.

Standard Bank is expected to increase fees by between 12,5% and 13,3%. General manager of financial and secretarial services Mr

Henry Shaw said the benefit of VAT credits which the bank was able to claim would be passed on to customers.

South African Chamber of Business (Sacob) economist Mr Keith Lockwood said the total amount the government expected to recover by levying VAT on service fees was about R150m.

But the financial services levy which was previously payable by banks and institutions, would fall away. This meant a R50m loss to

the government when banks no longer had to levy the additional quarter percent on interest.

This was a drop in the ocean compared with the additional R2,7bn the government hoped to collect from the taxation of the retirement fund industry, and the R2bn which the government had foregone as a result of restructuring personal income tax.

Standard Bank economist Mr Nico Czymionka said the new tax would make no difference to the

Receiver's income as the timing of its introduction would coincide with the scrapping of the levy on interest, one tax more-or-less replacing the other.

"Consumers will foot the bulk of the bill for the new levy unless money market conditions at the time of introduction make it possible for banks to drop lending rates by a quarter percent — because interest rates were raised by that amount when the levy on interest was introduced," he said.

## ET 6/9/96 No review of death penalty' (252)

MILEM STEENKAMP

PRESIDENT Nelson Mandela had assured him that the ANC would not review its position on the death penalty. Truth and Reconciliation Commission chairman Archbishop Desmond Tutu told a meeting of Gun-Free South Africa last night.

Tutu, a patron of the organisation, said Mandela had given him the freedom to make this point known.

"They are not bucking under and they are not going to review the matter of the death penalty," he said.

Tutu told the meeting there had been two results from the disturbing escalation of violent crime in South Africa. There had been a call to reimpose capital punishment and people had "armed themselves to the teeth", marched, and burnt "the east one alleged crime lord". Citizens were "browned off" with the justice system, he said.

Reintroducing the death penalty was "wholly unrealistic", and he expressed disappointment with the "unprincipled and scandalous" decision by some top ANC members to revisit the issue. It was "obscene in illogicality" to take a life to protect others, he said, adding "I oppose the death penalty like I opposed apartheid."

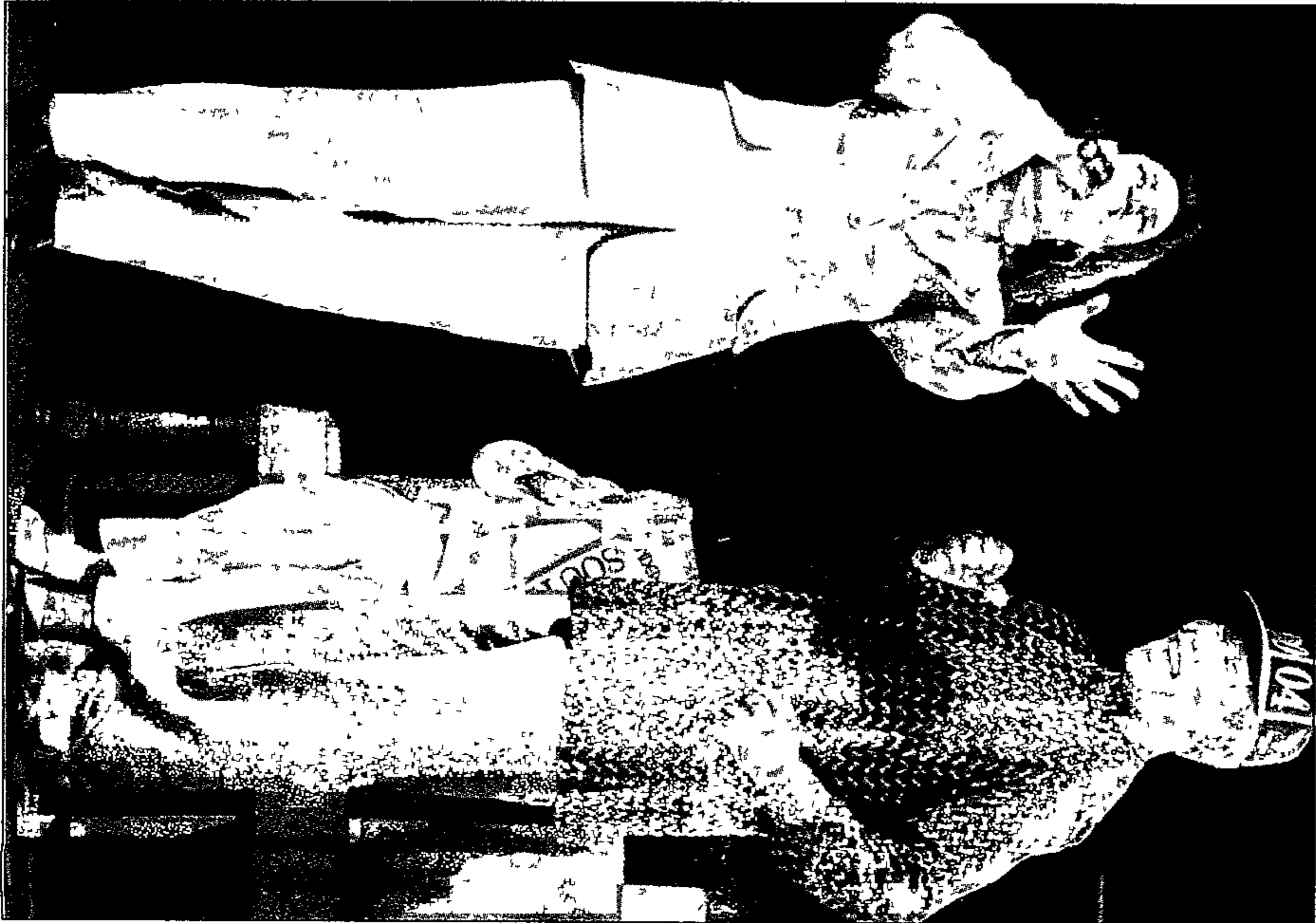
He said guns did not provide security in a crime-ridden society, and recalled a number of recent tragedies involving accidents with firearms. "The real problems we need to deal with are social and economic."

Tutu said also that there was a need for "more and better-trained police on the beat. They need to be visible."

● Asked afterwards if he had any advice for Mandela in his relationship with Mrs Graca Machel, Tutu said "My news Get married."

"They want to," he added, "At least he does — so it seems."

## Bid time ticking



**PARTY HOUR:** President Nelson Mandela dances with singer Vicky Samson to her song African Dream at the Civic Centre yesterday during the launch of the Olympic Bid Company's countdown clock. ● See Page Two

# The courts where justice is strangled

ET 6/9/96 (252)

SENIOR officials at the Mitchell's Plain Magistrate's Court tell of wholesale intimidation of witnesses in overcrowded facilities and of huge delays in administration and procedures caused by the sheer weight of documentation. **EUGENE HUGO** reports.

**C**HILD rape cases pour through it, but they have no special facilities. Staff are exhausted and the sheer weight of files hamper the administration of justice.

Desperate senior officials at the Mitchell's Plain Magistrate's Court have painted a vivid picture of an antiquated, beleaguered and chaotic system which cannot properly serve criminal justice in South Africa.

Participating in a Cape Times investigation, they pointed out overcrowded courtrooms, demonstrated inadequate facilities and disclosed that magistrates and prosecutors were under incredible pressure — some almost to breaking point.

At the same time, they told of wholesale intimidation of witnesses and outlined how the weight of documentation and administration caused excessive delays in procedure, annoying complainants and accused alike.

The Cape Times found that:

- Mitchell's Plain courts are being choked under the weight of files administered through the most old-fashioned of methods.
- Court cases are being constantly delayed as officials under siege helplessly wait on other institutions and departments.
- Post-mortem, assigning of social workers, and psychological reports take up to three months to be processed. Blood tests

the government when banks no longer had to levy the additional quarter percent on interest.

This was a drop in the ocean compared with the additional R2,7bn the government hoped to collect from the taxation of the retirement fund industry, and the R2bn which the government had foregone as a result of restructuring personal income tax.

Receiver's income as the timing of its introduction would coincide with the scrapping of the levy on interest, one tax more-or-less replacing the other.

"Consumers will foot the bulk of the bill for the new levy unless money market conditions at the time of introduction make it possible for banks to drop lending rates by a quarter percent — because interest rates were raised by that amount when the levy on interest was introduced," he said.

for housing prisoners without considering the costs of legal aid.

An angry magistrate laid it on the line "Eke is now gatvol (I am fed up)." He said the system was so old "it hasn't changed since Van Riebeeck's days. I feel frustrated, I feel as if I'm working in a vacuum. Sometimes I want to go mad or vomit."

And he added "People speak of Sarafina, 1,2,3,4. I don't care, but I must tell you the justice system wastes more than that every day."

Acting senior prosecutor Mr Mark Wakefield (who doesn't know why he's acting or who's going to be appointed) said the addition of the "satellites" really put pressure on his courts.

He said that in the overcrowded circumstances that prevail, witnesses and accused stare at each other outside courtrooms. □ Turn to Page 2

## Bid against crime.

It is suspected that it was a "fast-gasp" apartheid decision in 1992 by a senior justice Department official to allocate all these "satellite areas" to Mitchell's Plain because they did not want blacks in Wynberg.

There are an inordinate number of child-rape cases flowing through Mitchell's Plain. That court, however, does not have a special facility like Wynberg Court. "We have a camera but no special court."

All of this places an unwarranted burden on the taxpayer, who pays R64 a day

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# ANC 'tried to make Inkatha a subordinate'

CT 6/9/96 (252)

**A SUBMISSION** to the TRC, Inkatha leaders said the ANC should 'table all their strategy documents', or be subpoenaed to do so, "so that the truth about their objectives becomes a matter of record" **ROGER FRIEDMAN** reports.

**I**NKATHA was "singled out as enemy" by the ANC in 1979 after the Inkatha Cultural Liberation Movement resisted attempts to make it "a surrogate of the ANC" at bilateral talks between the organisations in London

Yesterday, during the IFP's submission to the Truth and Reconciliation Commission in Cape Town, the party urged the commission to call on both the IFP and the ANC to publically and simultaneously reveal the details of those talks. The contents of the talks were vital if the commission was serious about discovering the truth and fostering reconciliation

"The differing strategies to overcome apartheid proved irreconcilable at that conference," the IFP stated in a submission by party leader Chief Mangosuthu Buthelezi, chairman Dr Frank Mdlalose and KwaZulu/Natal MEC Dr Ben Ngubane

Inkatha had "refused to crook the knee to the ANC or accept its strategy of armed struggle and the destruction of the SA economy"

The submission — which listed the names of 422 IFP office-bearers killed since 1985, and documented several hundred incidents of violence perpetrated against IFP members and supporters since 1991 — follows submissions by most other political parties two weeks ago

The conflict between the ANC and our organisation is rooted in differing responses to the problem

of apartheid Those responses began more than three decades ago

"Unless there is an acceptance that there were differing responses to apartheid, there will be no reconciliation in our land There will never be reconciliation in this land until the truth about our past and what is happening now is laid bare for all to see

"In the dark years of apartheid we were all conditioned to think of black and white, in stark contrasts There were no in-betweens, no greys This stereotypical thinking has journeyed with us into what we call the new South Africa We are still busy crafting political mythologies in which we cast ourselves as the only righteous force in the struggle for freedom," the IFP said

"The work of this commission too is in danger of becoming a victim of this malaise Its brief is essentially to investigate human rights violations under apartheid. But the conflict between Inkatha and the ANC was not about apartheid The conflict was about the nature of the system that would replace white rule, and the identity of those who would wield power after liberation

"We wish to remind the commission that the campaign to render South Africa ungovernable was not only directed against the

apartheid state KwaZulu and the IFP in particular have been targets of ANC destabilisation policies since the failed 1979 conference to persuade the then Inkatha Cultural Liberation Movement to become a surrogate of the ANC.

"It is not our intention to detail these plans Instead, we would suggest that the commission call on the ANC to table all its strategy documents, both those distributed externally and internally, before the commission so that the truth about their objectives might become a matter of public record If the ANC fails to do so voluntarily, the documents should be acquired by subpoena.

"While it cannot be again said that apartheid lies at the root of many of the country's political and social problems, the IFP believes it equally true that the ANC's response to apartheid and particularly its ungovernability programme is the father of today's violence and the cause of the conflict between the ANC and the IFP

"Ungovernability campaigns might well have been replaced with masakhane programmes, but the heritage of schemes to sow anarchy is with us, as most South Africans know only too painfully

"The ungovernability not only sought to destroy constitutional authority, but it sought to replace it with essentially illegal structures that were based on violence and coercion The people's courts of yesterday, and calls for the 'mushrooming of people's power' find expression in the Pagads of today "



## Buthelezi apologises to ANC for hurts

**STAFF WRITER**

IFP leader Chief Mangosuthu Buthelezi has apologised for "any hurt" his followers might have inflicted on members and supporters of the ANC

"I have always abhorred violence I abhor violence now and I will die abhorring violence I have never made any decision to employ violence anywhere for any purpose whatsoever," Buthelezi told the Truth and Reconciliation Commission in the city yesterday

But Buthelezi acknowledged that some of his supporters had resorted to violence, and apologised on their behalf

"Although I have not orchestrated one single act of violence against one single victim of the political violence, as the leader of the IFP I know that the buck stops in front of me

"Because we are human beings, we shall still hurt each other I apologise for the past hurts and I do so also on behalf of my followers "



## 'Clerics did not weep at graves of murdered IFP members'

**ROGER FRIEDMAN**

**T**HE Inkatha Freedom Party has no faith whatsoever in the Truth and Reconciliation Commission's ability to reveal the truth or promote reconciliation

"I have decided to come here because we cannot in all conscience remain silent when no effort is made by this commission to question who has killed 420 of the IFP's leaders and murdered thousands of its supporters These serial killings are a crime against humanity and demand answers," said IFP president Chief Mangosuthu Buthelezi during his party's submission to the TRC yesterday

"We have not seen any prominent clerics weep at the gravesides

of the thousands of IFP members who have been murdered for no other reason than they are members of the IFP," he told a commission panel headed by two clerics, Archbishop Desmond Tutu and Dr Alex Boraine

"We have not seen one prominent cleric strive to comfort the thousands of widows and children whose loved ones were put to death simply because they held a particular political point of view

"We have not seen one human rights organisation voice its concern or chronicle this dossier of death We have not seen one NGO that has provided succour to these bereaved, or to structures of which they were part when they were alive

"Indeed, the South African Council of Churches saw to it that not a cent of the hundreds of millions of rands of aid from the European Community could be used to uplift bodies to which our members belonged "

"The IFP has had reservations about the TRC from the outset We believed — and we continue to believe — that the commission as currently composed, and operating within its current terms of reference, will neither reveal the truth nor bring about the reconciliation we so desperately need "

Said Buthelezi "As we look around this room, we do not see many friends "

CRIME &amp; PUNISHMENT

(252)

**DANGLING THE NOOSE**

FM 6/9/96

The plea from delegates, at the ANC's weekend safety and security conference, for the party executive to reconsider the death penalty comes when perceptions are that crime has reached uncontrollable proportions (see *Leading Articles*)

Allied to that, law enforcement agencies and the criminal justice system are seen as corrupt and incompetent

In the Western Cape, People Against Gangsterism & Drugs (Pagad) continues to assert this as a truism — and to flout authority. Its leader, Ali "Phantom" Parker, says Pagad will ignore new regulations sponsored by Safety & Security Minister Sydney Mufamadi aimed at curbing the carrying of weapons in public. The rules come into effect on September 16 and are in line with the tough, if despairing, attitude of the ANC conference.

Whether the police have the numbers or the will to enforce such regulations is open to question. Pagad and its offshoots — however illegal their methods are at times — have widespread support in crime-racked communities and the police appear to want to co-opt rather than prosecute them.

Pagad marches and attacks on perceived gangsters continue — though the situation is confused, with the media now excluded from the organisation's strategic planning sessions at the Gatesville Mosque near Athlone, and the difficulty of separating "ordinary" crime from vigilante violence.

The volatility of the situation is underlined by the appearance of some community support for the gangsters, too. Security forces were called in to ringfence the protracted bail hearing of alleged druglord Colin Stanfield in the Wynberg Magistrate's Court this week. There was a serious threat of physical invasion by up to 500 Stanfield supporters, who describe their hero as a "god" because he helped the poor.

Stanfield, a leader of a syndicate called The Firm, was arrested at his Rondebosch home last Thursday after what is described as a three-year drug investigation. He was recently seen in the company of Rashied Staggie, brother of

Rashaad, torched and shot to death by Pagad last month.

If the police took three years to build a case against Stanfield, it's no wonder Pagad has become impatient and arrogant. Claims of police and justice system corruption abound and Justice Minister Dullah Omar has conceded there is some truth in them (*Current Affairs* August 30).

Apart from being overcrowded, the prisons appear to have been turned into playgrounds for some convicted criminals. This week, Correctional Services is reported to be investigating claims by a long-term prisoner that — courtesy of corrupt officials — he spent last Christmas eve enjoying himself drinking and partying on the Cape Flats. A departmental spokesman gives the feeble assurance that an anti-corruption unit is being established and will act "rapidly and ruthlessly" against corruption.

The mandate issued by the ANC conference to its leaders (apart from the call to reopen the death penalty issue) includes

- An extension of the witness protection programme as a means of circumventing the murder of State witnesses,
- Intensified gun control,
- An expansion of the courts into specialised tribunals dealing with gangsterism and drugs,
- An increase in prosecutors' pay, and
- A reversal of the presumption of innocence to make defendants more answerable to French-style inquisition.

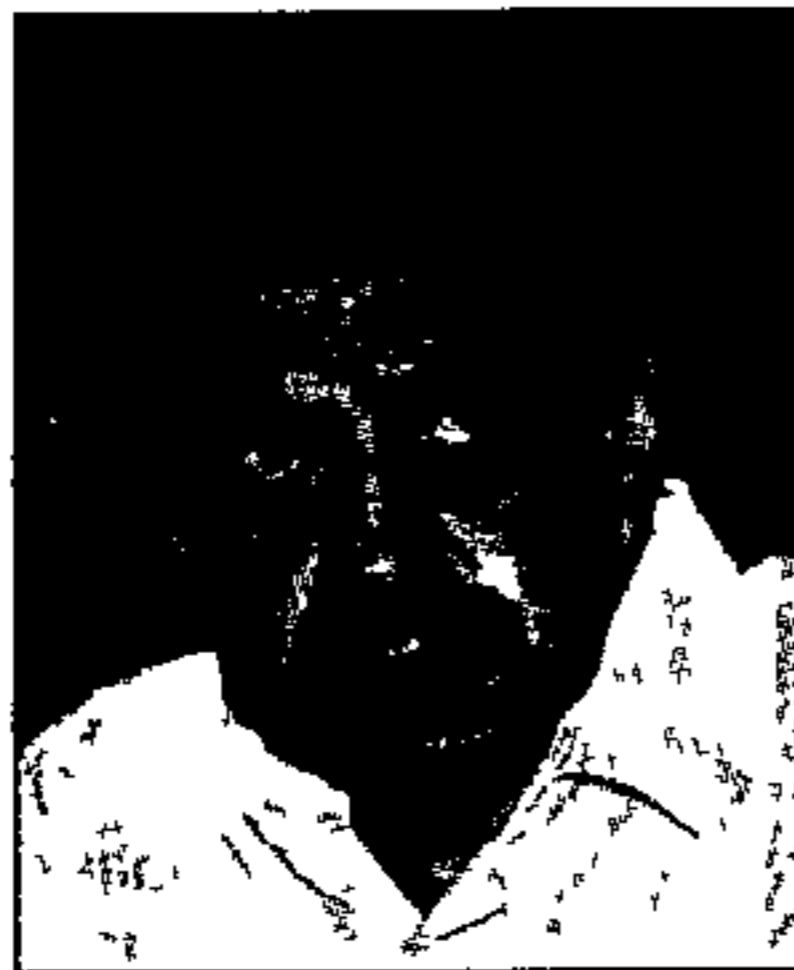
Yet these suggestions follow only a few days after the law and order Ministers issued a joint statement on a wide-ranging National Crime Prevention Strategy. In other words, many voices are being raised in the name of stricter and more efficient prosecution, sentencing and parole conditions — but little practical advice is forthcoming over how all this is to be done and financed.

Meanwhile, comments by Omar to the effect that judicial appointments under the old regime were "illegitimate" has caused enough disquiet to trigger the resignation of Judge Rex van Schalkwyk of the Witwatersrand Supreme Court. Van Schalkwyk says he is tired of "making orders which I know are unlikely to be enforced." He also objects to affirmative action policies in the justice system

that have, he claims, led to the appointment of unqualified judges.

He says many juveniles released from jail — on the orders of Correctional Services Minister Sipo Mzimela — are "back in business" and the ANC's response to criticism of the system is to label its critics "racist and undemocratic."

Such defections will exacerbate perceptions that law and order ministries are floundering and that government rhetoric means nothing in the face of an unstoppable tide of crime and violence. ■



Dullah Omar



# Buthelezi apologises for violence

Wynndham Hartley

CAPE TOWN — IFP leader Mangosuthu Buthelezi apologised to the nation yesterday for violence committed by his followers, but insisted he had never orchestrated a single act of political violence.

He also apologised to the ANC and President Nelson Mandela for "hurting" he might have caused the ANC leadership and immediately challenged Mandela to publicly do likewise.

"I say I am sorry to SA because, although I have never orchestrated one single act of violence against a single victim of the political violence that has cost many lives, as the leader of the IFP I know that the buck stops right in front of me," he said, after conceding IFP members had been drawn into political violence.

After launching his submission to the truth commission with a hymn, Buthelezi launched a bitter attack on the clergy in SA. In an apparent reference to the head of the commis-

ston, Anglican Archbishop Desmond Tutu, he said no prominent clerics had wept at the side of IFP graves. The SA Council of Churches had not spent a single cent out of hundreds of millions of rands on IFP affiliated organisations.

He said he felt he had to raise the issue of an apology to the nation by churches in the interests of reconciliation. He said the "political clergy" who believed the armed struggle had been necessary and who had not believed in non-violent opposition to apartheid owed an apology for supporting violence.

It would be a hideous distortion of political reality to say that South Africans had to die on street corners from bomb-blasts in order to achieve the political victories which were now a reality, Buthelezi said.

He slammed the Kaaros "resistance theology" document which sought to give Christian backing to revolutionary tactics and violence as badly mistaken. Buthelezi said it had been a strange expe-

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ence for him to be "demigrated by ecclesiastical patrons of radical political movements who, without scruple, presided over what appeared to me to be thuggery of the worst kind."

Human rights organisations also came in for criticism for not voicing concern "over the chronicle of death" of IFP members. Nowhere else in the world would killing on such a grand scale go unchallenged, he said. If the ANC was correct in saying that the IFP was an apartheid surrogate, then the NP government was not responsible for killing them.

A statement by Judge Richard Goldstone that Public Works Minister Jeff Radebe had said the ANC had changed its policy with regard to violence as a political tool presented a "prima facie" case that they had been involved in political violence.

The only tangible result of the Goldstone commission was the creation of the investigation task unit which was seen as serving the interests of the ruling party, Buthelezi said.

# ANC reopens debate on the death penalty

Ann Eveleth

MTG 6-12/9/96 (252)

**C**AUGHT between the rock of its abolitionist principles and the hard place of a constituency ravaged by crime and clamouring for revenge, the African National Congress seized control of the death penalty debate this week.

A recommendation from the ANC's crime summit last weekend asked its leadership to "consider reconceptualising its long-standing opposition to the death penalty." Senior ANC MP Carl Niehaus moved quickly this week to "clarify" the resolution as little more than a recommendation for the ANC's National Executive Committee to "consider whether we need to re-examine our position," but added that a "positive outcome of the debate could be a move to restate the ANC's arguments against the death penalty."

Niehaus noted that "once the initial hype settled down, there has subsequently begun to be a serious debate on the issue."

In sharp contrast to the recent focus on opposition campaigns for the reopening of the gallows, most major newspapers this week rallied behind the hard-won campaign which closed the door on executions last year.

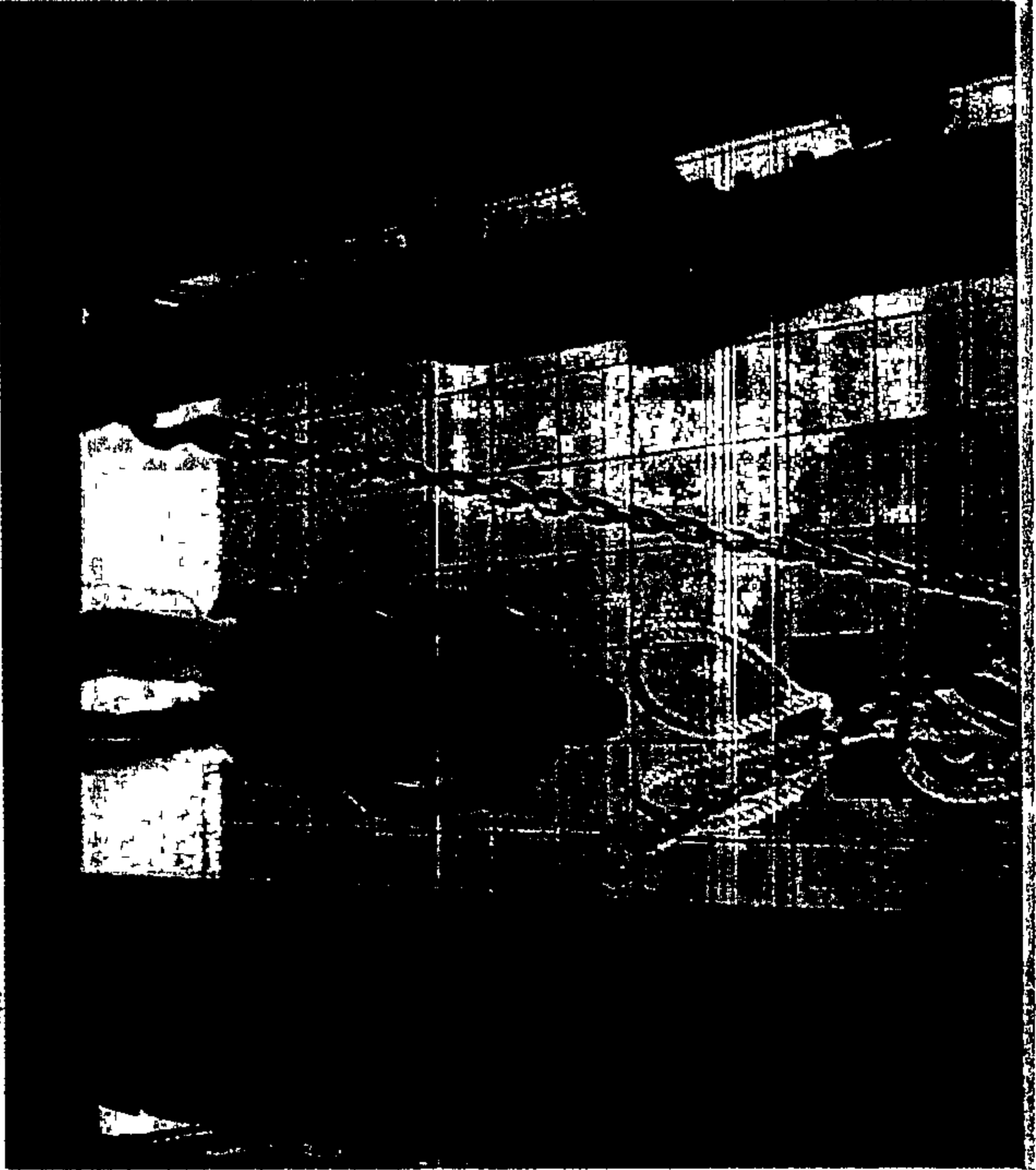
Human rights groups rallied behind their sacred principle, and the ANC's most vocal abolitionists dusted off their ammunition to launch a counter-offensive against a "knee-jerk response to crime."

**"If we were to hold a referendum on every contentious issue, this country would be nowhere"**

The Gambia, Papua New Guinea and the Philippines have not used it.

The ANC's most celebrated death row survivor, Magoo's bar bomber and Deputy Director of Foreign Affairs Robert McBride, rallied behind the party's abolitionist stance, saying pro-hanging arguments represented a "jump in logic" for communities reeling from the crime wave.

"I've never come across a death row prisoner who thought at the time he



Gaping question: The ANC's abolitionists argue against a 'knee-jerk' reaction to crime. PHOTO: HEINER FRANKENFELD

**Gaping question: The ANC's abolitionists argue against a 'knee-jerk' reaction to crime.**

reversed the current status quo. 100 countries worldwide have either outlawed the death penalty or have not used it since 1985. Only four countries have reintroduced the death penalty in the past decade — of these four, Nepal has since realpolished it and the Gambia, Papua New Guinea and the Philippines have not used it.

The ANC's most celebrated death row survivor, Magoo's bar bomber and Deputy Director of Foreign Affairs Robert McBride, rallied behind the party's abolitionist stance, saying pro-hanging arguments represented a "jump in logic" for communities reeling from the crime wave.

"I've never come across a death row prisoner who thought at the time he committed the crime that he'd be hanged. Even in the heyday of apartheid, when they were hanging 167 people a year, crime skyrocketed. The real problem is that criminals know they won't be caught," McBride said.

ANC justice committee chair Johnny de Lange said the debate had diverted attention from the "real issue of the transformation of the justice system" which the party had begun to tackle at the summit.

Despite the summit's decision to "acknowledge" the public outcry in favour of hanging — including public opinion polls placing support for hanging at about 70% and indicating substantial ANC grassroots support for the death penalty — ANC leaders this week swiftly countered opposition, calls for a referendum on the issue.

The National Party, Inkatha Freedom Party, Freedom Front and some Democratic Party leaders said they were in favour of a test of the electorate, but ANC leaders stood firm in their belief that "some issues cannot be subjected to the vagaries of public opinion."

Nzimande said: "If we were to hold a referendum on every contentious issue, this country would be nowhere. If we had subjected the Government of National Unity to a referendum, it would never have been accepted."

McBride argued there were other equally contentious issues like land reform, over which "nobody demanded referendums. If we called a vote on land reform, most people would demand the immediate return of land that was taken from them under apartheid."

Provincial and Constitutional Affairs Ministry spokesman Mpho Mosmane warned that any attempt to chip away at the human rights culture enshrined in the Constitution's Bill of Rights could have a "ripple effect" on other rights. A return to the death penalty would require the removal or amendment of the right to life clause in the Bill of Rights, but "other rights, such as abortion, may also be affected."

# Death penalty unlikely to be reintroduced

(252)

AKL 6/9/96

SA's constitution-making process nears its final lap with the institutional Court's judgment today, a new twist has merged the death penalty. If, as seems likely, the constitution is referred back to the Constitutional Assembly, what are the chances changes to the constitution to allow the reintroduction of the death penalty?

Basically zero. The abrupt out-face on the death penalty by ANC delegates at a crime conference last week signals a new approach by the party to the crime issue. But the conference did not end the ANC to a new position, it merely referred the issue to the national executive committee.

Even though Justice Minister Allah Omar has pledged to present the delegates' motivation for change in policy, there is practically no chance that it will be enacted formally by the party.

Although there is more support for reintroduction of the death penalty than before in the national executive committee the vast majority of members are implacably opposed to the death penalty. Too many committee members wrongly escaped the gallows themselves, too many members member comrades who were hanged during the apartheid era, and too many lived for long periods in countries where the death penalty was reviled for any change to take place now.

British journalist Simon Jenkinson once wrote that in the US, which is governed by the politics of the mob, politicians find themselves unable to resist popular pressure for the application of the death penalty. In the UK, which is governed by the politics of the club, politicians find it quite easy to resist popular support for the death penalty and do so often.

Despite widespread perceptions to the contrary, SA politics are characterised more by the club than the mob — it is just a different kind of club.

The SA version essentially subscribes to the same views as Jenkins: that the death penalty is not a deterrent, that if government is civilisation, something as uncivilised as the death penalty is unconscionable because retribution is not a matter of replicating the crime but finding an appropriate punishment. Hence face slashers do not get their faces slashed, and murderers are not incarcerated and sons of murderers are not hanged.

In any event, says Mark Shaw, senior crime researcher at the Institute for Defence Policy, as far as the crime debate in SA is concerned, the death penalty is simply a red herring. However, he points out that ANC members call

for a reassessment of the death penalty does introduce a new phase to the crime debate.

At the beginning of the new government's term of office, many of its members felt the high level of crime was a by-product of apartheid which would rectify itself as the society stabilised. This position evolved into recognition of the severity of the problem and a period of "paper promises", voluminous plans, reports and studies of crime and promises to set things right. Now a new phase has developed with a call for immediate and visible political action, hence, the calls for the death penalty.

Although the issue is not likely to affect the constitutional debate, it is likely to affect the budgetary process. It is pertinent for the issue to be raised because early next month government departments' budgets for the 1997/98 financial year will be finalised.

Unfortunately the ground swell of new support for an increase in the crime budget is on a collision course with government's macroeconomic framework. Although the budgets of the justice, safety and security and correctional services departments are not known, rumours are that they

are all to decrease in real terms. Many budgets will have to be cut if government is to meet its 4% deficit target, and so far the anti-crime budget has not been excluded. Will it really be allowed to fall for a third year in a row?

There is a strong lobby in government which is determined that this will not happen. Some financial assistance for the fight against crime is likely, despite repeated claims and academic evidence that more money does not necessarily result in less crime.

If the crime budget is to increase, where and how should it be spent? Shaw makes two points: firstly that the problem with SA's police force is a middle management problem and, secondly, more focus is needed at the back end of the crime problem — the justice and prison systems — rather than on police in the frontline.

Years of apartheid government, where police were primarily concerned with restaurants, led to highly centralised control of the police force in Pretoria. This needs to be loosened, with a greater focus on the metropolitan level and more responsibility and power placed in the hands of station commanders and detectives, who need to be better trained.

More work needs to be done on speedy and effective prosecution and effective rehabilitation. That means there is no way government can hide from its unpalatable duty to build more jails.

Justice Minister Dullah Omar has promised to present ANC members' motivation for a change in policy on the death sentence



# Omar called on to answer judge's claims <sup>(252)</sup>

Opposition parties have asked that  
Judge Rex van Schalkwyk be heard

By **PATRICK BULGER**  
Cape Town

Justice Minister Dullah Omar should answer allegations by Rand Supreme Court Judge Rex van Schalkwyk that he was stepping down from the Bench because Omar was undermining the judiciary, opposition parties said in Parliament yesterday.

Judge van Schalkwyk charged earlier this week that Omar had undermined the judiciary by saying judges appointed before April 1994 were illegitimate. He was stepping down as a result.

Democratic Party justice spokesman Douglas Gibson has asked the portfolio committee on justice to give the judge a hearing. He told the committee Judge van Schalkwyk was not a "tainted apartheid judge".

"On the contrary, he had impeccable liberal and democratic credentials before his appointment to the Bench," Gibson said, adding that South Africa could not afford to lose judges of his calibre.

National Party justice spokesman Sheila Camerer said the resignation was "a matter of serious concern". Omar owed the public a full and substantial answer to the allegations.

Announcing his departure after 10 years, Judge van Schalkwyk described the problems which he says led to his letter of resignation in April, but which were revealed only on Monday, reports Shirley Woodgate.

He warned that the country was heading for civil disorder if the courts' authority was no longer respected by the public.

His main concern was comments by Omar and other ANC members that the judiciary was "illegitimate".

He claimed this often led to court orders being defied with impunity, which in turn led to dissatisfaction within the judiciary.

"Personally, I just became frustrated at making orders which I knew were unlikely to be enforced," Judge van Schalkwyk said.

## Convicts to seek amnesty

# Ntuli's gho

## Prison cell, disclosures of IFP reign of terror

By WALLY MBHELE



**TWO LIFE-SERVING convicts have made dramatic revelations from their Johannesburg prison cells incriminating several Inkatha officials in the pre-election reign of terror in Thokoza, Gauteng – including the killing of civic leader Sam Ntuli and other prominent leaders.**

For the first time light has been shed on who killed Ntuli – who before his death in 1991 was the general secretary of the Civic Association of Southern Transvaal and a prominent ANC official

The damning allegations come within days after Inkatha made its own submissions to the Truth and Reconciliation Commission detailing an alleged plot by the ANC to assassinate Inkatha leader Mangosuthu Buthelezi in 1987

City Press can reveal that a top Inkatha official (known to us) recently visited the two prisoners and tried to stop them from making the disclosures on the Thokoza killings by offering them a R100 bribe

The two – Thulani Mlaba and Themba Zimu – have applied for amnesty to the Truth and Reconciliation Commission's amnesty committee and want to reveal all

An amnesty committee spokesman confirmed that the two convicts had applied for amnesty but would not reveal details of their offences

Mlaba and Zimu, however, told City Press they had been dragged into an Inkatha reign of terror

They said they had operated under an Inkatha hit squad commanded by a notorious Thokoza warlord, whose name is known to City Press

The warlord's hit squad had assassinated his own wife, they said – but the warlord had blamed comrades in neighbouring Katlehong

On the eve of his wife's funeral, they said, the warlord had ordered an attack on a house in Katlehong in the East Rand where he claimed his wife's killers stayed

They had taken part in the grisly attack – in which five school children were killed and eight people injured

They said another prominent Inkatha official who is also an MP (known to City Press) had distributed arms and ammunition to Inkatha supporters during the height of pre-election violence in Thokoza

They revealed how the assassination of Thokoza Civic Association president Sam Ntuli had been planned and executed. They told how Ntuli's likely successor, Vusi Shabalala, was shot dead

Mlaba and Zimu named another life serving convict as having taken

part in Ntuli's assassination

They named two prominent Thokoza businessmen who had been on the warlord's hit list although the missions were never carried out

Mlaba and Zimu said they regretted their role in the violence and wished to ask the Thokoza community for forgiveness

In their amnesty applications, the two tell how on the night of January 22 1993, accompanied by the warlord, they had attacked a shebeen in Katlehong

"It was during the night vigil for the warlord's wife that he ordered us to go and kill 'the people who had murdered his wife'," they said

Two hostel dwellers had joined them and the warlord had given them three AK-47s and a handgun, they said

"The warlord escorted us to house number 321 in Ngema section. We heard people talking inside the house," said Mlaba, who had been employed as a taxi driver

"We fired into the house. A brother of the warlord was also with us. We fled after the attack. The next day we heard five people had died and eight had been injured"

Asked in the amnesty application to state the political objective they had sought to achieve, the two said they had lived in an Inkatha stronghold in Thokoza

"We lived under IFP control. If you did not take orders, your family would be killed"

"I killed all those innocent pupils because if I did not, I would also be killed," Zimu says in his application. "For the sake of my parents –"

## 'One of Ntuli's killers is here with us - in jail'

ONE OF THE professional hit-squad members responsible for the gruesome assassination of prominent Thokoza Civic Association president, Sam Ntuli, in September 1991 is a man presently serving a life sentence in Pretoria

However, City Press is not permitted to publish his name. We will therefore call him 'Mr X'

He is formerly of the IFP-controlled Mshayazafe hostel in Thokoza on the East Rand

Mr X is currently held at the Pretoria Maximum security prison for five murders which were not related to Ntuli's assassination

This information was this week revealed to City Press by two IFP convicts, Thulani Mlaba and Themba Zimu, who were convicted for the same murders as Mr X

Mlaba and Zimu have both approached the Truth and Reconciliation Commission for amnesty – despite efforts by senior IFP leaders to stop them from doing so

They told City Press that an IFP female parliamentarian had also approached Mr X in a bid to convince him not apply for amnesty

Ntuli's assassination, according to the two men, was planned at a meeting which was attended by a notorious Thokoza warlord, whose name is known to us

A trap was set by using Ntuli's girlfriend, Gugu Mzizi, to phone him and make an appointment

Hit-squad members in three cars followed Ntuli from his home in Mazibuko street when he left for the appointment. One of the cars was driven by the warlord

Ntuli's car was then riddled with a hail of AK-47 bullets in broad daylight as he drove down Khumalo street in Thokoza

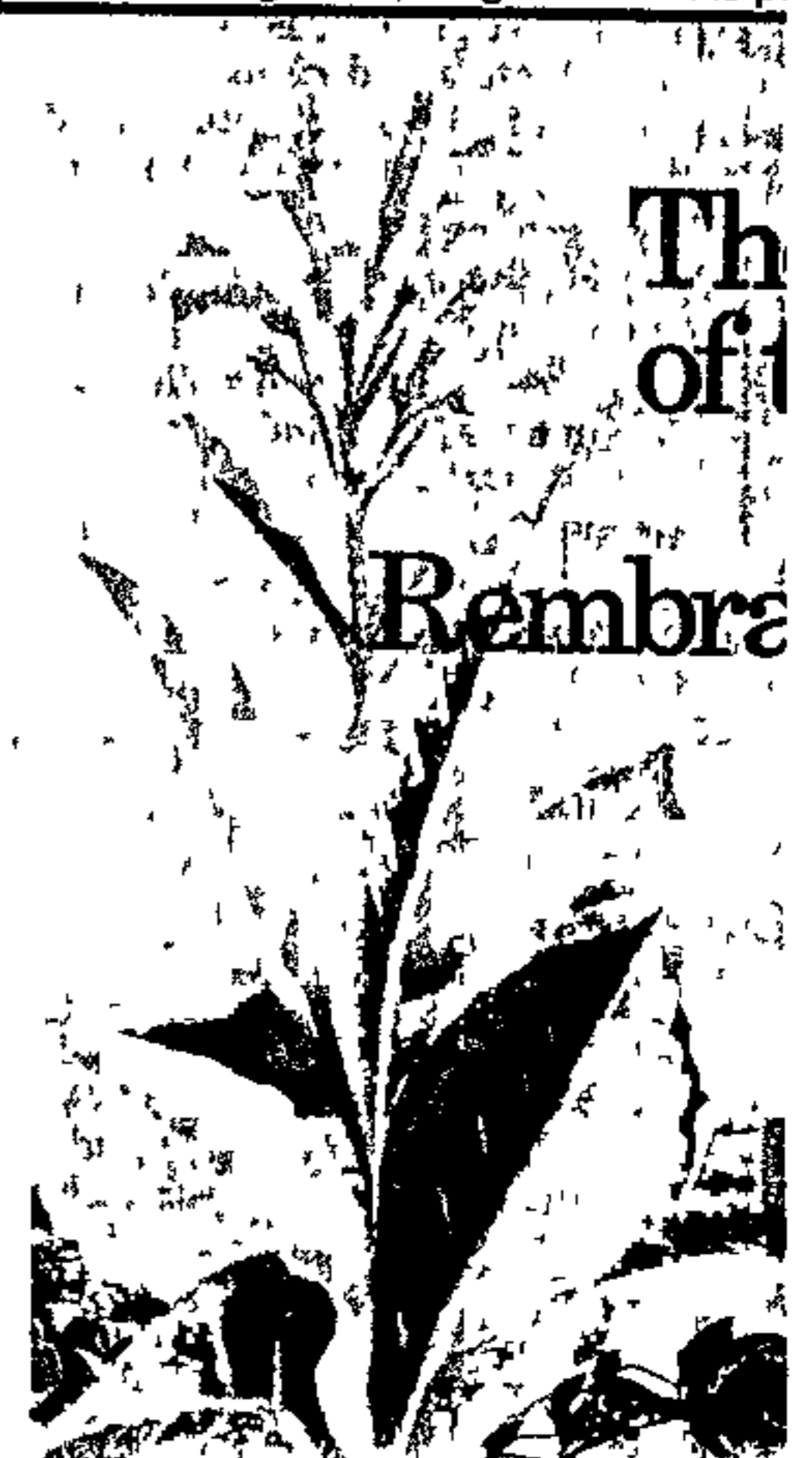
A few months later his girlfriend was also killed by the same hit-squad, which feared that she might reveal information relating to the assassination, City Press was told

"We know all the people who participated in that murder," said the two men, who were in the warlord's employ at the time

Following Ntuli's assassination, at least 18 people died and more than 20 were injured as unknown gunmen opened fire on people who were returning from his funeral

### SMOKING YOUR I

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Week amnesty

# It's ghost

(252) CP8/9/96

## Disclosures of IFP reign of terror in Thokoza

the eve of his wife's funeral, the warlord had ordered a truck on a house in Katlehong East Rand where he claimed his killers stayed. Mlaba had taken part in the grisly attack in which five school children were killed and eight people injured.

Mlaba said another prominent official who is also an MP (City Press) had distributed ammunition to Inkathas during the height of pre-violence in Thokoza. Mlaba revealed how the assassination of Thokoza Civic Association leader Sam Ntuli had been planned and executed. They told how Mlaba, likely successor, Vusi Mlaba, was shot dead and Zimu named another convict as having taken

part in Ntuli's assassination. They named two prominent Thokoza businessmen who had been on the warlord's hit list although the missions were never carried out. Mlaba and Zimu said they regretted their role in the violence and wished to ask the Thokoza community for forgiveness.

In their amnesty applications, the two tell how on the night of January 22 1993, accompanied by the warlord, they had attacked a shebeen in Katlehong.

"It was during the night vigil for the warlord's wife that he ordered us to go and kill 'the people who had murdered his wife'," they said.

Two hostel dwellers had joined them and the warlord had given them three AK-47s and a handgun, they said.

"The warlord escorted us to house number 321 in Ngema section. We heard people talking inside the house," said Mlaba, who had been employed as a taxi driver.

"We fired into the house. A brother of the warlord was also with us. We fled after the attack. The next day we heard five people had died and eight had been injured."

Asked in the amnesty application to state the political objective they had sought to achieve, the two said they had lived in an Inkatha stronghold in Thokoza.

"We lived under IFP control. If you did not take orders, your family would be killed."

"I killed all those innocent pupils because if I did not, I would also be killed," Zimu says in his application. "For the sake of my parents -

whose house would be burned - I was forced to participate in these killings."

"I would request the commission to investigate all the above mentioned offences and to go to the deceased's next of kin and apologise on my behalf for what I have done," Mlaba says in his application.

"I did not do these things because I was cruel. I was trying to save my family from IFP leaders."

Mlaba said he would reveal more dirty tricks to the commission.

Mlaba and Zimu are serving life for sentences for crimes ranging from five counts of murder, attempted murder, robbery, possession of unlicensed firearms and ammunition. Most charges relate to an attack on a students' birthday party in Thokoza in 1993.

## Name of Ntuli's killers here with us - in jail

IF THE professional hitmen responsible for the assassination of prominent Thokoza Civic Association leader, Sam Ntuli, in September is a man presently serving sentence in Pretoria, City Press is not prepared to publish his name. We refer to him as 'Mr X' - formerly of the IFP-con-Mshayazafe hostel in on the East Rand. He is currently held at the Maximum security prison in Durban where he was involved in Ntuli's assassination. Information was this week to City Press by two IFP members, Thulani Mlaba and Zimu, who were convicted of the same murders as Mr X. Mlaba and Zimu have both applied to the Truth and Reconciliation Commission for amnesty - efforts by senior IFP leaders to stop them from doing so. City Press that an IFP MP had also named Mr X in a bid to convince the commission not to apply for amnesty.

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A trap was set by using Ntuli's girlfriend, Gugu Mzizi, to phone him and make an appointment.

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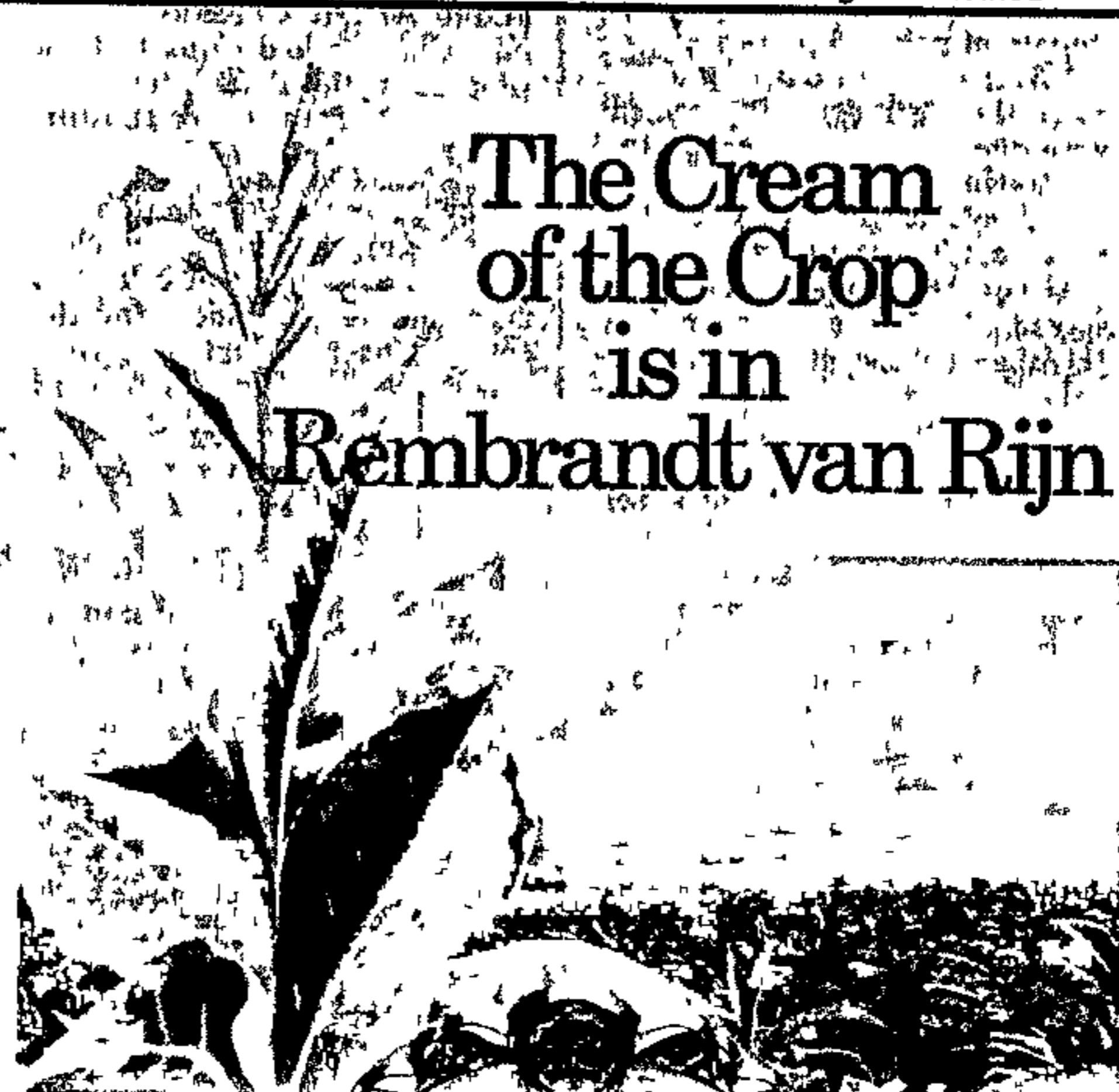
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## Convicts to seek amnesty

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(252) CP8/9/96

## Prison cell disclosures of IFP reign of terror in Thokoza

By WALLY MBHELE



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# Entrenchment of Bill of Rights needs stricter protection

Susan Russell

THE Constitutional Court has agreed that the final draft of the constitution does not properly entrench the Bill of Rights or have sufficient safeguards to prevent constitutional amendments in pursuit of political agendas by ordinary majorities.

Among the court's reasons for rejecting the final draft of the constitution was that the text failed to include "special procedures involving special majorities" before an amendment could be made. This was one of the conditions set out in the constitutional principles agreed to by the multiparty negotiators.

In addition the court agreed with another objection that the fundamental rights were not "entrenched" as required by the constitutional principles. Objectors on these two grounds, including the Association of Law Societies, argued that while the constitution made provision for special majorities it did not do the same for special procedures.

Section 74 of the new text provides that the constitution may be amended by a Bill passed by a two-thirds majority of the National Assembly. This applies to the entire constitution except for the first section which sets out the principle of SA as a democratic non-racial, non-sexist sovereign state based on human dignity and universal human suffrage and which requires a 75% majority for amendment.

The court said while the two-thirds majority prescribed for an amendment to an ordinary constitutional provision was a super majority which involved a higher quorum, this was an aspect of the "special majorities" requirement and could not be regarded as part of "special procedures".

It said it was not the court's function to decide on an appropriate procedure, but the absence of one amounted to non-compliance with the constitutional principles. The court also agreed that the Bill of Rights was not sufficiently entrenched in the new constitution. The constitutional principles state that "everyone shall enjoy all universally accepted fun-

damental rights, freedoms and civil liberties which shall be provided for and protected by entrenched and justifiable provisions in the Constitution."

Lawyers for the Constitutional Assembly argued that these rights had been sufficiently entrenched by placing them beyond the reach of ordinary legislative procedures. The court disagreed, however, saying en-

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damantal rights, freedoms and civil liberties which shall be provided for and protected by entrenched and justifiable provisions in the Constitution.

Although the constitutional principles did not require the Bill of Rights to be immune from amendment, the court said, it did require some entrenching mechanism which gave it greater protection than the ordinary provisions in the new text.



# De Klerk, Gqozo are to blame for Bisho massacre, says

**BISHO** — Former president FW de Klerk and deposed Ciskei military ruler Oupa Gqozo must be held responsible for the September 7 1992 Bisho massacre, ANC secretary-general Cyril Ramaphosa told the truth commission yesterday.

Ramaphosa said the massacre was a "criminal action" which had caused the deaths of 29 people.

He said De Klerk's NP government had been the real power behind Gqozo's regime. Without its support, Gqozo would never have had the "courage to

do what he did".

He said the Ciskei Defence Force had been commanded by officers seconded from the SADF while former SA government officials had occupied key posts in the Bisho administration.

Ramaphosa was testifying on the first day of the commission's special three-day hearing into the massacre during which Ciskei troops opened fire on thousands of ANC marchers gathered near Bisho stadium. The final toll included 28 ANC marchers and one soldier. About 200 others were injured.

The commission heard that the ANC had organised the march to demand free political activity in the homeland and the replacement of Gqozo's Council of State with an interim administration. Ramaphosa said the ANC had planned to occupy Bisho's CBD to hold a "people's assembly" in a public show of unhappiness with the Gqozo regime.

However, Ciskei troops blocked off the main road into the city with razor wire and laid a carefully planned ambush at the stadium nearby.

A group of marchers led by Deputy Defence Minister Ronnie Kasrils, who tried to leave the stadium through a gap in the fence, were shot at by soldiers hidden in shrubs and behind mounds of earth. "The shooting started without any warning. The shooting was widespread and was aimed at the marchers who had moved out of the stadium. There was terror and panic," Ramaphosa said.

"The gap in the stadium fence and the deployment of the soldiers suggests there was an ambush set for people

## Ramaphosa

who chose to move out of the stadium. There is no other explanation. The conduct of the Ciskei Defence Force was criminal. Oupa Gqozo also showed no remorse for his criminal action."

He said the Ciskei Defence Force had contravened its own standing orders by using lethal force on an unarmed crowd holding a peaceful march.

Kasrils told the commission it still haunted him that perhaps he and fellow ANC leaders could have done more

Continued on Page 2

## Massacre (252)

Continued from Page 1

to avoid the massacre. I accept in a profound moral sense that I was an element in the events that culminated in the massacre. But in all honesty, if we had known that the Ciskeian forces would open fire on us, we would never have taken the risks we did."

He and his fellow leaders had not imagined Gqozo would "dare react with such brutal force, more particularly, at such a public event, and in the eye of the world media."

Kasrils said that with the benefit of hindsight, some might say their decision to march on Bisho had been a tragic miscalculation. But at the time the possibility that the Ciskei Defence Force would shoot had seemed improbable "particularly since our stated objectives and visible conduct were so clearly non-violent."

Former Foreign Affairs Minister Pik Botha said at the commission he had tried repeatedly to have Gqozo removed from power in the months before the massacre, after relations between Pretoria and the homeland government became strained and acrimonious.

He said managing relations with the former Transkei, Bophuthatswana, Venda and Ciskei homelands had been the most depressing and distressing experience of his life.

He denied suggestions by commis-

sion member Dumisa Ntsebeza that SA had been reluctant to act against Gqozo's government because it was using the homeland as a base for covert operations aimed at Transkei. "Brig Gqozo was not a puppet of the SA government," Botha said.

He had considered ways of having Gqozo removed as head of state — particularly after the murders of failed coup plotters Col Onward Guzana and Charles Sebe — but was told by legal advisers that there was no constitutional provision for this. "I personally suggested to him on more than one occasion that he should resign."

Describing the Bisho massacre as a tragedy, Botha said he had been deeply involved in preventing an earlier bloodbath on August 6, when the ANC first organised a 60 000 strong march to Bisho. Tensions had escalated after an "unbending" Gqozo had refused to allow the marchers into Bisho and the ANC had insisted that they be allowed to continue the march.

He had pressed for a compromise in talks with the march leaders and the Ciskei government. When this eventually materialised, the marchers were allowed to gather in Bisho Stadium.

"Thus ended a day that started with hardline positions which seemed to offer no hope of escaping from a bloodbath. Unfortunately the lessons did not take root. What I feared would happen on August 4 happened on September 7, 1992," he said.

Gqozo has agreed to testify before the commission today — Sapa, Reuter

# FWV, Gqozo blamed for Bisho

(252) *Journalist*  
10/9/96



**By Mzimasi Ngudle**

He said Kasrils, together with the late SA Communist Party leader Chris Ham, were mandated to lead the marchers through the gap. The march was part of the ANC rolling mass' action for free political activity in Ciskei, the former Bophuthatwana and former KwaZulu homelands.

The ANC had planned to occupy Bisho's central business district to hold a "people's assembly" in a public show of unhappiness with the Gqozo regime.

However, the Ciskei Defence Force blocked off the main road into the city with razor wire and laid a carefully planned ambush at the stadium nearby, he said.

A group of marchers led by Kasrils, who tried to leave the stadium through a gap in the fence, were fired on by soldiers hidden in shrubs and behind mounds of earth.

**Terror and panic**  
"The shooting started without any warning. It was widespread and was aimed at the marchers who had moved out of the stadium. There was terror and panic," Ramaphosa said.

"The gap in the stadium fence and the deployment of the soldiers suggests there was an ambush set for people who chose to move out of the stadium. There is no other explanation."

He said the CDF had contravened its own standing orders by using lethal force on an unarmed crowd holding a peaceful march.

"The conduct of the CDF was criminal. Oupa Gqozo also showed no remorse for his criminal action."

Ramaphosa said the ANC regretted the loss of life and asked the commission to find out who gave the orders to open fire.

"Was it Gqozo or someone else? We urge those responsible to come forward and tell the truth."

**Cyrl**

Ramaphosa... told the TRC that former president FW de Klerk and Brigadier Oupa Gqozo were to blame for the Bisho massacre.



"We submit that there was a plan to trap those whom they knew would want to emerge from a gap in the fencing," he said.

Ramaphosa rejected claims that Deputy Defence Minister Mr Ronnie Kasrils acted hot-headedly and rashly when he led marchers through the gap on September 7 1992.

KASRILS DENIES LEADING GROUP TO SLAUGHTER

# Bisho: What really happened

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**BISHO:** Deputy Defence Minister Mr Ronnie Kasrils (left) yesterday what happened during a talk at the Bisho march last year. **WRITER: ROGER FRIEDMAN**



**D**EPUTY Defence Minister Mr Ronnie Kasrils has "emphatically rejected" allegations that he led a group of marchers in the slaughter through a gap in the Bisho Stadium fence four years ago.

He was addressing a Truth and Reconciliation Commission hearing at the University of Fort Hare yesterday on the Bisho massacre.

Twenty-eight marchers and one soldier died that day. Over 300 marchers were injured.

Kasrils said he still agonised over the decisions he took as the leader of the group who came under the first

The intention of the September 7 march organised by the ANC/SACP/posathu alliance, had been to stage a "People's Assembly" to send a message to the leader of the rigadier Oupa Gqozo that his homeland was not exempt from the democratisation process unfolding in greater South Africa.

The marchers were armed, Kasrils said.

It was not intended to overthrow Gqozo's government, though it was planned to call for his removal at the assembly. He said as the march proceeded from King William's Town to Bisho, a small group went ahead to assess the situation at the border between South Africa and Lesotho. Soldiers were out in force, intent — with razor wire — to deflect the march away from Bisho into the stadium.

Kasrils said the advance party held talks with National Executive Committee members at the wire blockade in the main road, before entering the stadium and noticing a gap in the fence — on the Bisho side.

He said the gap took the advance party by surprise as it appeared to give unimpeded access to Bisho and there did not seem to be any security force members in the immediate vicinity.

The advance party returned to the main body of marchers to report back.

"While Cyril Ramaphosa and others, including Tokyo Sexwale, Jeff Radebe, John Gomo, Silumko Sokupa, Tony Yengeni and Raymond Suthar moved to the barricade, Chris Ham, Smuts Nkonyama, Linda Mti and I broke off to move into the stadium.

"We broke into a run to move as swiftly as possible out of the gap and away from where the soldiers were deployed. We had covered about 50 or 60m when, without any warning, the soldiers began shooting at us with automatic rifles.

"It went on and on. It was like a swarm of bees whistling over our heads. And to compound that was the whoosh of launch grenades and I thought, 'My God, they must be crazy!'

"The blame (for the massacre) clearly rests with those who pulled the trigger, and those who ordered the killing — the Ciskei Defence Force and the regime of F W de Klerk."

Earlier, ANC secretary-general Mr Cyril Ramaphosa delivered an ANC submission on the massacre and suggested the gap in the fence had deliberately not been repaired to entice marchers toward Bisho and aimed at ambushing them.

"When the front of the group that had proceeded through the gap in the fence was about 60m beyond the gap, the shooting started without warning," Ramaphosa said.



**HALLELUJAH:** Archbishop Desmond Tutu is delighted that Deputy Minister of Defence, Mr Ronnie Kasrils of the SA Communist Party, attended a Bisho church service.

**PICTURES: BENNY GOOL**

## Pik may join new group

**ROGER FRIEDMAN**

**BISHO:** Long-serving apartheid-era Foreign Minister Mr Pk Botha could soon flee the National Party nest. Addressing the Truth and Reconciliation Commission here yesterday Botha said a "regrouping of political parties" had become inevitable.

The ANC and PAC were essentially structured to defeat apartheid, while neither the NP nor the DP had changed significantly in response to democracy.

"There's a new movement coming into being which will undo the divisions of the past," he predicted. He had already discussed such a concept with certain senior ANC members.

SA was in danger of never rescuing itself from the past. "There must come a time when you can no longer say a certain road is not tarred because of apartheid."



## IFP wants poll on death penalty

DURBAN The IFP called yesterday for a referendum on the reinstatement of the death penalty

IFP justice spokesman Mr. Madala Mzizi said the issue was so important the views of all South Africans should be sought

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# The thoughts behind sending constitution for redrafting

10/9/96

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FIRST and foremost it must be emphasised that the court has no power, no mandate and no right to express any view on the political choices made by the constitutional Assembly in drafting the new text, save to the extent that such choices may be relevant to compliance or non-compliance with the (34) constitutional principles established during the World Trade Centre negotiations and against which the new constitution must be weighed by the court.

□ **On whether the Bill of Rights should apply horizontally — between individuals — as well as vertically, or between the state and individuals:** The objection was grounded on the basis that the horizontal application of

The Constitutional Court has sent the constitution back for redrafting. The following are extracts on specific aspects of the court's judgment

fundamental rights is not universally accepted. That is so, but the requirement of universal acceptance does not preclude the constitutional Assembly from including provisions in the new text which are not universally accepted

□ **On abortion:** It should be emphasised that this court's current task is not to determine whether the new text permits abortion or not but to decide whether or not the new text complies with the constitutional principles

□ **On labour relations:** It was argued that the principle of equality requires that, if the right to

strike is included in the new text, so should the right to lock out be included. This argument is based on the proposition that the right of employers to lock out is the necessary equivalent of the right of workers to strike and that therefore, in order to treat workers and employers equally, both should be recognised in the new text

That proposition cannot be accepted. Collective bargaining is based on the recognition of the fact that employers enjoy greater social and economic power than individual workers. Workers therefore need to act in concert to provide them collectively with sufficient power to bargain effectively with employers. The argument that it is necessary in order to maintain equality to entrench the right to lock out once the right to strike has been included, cannot be sustained, because the right to strike and the right to lock out are not always and necessarily equivalent

□ **On collective bargaining by employers:** The objectors pointed out that new text specifically entrenches only the rights of employers' associations to engage in collective bargaining, and does not specifically entrench the right of individual employers.

□ **On socio-economic rights:** The new text provides rights of access to housing, health care, sufficient food and water, social security and basic education. These rights are, ... to some extent, justiciable. Many of the civil and political rights will give rise to similar budgetary implications with-

procedure amounts to a failure to comply with the constitutional principles

□ **On entrenchment of the Bill of Rights:** A two-thirds majority of one House does not provide the bulwark envisaged by the constitutional principles.

The constitutional principles do not require that the Bill of Rights should be immune from amendment or practically unamendable. What it requires is some "entrenching" mechanism, such as the involvement of both Houses of Parliament or a greater majority or other reinforcement.

□ **On independent institutions:** The new text does require that a majority of the national assembly resolve to remove (the public protector), but a simple majority will suffice. We do not think it is sufficient in the light of the emphatic wording of (the) constitutional principle which requires both provision for and safeguarding of

ers and functions of the provinces in terms of the new text are less than and inferior to the powers and functions which the provinces enjoy under the interim constitution. The question then is whether they can be said to be substantially less than or substantially inferior to such powers. This has been the most difficult of all the questions that we have been required to address in these proceedings

None of the functional areas set out in the interim constitution has been excluded but in some instances the extent of the powers has been curtailed. In particular, this has been the case in respect of police powers, and to a lesser extent in respect of education, local government and traditional leadership.

Seen in the context of the totality of provincial power, the curtailment of these four aspects would not in our view be sufficient in themselves to lead to the conclusion that the powers of the provinces taken as a whole are substantially less than or substantially inferior to the powers vested in them under the interim constitution.



cient food and water, social security and basic education. These rights are, to some extent, justiciable. Many of the civil and political rights will give rise to similar budgetary implications without compromising their justiciability. The fact that (these) socioeconomic rights will almost inevitably give rise to such implications does not seem to us to be a bar to their justiciability.

□ **On education in the language of choice:** The

objectors were unable to point to any constitutional principle that is alleged to have been breached.

□ **On states of emergency:** Although we accept that it is in accordance with universally accepted fundamental human rights to draw a distinction between those rights which are derogable in a national emergency and those which are not, this should be done more rationally and thoughtfully than it is done in the new text.

□ **On protecting legislation from constitutional scrutiny:** The new text provides that the provisions of the Labour Relations Act shall, despite the provisions of the constitution, remain valid until they are amended or repealed. This section is in conflict with the constitutional principles. (From a variety of constitutional principles) it is plain that statutory provisions must be subject to the supremacy of the constitution unless they are made part of the constitution itself. (The same applies to the Promotion of National Unity and Reconciliation Act).

□ **On amending the constitution:** It is of course not our function to decide what is an appropriate procedure, but it is to be noted that only the National Assembly and no other House is involved in the amendment of the ordinary provisions of the new text; no special period of notice is required; constitutional amendments could be introduced as part of other draft legislation; and no extra time for reflection is required.

We consider that the absence of some such



Constitutional Court president Judge Arthur Chaskalson

independence and impartiality. (The same applies to the auditor-general.)

□ **On the Public Service Commission:** Save for a statement in the new text that it must "promote the values and principles of public administration in the public service", the powers and functions of the commission are not dealt with in the new text. (Without an indication of) what protection it will have in order to ensure that it is able to discharge its constitutional duties independently and impartially, we are unable to certify that this requirement has been complied with.

□ **On politicians switching parties:** An anti-defection clause enables a political party to prevent defections of its elected members, thus ensuring that they continue to support the party under whose aegis they were elected. It also prevents parties in power from enticing members of small parties to defect from the party upon whose list they were elected to join the governing party. This objection cannot be sustained.

□ **On local government:** No provision has been made in the new text for appropriate fiscal powers and functions in respect of different categories of local government. At the very least, the requirement of a framework for local government structures necessitates the setting out... of the different categories of local government that can be established by the provinces and a framework for their structures.

□ **On provincial powers:** We have come to the conclusion that the pow-

These are not the only relevant considerations. There is in addition the presumption in the new text which favours national legislation....

There is also the alteration in the scope of the override (in favour of national legislation). It introduces the criterion for the setting of norms and standards for a matter that it be required "in the interests of the country as a whole", in place of the criterion that the norms and standards be required for the "effective performance" of the matter.

If the curtailment of powers and the override provisions referred to in the preceding two paragraphs are taken together, their combined weight in the context of the new text as a whole is sufficient to be considered substantial.

It therefore follows that the new text does not satisfy constitutional principle XVIII (which requires the new text should not substantially diminish the powers of provincial government).

We ultimately come to the conclusion that the new text cannot be certified as it stands but one must focus on the wood, not the trees.

The new text represents a monumental achievement. Constitution-making is a difficult task. Drafting a constitution for SA, with its many unique features, is all the more difficult. Having in addition to measure up to a set of predetermined requirements greatly complicates the exercise.

Yet, in general and in respect of the overwhelming majority of its provisions, the Constitutional Assembly has attained that goal.

## Omar warns striking justice department officials

DURBAN — Justice Minister Dullah Omar yesterday gave striking KwaZulu-Natal justice department officials until tomorrow to resume their duties, or face possible dismissal.

Omar said all demands by former KwaZulu government justice department officials had been considered and those that were reasonable had been met.

The employees from the justice department in the former KwaZulu homeland government have been on strike since Monday last week over demands relating to back pay, promotion and the immediate removal of the department's regional representative, David Ntshangase, who is based in Ulundi.

The continuous additional demands from the

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strikers' leadership indicated no good faith on their part, Omar said.

The justice department had been left with no alternative but to issue a notice to striking officials in terms of the Public Service Labour Relations Act of 1994.

Omar warned any interference by strikers with the work of magistrate's offices was a criminal offence. — Sapa.

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# Constitution can include

## disputed rights — court

Susan Russell

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THE Constitutional Court has dis-  
missed complaints that the inclusion of  
socioeconomic rights in the new consti-  
tution, including the right to access to  
housing, health care and water,  
breached the constitutional principles  
agreed to by multiparty negotiators.

Objections were raised on two  
grounds. It was argued that these  
rights could not be included because  
they were not universally accepted.

Second, it was contended that in-  
cluding socioeconomic rights would  
violate the constitutional principle of a  
separation of powers because the judi-  
ciary would have to intrude into the  
territory of the legislature and exec-  
utive to enforce them.

A major objection was that the  
courts would end up dictating to gov-  
ernment how the budget should be  
allocated.

Rejecting the objections, the Consti-  
tutional Court agreed that including  
socioeconomic rights might mean court  
orders which had direct implications  
for budgetary matters.

“However, even when a court en-  
forces civil and political rights such as  
equality, freedom of speech and the  
right to a fair trial the order it makes

will often have those implications,” the  
court said.

“In our view it cannot be said that by  
including socioeconomic rights, a task  
is conferred upon the courts so differ-  
ent from that ordinarily conferred by  
a Bill of Rights that it results in a  
breach of the separation of powers.”

The court also rejected the con-  
tention that socioeconomic rights were  
not justiciable (within the court's com-  
petence to deal with them) because of  
the budgetary issues their enforce-  
ment might raise.

It said the argument that these  
rights could not be included because  
they were not universally accepted was  
also wrong, because the constitutional  
principles permitted the Constitution-  
al Assembly to supplement universally  
accepted rights with others that might  
not be.

Sapa reports that the SA Agricul-  
tural Union yesterday criticised the  
Constitutional Court for not contesting  
the property clause in the draft consti-  
tution. The union said the clause did  
not provide sufficient protection for the  
rights of property owners, and was in  
fact a watered-down version of the cur-  
rent property rights law.

Courts would have to be relied on to  
apply the clause carefully. — Sapa.



# The Bisho massacre could have been avoided, says Frank

Political Staff

**BISHO**—If Brigadier Oupa Gqozo had had the support of the SA government he could have picked up enough courage to break out of the pressure of his colleagues and the Bisho massacre could have been avoided.

Former SA Council of Churches (SACC) general secretary Frank Chikane told a special truth commission hearing on the Bisho massacre "If the commission would ask me as to whether or not I think the tragedy of

Bisho could have been avoided, I would say an unqualified yes," Chikane said.

Chikane, now a special adviser to Deputy President Thabo Mbeki, said senior defence force personnel had been seconded to Ciskei and were in touch with SA "There is no reason why FW de Klerk could not have acted."

Chikane said the early warnings of a crisis in Ciskei were there in June 1991 and Church leaders had said then that the Ciskei government "had lost much, if not most, of what popular support it might have had immediately af-

ter the overthrow of the Sabe regime".

The Church leaders said they had tried unsuccessfully to initiate a dialogue, and warned of the "possibility of destructive and divisive violence".

They had called on then president FW de Klerk to "intervene decisively and to ensure rapid and orderly re-incorporation of Ciskei into the greater SA in consultation with all concerned". Chikane said this had been ignored. He said as September 1992 advanced it became clear that a violent confrontation between the Ciskei gov-

ernment and ANC-led mass democratic movement was "looming". Chikane said a letter had been sent to Gqozo on September 3 urging him to take specific action to avert the possible "outbreak of tragic violence". A proposal had been submitted on September 5, in terms of which a referendum would be held within 21 days, and the ANC would call off the Bisho march. The proposal was submitted to the SA and Ciskei governments and the ANC alliance, in the belief it would avoid a violent confrontation. The Ciskei Mil-

Chikane

## Bisho

Continued from Page 1  
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hearing as advocate Sally Collett said that during consultations with Gqozo "it became abundantly apparent he was not in a fit condition to make a contribution. He suffered from a lack of concentration, a lack of coherence and extreme fatigue." Collett submitted an affidavit from state psychiatrist Elizabeth Vice, saying he was suffering

from "depressive episode".

Wyndham Hartley reports from Cape Town that NP secretary-general Roelf Meyer has rejected ANC allegations that the former government was directly responsible for the Bisho massacre. "There is no way that this is a true reflection of the facts. It is apparently an attempt by ANC spokesmen to hide the organisation's share in the tragic deaths of 29 people," Meyer said. The NP wanted to give evidence at the truth commission to put the record straight.

tary Council and SA government failed to respond, while the alliance was reluctantly ready to accept the principles subject to further discussions.

Meanwhile, the commission has demanded a second psychiatric opinion on the condition of Gqozo, after his lawyer said yesterday he was not fit to give evidence on the Bisho massacre. A special hearing is now likely to be set for Gqozo. There were angry rumblings at the

Continued on Page 2

## Foundation set up for (252)

R86m grant

20 11 96

Stephané Bothma

IMPLEMENTATION of an R86m EU grant to benefit South Africans who have historically been denied basic human rights took off yesterday with the launch of the EU Foundation for Human Rights.

Justice Minister Dullah Omar announced appointments to the supervisory board of the foundation at a ceremony at KwaMahlanga in the former KwaNdebele.

They are Dolly Mokgatle, Louise Asmal, Jude Petersen, Judge Siraj Desai and James Yekiso. The board has been appointed on the recommendation of a number of nongovernmental organisations. Vusi Pikoli will represent the justice department and the EU observer will be Richard Zink.

The foundation was created under the auspices of the EU human rights programme signed in February by President Nelson Mandela and EU commissioner responsible for SA Joao de Deus Pinheiro.

In particular, the grant will target those living in informal urban and rural settlements, those who have been dispossessed of their land and housing, and prisoners. Special attention will be given to women and children.

The foundation is part of a European programme for reconstruction and development under which R593m is committed to SA's reconstruction process.

## Death penalty 'not backed'

(252)  
Stephané Bothma

PRETORIA — The perception among black South Africans was that they would be "massacred" by the reinstatement of the death penalty and it was for this reason they were against it, President Nelson Mandela said yesterday.

"The perception is, rightly or wrongly, that the demand for reinstatement comes from the traditional white political parties," Mandela told media at the Union Buildings following a meeting with a Dutch Reformed Church group.

The delegation, led by Dutch Reformed moderator Freek Swanepoel, met Mandela to discuss issues ranging from the death penalty to abortion, affirmative action and education.

In a memorandum handed to Mandela, the church group expressed its support for the death penalty in "severe murder cases".

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AD 12/9/96

# Battle over top justice

(252) AT 12/9/96

POST

**COMPETITION** for the job as South Africa's new Chief Justice has taken on political and racial overtones, with judges and the legal fraternity split over who will succeed Mr Justice Michael Corbett when he retires at the end of this year. Political Writer **HENRY LUDSKI** reports.

**A**N intense battle is being fought behind the scenes over who will be South Africa's next Chief Justice of the Appellate Division, for which nominations closed yesterday.

The tussle over who gets the top job has taken on distinct political and racial overtones, with judges and jurists split largely along progressive and conservative lines.

By early this week Mr Justice Henrie van Heerden, the most senior Appeal Court judge after the present Chief Justice, Mr Justice Michael Corbett, was the only person officially still in the running.

An overwhelming number of South African judges, including the entire Appellate Division and a small minority on the Cape bench, have endorsed his nomination.

However, in an 11th-hour move aimed at changing the all-white, male-dominated composition of the Appellate Division, other jurists persuaded Constitutional Court deputy president Mr Justice Ismail Mahomed — long tipped for the top job — to agree to be nominated.

Those behind the move include the Black Lawyers Association (BLA), National Association of Democratic Lawyers (Nadel), the University of Witwatersrand's Centre for Applied Legal Studies and top justice officials in the government.



**DISTINGUISHED RECORD:** Mr Justice Ismail Mahomed.

They see Judge Mahomed as representing "a clean break with the past".

Judge Mahomed, who has a long and distinguished human rights record and is Chief Justice of Namibia, is seen by progressive groupings as far more likely to promote judicial reform and bring court rulings in line with the new constitution.

They argue that Judge Van Heerden would adopt a cautious and conservative approach.

Mr Vincent Saldanha, Nadel's general-secretary, yesterday described Judge Mahomed as one of the "most outstanding and internationally respected Southern African judges".

"The Appellate Division is clearly in need of fresh blood and Judge Mahomed, who will be no token appointment, will be able to play a tremendous role in transforming the court," said Saldanha, who expressed his confidence in the Judicial Services Commission's ability to make "the most appropriate appointment".

The national director of the Black Lawyers Association, Mr Ishmael Semenya, said his organisation believed that Judge Mahomed had a better chance than Judge Van Heerden of restoring confidence in the judiciary.

"The Appellate Division is still all-white and all-male and appointing Judge Van Heerden won't cure this basic problem," said Semenya.

Mr Justice Deon van Zyl of the Cape Bench, who is understood to have supported Judge Van Heerden's nomination,

yesterday dismissed any suggestion that conservative elements in the judiciary were attempting to hamper transformation.

"It's pure mischief-making, which must be dismissed with contempt."

"No judge in his right mind would consider supporting a nomination if he did not believe that person to be the right man."

"Van Heerden is a brilliant and distinguished lawyer and I am convinced the people who are supporting him are doing so because they believe he is the best man for the job."

Saying that Judge

Mahomed's record was equally impeccable, Judge Van Zyl said whomever people favoured "the day that person gets appointed he will have everyone's complete support".

Tension around the transformation of the judiciary has surfaced over the past few months. On July 3, Mr Justice Fritz Brand of the Cape Bench, who had been nominated for the Appeal Court, was grilled by the Judicial Services Commission (JSC) about his former membership of the Broederbond.

Last week Mr Justice Rex van Schalkwyk resigned from the Witwatersrand Local Division, saying comment by Justice Minister Mr Dullah Omar that the judiciary was illegitimate undermined the court's authority and credibility.

A spokesperson for the JSC confirmed yesterday that public hearings at which it would interview the nominees would be held in Cape Town early next month. The 17-member commission then has to make a recommendation to President Nelson Mandela, who must consult the cabinet before making an appointment. Omar said last night he did not want the issue of the Chief Justice nomination to be politicised. "I want to retain the independence and integrity of the courts and I believe the JSC will handle the matter in a manner that will ensure that these objectives are met," he said. He said the President had left the matter in the hands of the commission to allow it to follow a procedure that was fair and transparent.

# 'I confirmed the troops were authorised to fire'

(252) CT 12/9/96

**BISHO:** The former chief of the Ciskei Defence Force told the Truth and Reconciliation yesterday that he was "convinced" that had the charge through the stadium not occurred, not a single shot would have been fired. **ROGER FRIEDMAN** reports.

**T**HE man in charge of the new South African National Defence Force's transformation process yesterday admitted authorising members of the Ciskei Defence Force (CDF) to open fire on a crowd of demonstrators four years ago, in what became known as the Bisho massacre.

At the time of the massacre Major General Marius Oelschig was chief of the Ciskei Defence Force. Today he is Chief Director Transformation Management of the SANDF.

After his submission to the Truth and Reconciliation Commission yesterday, commissioner Mr Dumisa Ntsebeza questioned the appropriateness of Oelschig's new role as a senior agent in South Africa's transformation process.

Oelschig submitted that he was monitoring the march — by supporters of the ANC/SACP/Cosatu alliance, from King William's Town to Bisho — from his office when he overheard his field commander, Colonel Vakele Mkosana, reporting to CDF commander, Colonel Adriaan van der Bank, that his position was under attack or under fire.

"He sought advice from Colonel Van Der Bank and asked whether he should open fire.

"Colonel Van Der Bank instructed him to hold fire and enquired from me whether I had monitored this transmission, which I confirmed.

"Colonel Van Der Bank then enquired whether the field commander could open fire.

"Upon confirmation by Colonel Van Der Bank that the crowd was firing at the field commander's troops, and was storming their position, I confirmed that the troops were authorised to fire, meaning those troops that were in immediate danger.

"It was subsequently reported to me that the charge, on the position of the troops, had taken place through a gap in the perimeter fencing of the stadium.

"Up to this stage, I had not actually heard any shots being fired, although there was a helicopter flying overhead, radios were going and there was a lot of activity in the office.

"After a brief delay I heard sporadic shots being fired, which subsequently intensified and continued," said Oelschig.

"There have been totally misguided suggestions that the incident was somehow planned by Ciskei security forces, that the marchers were ambushed or intentionally led into some trap.

"I reject these allegations in the strongest terms.

"I am absolutely convinced that, had the charge through the stadium around the right flank of the Ciskei Police not occurred, not a single shot would have been fired by members of the Ciskei Defence Force," he said.

"I am not proud that troops under my command were involved in a calamity of this nature.

"I cannot adequately explain the anger and frustration of seeing our warnings and recommendations apparently ignored or disregarded by politi-

cians, negotiators, and others who could have influenced the situation, and of witnessing the realisations of our worst predictions."

Oelschig was promoted from the rank of colonel to major-general shortly after the massacre. But yesterday he rejected as a "personal insult" an insinuation by former Transkei leader General Bantu Holomisa, during an earlier commission hearing, that the promotion was a reward for the massacre.

"I sincerely believe that my promotions from the rank of Lieutenant to the rank of Major-General have been based purely on merit.

"I believe that I have acted professionally and correctly at all times," he said.

Van Der Bank did not turn up at the hearings yesterday, although he was on the witness list. He apparently telephoned the commission around midday to say he did not receive his invitation, but would be prepared to appear at a later date.

Oelschig was followed on the witness stand by Colonel Horst Schobersberger, CDF chief of staff operations at the time of the massacre, who suggested it was unfair that soldiers be expected to "put our heads on the block" for the incident, in the absence of any testimony from former Ciskei military leader Brigadier Oupa Gqozo.

Gqozo pulled out of the hearings yesterday, citing mental instability.

"We expect and we ask the commission to ensure he appears before the commission," said Schobersberger.

"We are not sick people, we are not mad people. We followed orders and we regret it deeply. We are sorry."

"I request the commission, I think on behalf of all soldiers of the CDF, that Brigadier Gqozo stand here and answer for what he ordered on September 7, 1992," he concluded.



## Victims were shot while trying to flee, TRC told

**ROGER FRIEDMAN**

**MOST** of the 29 Bisho massacre victims were shot in the back or in the left side of their bodies, indicating they were attempting to flee from the Ciskei Defence Force soldiers deployed on the ground, a forensic scientist told the Truth and Reconciliation Commission yesterday.

Mr Jacobus Daniel du Plessis said he had been unable to find any indication the soldiers came under fire from elements in the 60 000 to 80 000-strong crowd of demonstrators, whose attempts to march to Bisho on September 7, 1992 ended in carnage.

"And it was "definitely probable" the only soldier to die was shot by one of his colleagues. He said the soldier appeared to have been hit by a bullet fired from an R4 rifle.

A ballistics expert, attached to the police Forensic Science Laboratory at the time of the massacre, Du Plessis based his submission yesterday on analysis of post-mortem results, bullets removed from the deceased, the testing of hundreds of Ciskei Defence Force firearms and the inspection of hundreds of spent bullets collected at the scene.

He said he had been able to determine the trajectory of the bullets which accounted for 26 of the 29 lives lost. Ten marchers were struck in the back, 15 from the left (where soldiers were deployed), one from the right-hand side and none from in front.

# Oelschig's role in Bisho probed

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AGG 13-19/9/96

**Eddie Koch and Mungo Soggot** report on General Marius Oelschig's sinister actions in the 1992 Bisho massacre, and his subsequent military dealings

**T**HE man who gave the orders to shoot when 30 people were killed by Ciskei soldiers at Bisho in 1992 — and then allegedly played a role in blocking an effective probe into the massacre — is now a military general in charge of transforming the old apartheid armed forces into a cohesive national army

Evidence presented this week by former Ciskei attorney general Jure Jurgens at a special truth commission hearing dealing with the causes of the Bisho massacre indicated that Major General Marius Oelschig, a man who now holds a strategic post in the highest echelons of the South African National Defence Force (SANDF), played a role in scuppering earlier efforts to find those responsible for the killings

Jurgens said he had instructed the Ciskei police to open 30 dockets of murder relating to the random shooting at the demonstrators, but a number of organisations had hindered his effort to prosecute the perpetrators

He told the truth body that Oelschig — former head of the Ciskei Defence Force who admitted in separate testimony to the truth commission this week that he gave the first orders for his soldiers to fire on a crowd of demonstrators — had subsequently created major problems for his criminal investigation.

"A fourth, and major obstacle was the lack of co-operation from the then Ciskei Defence Force," said Jurgens Oelschig, then a brigadier in charge of the Ciskei army, had promised his support during the attorney general's investigation "However the co-operation promised was not forthcoming, especially when certain details were sought and when all the firearms on the scene of the massacre were sought for ballistic tests"

Jurgens said Oelschig had given him a "top secret" report from a mili-

tary board of inquiry into the massacre which was of some value for the attorney general's investigation But he noted that "feeble" excuses had been given by Ciskei military officials under Oelschig's command when the police demanded access to witnesses and weapons used in the killings

The attorney general's evidence contradicted Oelschig's earlier claims to the commission that he had "responded expeditiously to every request to assist in all investigations and enquiries into the Bisho tragedy" and had "co-operated fully, had provided all the information and documentation at my disposal and had told the the truth at all times"

The contradictions between the general's evidence and that supplied by the attorney general raises serious questions about why a man who played a key role in one of the worst massacres in this country's history is now in a position to oversee the military's adaptation to democratic conditions

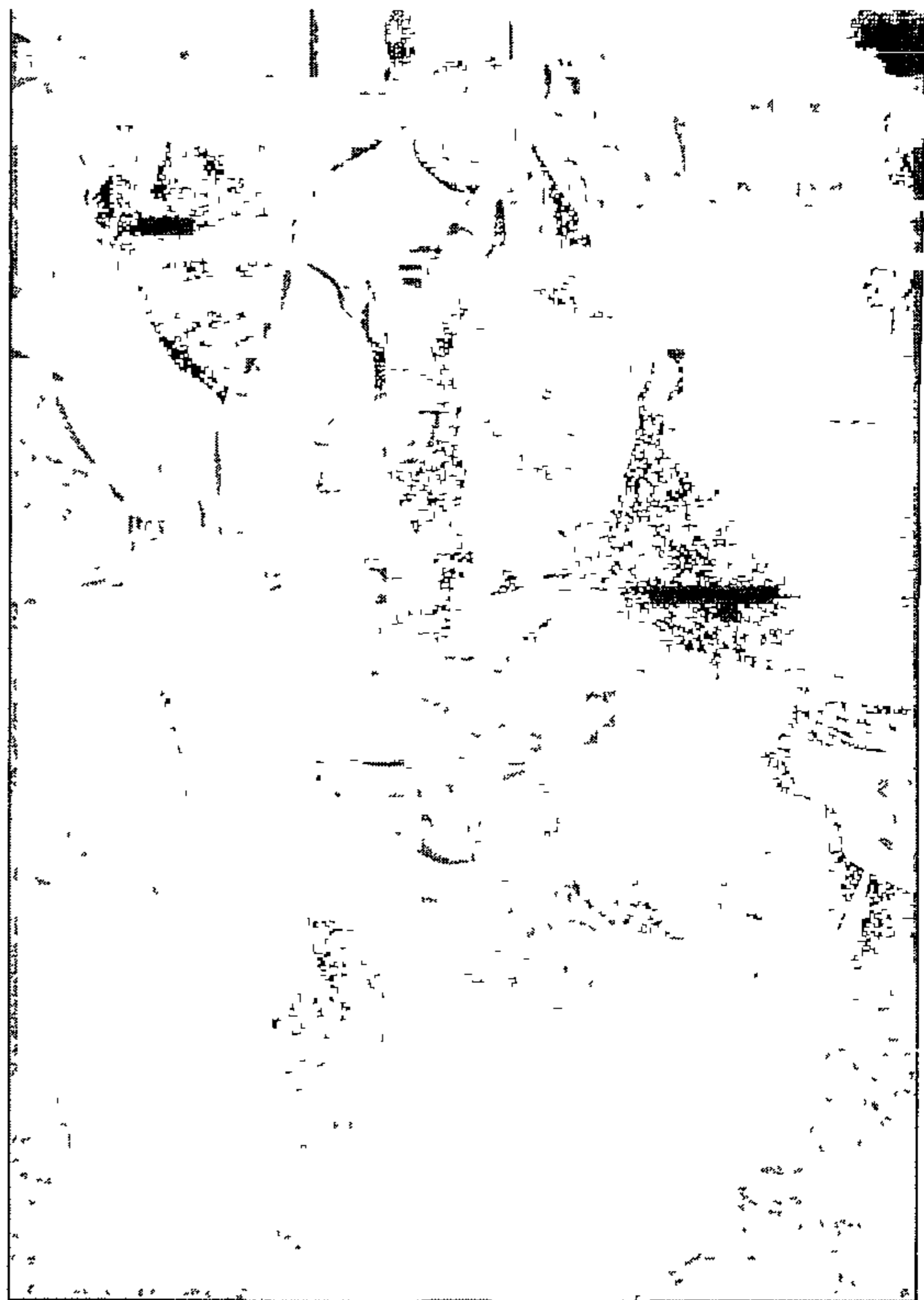
In his testimony to the commission, Oelschig admitted he had given the first authorisation for Ciskei soldiers to open fire on demonstrators at the Bisho stadium in September 1992 because he had received reports that some of the troops were being shot at by members of the crowd

When he realised the shooting was "not of a defensive nature, that it aimed at neutralising the immediate threat" he gave an order three times for the shooting to stop, said the general "I am unable to say who gave the orders to fire on the ground, or in which terms those orders were communicated"

These claims were also contradicted earlier by ballistic expert Jacobus du Plessis who told the commission there was no evidence that demonstrators had fired upon soldiers, and that many of those killed had been shot in the back while running away

Separate investigations by the *Mail & Guardian* show that parliamentary defence committee chair Tony Yengeni is investigating allegations that Oelschig has been involved in irregularities over a R50-million management consultant contract to transform the SANDF

Rival consultants have complained about the award of the transformation tender to leading consultancy Deloitte



**Massacre: Ciskei soldiers fired on a crowd of demonstrators**

& Touche who allegedly developed close ties with Oelschig while he was working with the firm on another military transformation consultancy.

The general's military background makes him a startling choice as the man tasked with leading the armed forces in shedding its apartheid legacy

His career has included a substantial stint in military intelligence at a time when this wing of the defence force played a key role in coordinating the apartheid's "total strategy" against its political opponents

He was a member of Military Intelligence's (MI) directorate of special tasks and responsible for co-ordinating logistics to Angola's right wing Unita movement at a time when the South African military was smuggling poached ivory supplies out of Southern Africa to offset the massive costs incurred in providing the rebels with war material He then became the military attaché to France, a post which almost certainly involved liaising closely with the MI officials

When he returned to South Africa he took up another post with army intelligence, before becoming chief of the Ciskei

Defence Force in 1991 Oelschig was seconded to the homeland at the height of a dirty tricks campaign designed by MI to ensure that Ciskei military ruler General Oupa Gqozo would help quash anti-apartheid uprisings in the Eastern Cape

Astonishingly, key players in manipulating events in Ciskei through the South African Defence Force's covert MI fronts were not called by the truth commission to give evidence There is a substantial amount of reliable information that MI fed false intelligence to the Ciskei over a sustained period which influenced former leader Brigadier Oupa Gqozo's African National Congress stance and crack-down on his political opponents

In 1992 Oelschig fluent in both Portuguese and French, returned to the national army and has since been involved in various transformation projects

Despite his controversial career he was promoted by Defence Minister Joe Modise to the rank of major general in March 1995 and appointed as the SANDF's chief director of transformation management

# Biko colleague seeks to tell TRC the 'untold story'

JOHN YELD  
ON THE TRUTH COMMISSION

A colleague of Black Consciousness Movement leader Steve Biko, who died at the hands of the security police 19 years ago, will approach the Truth Commission today about making a formal submission on his arrest and subsequent death.

This was announced by Peter Jones, who was arrested and detained with Mr Biko and who was the last of his colleagues to see him alive before his lonely death on September 12 1977.

The move comes as a surprise because the Azanian People's Organisation (Azapo), the political heir of Black Con-

sciousness Movement, has taken a hard line against the Truth Commission.

Azapo and Mr Biko's family were among those who brought an unsuccessful application to the Constitutional Court earlier this year asking for the amnesty provisions in the Promotion of National Unity and Reconciliation Act - the Truth Commission's founding act - to be ruled unconstitutional.

Mr Jones confirmed he was still an Azapo member but not an office-bearer.

He said he did not anticipate conflict with Azapo over the submission about Mr Biko to the Truth Commission because this would deal with the specifics of his arrest, detention and death.

"This (possible conflict) is not a con-

cern, because we will be ultra-sensitive for this not to be interpreted as a political act."

Mr Jones said he had a great desire for the "untold story" to be told, and that he was convening a meeting of former BCM leaders to help him prepare a full submission for the Truth Commission.

Those who were being asked to become involved in this included University of Cape Town vice-chancellor Mamphele Ramphele, Asha and Strini Woodley, Jerry Motala, Ben Khoapa and Kenneth Rakhidi.

At the time of his arrest, Mr Biko had been preparing for a round-table conference of liberation leaders at which he was to have submitted a unification plan, Mr Jones said.

"The individuals involved in these

national initiatives were bound by a commonly accepted code of discipline and silence, with regard to a process which could be regarded as life-threatening, given the pathological paranoia of the Nationalist government, and which indeed resulted in the death of Steve Biko," he said.

"The security forces, however, never established the real nature and extent of Steve's mission," Mr Jones said.

"The 'untold story', in our view, has national ramifications, and possibly contains elements of a solution which, once publicly submitted to the nation, can be examined or otherwise applied as the completion of an unfinished cycle of history," he said.

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**INKATHA'S BLINDSPOTS**

FM 13/9/96

The ANC, NP, and IFP have failed the Truth & Reconciliation Commission (TRC) by failing to come clean on their respective roles in past violence

None more so than the IFP whose self-serving submission paints a picture of a God-fearing party which abhors violence and merely defended itself against ANC thuggery

IFP leader Mangosuthu Buthelezi's failure to acknowledge that the IFP leadership instigated so much as one act of violence renders his apology to the ANC leadership meaningless

Even as he apologises, he blames the ANC for causing the conflict between them and begetting today's violence

"The ANC's response to apartheid and particularly its ungovernability campaign is the father of today's violence and the cause of the conflict between the IFP and the ANC"

According to the IFP, the conflict between it and the ANC was rooted in their differing responses to apartheid. KwaZulu and the IFP were targeted, along with the apartheid State, by the ANC's destabilisation policies after the failed 1979 London conference where the then Inkatha Cultural Liberation Movement rejected the armed struggle

The ANC then rebuffed reconciliatory gestures by Buthelezi and continuously called publicly for his removal from power, including making "blatant appeals for (his) murder"

Since 1961 about 14 000 IFP supporters have been murdered and 420 IFP leaders systematically assassinated in a

campaign by the ANC/UDF to "liquidate" township administrations and render SA ungovernable. In 1987 an alleged ANC plot to assassinate Buthelezi was leaked to him by former Church of Nazareth leader Rev Londa Shembe. Corroborating confidential documentation was submitted to the TRC



*Mangosuthu Buthelezi*

The IFP claims there was a conspiracy by the previous government and the ANC to downplay the slaughter of IFP members and that the NP allowed MK to carry out anti-IFP operations from Transkei

It notes that no mention is made in either the ANC or NP submissions of IFP deaths "There are half-hearted excuses for

apartheid and eloquent arguments about a just war against this, but there has been not a word of repentance about the crimes against those who fought apartheid by peaceful means"

The IFP goes so far as to say "The ANC spent many years more involved in fighting and killing their fellow black South

Africans than they spent involved in fighting the regime of the time"

The IFP leadership on the other hand never authorised the use violence for political purposes. But despite a "constant vigil" to keep violence out of IFP politics, its members were drawn into violence and for this it apologises

No mention is made of the State running guns to the IFP or training its members in the Caprivi or of Inkathagate where it emerged that SA taxpayers' money was funding IFP rallies

No explanation is given of the IFP's role in East Rand hostel violence in the early Nineties or the revenge attacks attributed to its Natal Midlands warlords. The TRC is not told who made policy, issued the orders or carried them out

It is difficult enough to accept that the IFP leadership never authorised the use violence, (De Klerk would have us believe the same thing about the NP government), but it is impossible to believe that they did not know what was going on in the party's ranks

Buthelezi is probably right when he says the TRC will fail to find the truth or achieve reconciliation. He will carry

*Continued on page 51*

# Omar and attorneys-general discuss improvements to the justice system

(252) Star 14/9/96

Cape Town - Justice Minister Dullah Omar met the attorneys-general in Cape Town yesterday to discuss the country's crime situation and how the justice system could be improved.

Matters debated included the issues of bail, police corruption, crime syndicates and gangsterism; and ways to strengthen the capacity of the prosecution system to conduct prosecutions more effectively, Omar told a media briefing.

A concerted effort would be made to find necessary funding, and greater efforts would be made to fill vacant posts, Omar said. Equipping the attorneys-general would also receive attention, as would the provision of training.

Section 205 of the Criminal Procedure Act, under which



Dullah Omar

journalists were recently subpoenaed to testify, was also discussed.

Omar said while there was a necessity for journalists to be able to protect the sources of their information if, for example, they were witnesses to a murder, they would - like other members of the public - be expected to help the police with

their investigations.

Asked about the relationship between the Truth and Reconciliation Commission and the attorneys-general, Omar said: "There is a natural tension between the workings of the Truth and Reconciliation Commission - particularly the amnesty committee - and the prosecuting authority."

He was confident discussions between the two parties could resolve whatever tension existed.

The constitutional provision for the creation of a single prosecuting authority, headed by a national director, had also been discussed, Omar said.

Draft legislation would soon be circulated to attorneys-general, who would be consulted extensively before it was finalised. - Sapa

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## TRC starts to deal with reparations

APR 14 1996  
Cape Town — A draft of the Truth and Reconciliation Commission's reparation and rehabilitation committee's proposals for urgent interim relief to victims of gross human rights violations will be available next week, the TRC said yesterday.

The proposals will be implemented only after adoption by a full commission meeting.

The commission's human rights violations committee has thus far taken statements from about 4 400 witnesses. Some victims may be eligible for interim relief, pending the commission's recommendations to the president and approval by Parliament.

A document outlining how longer-term policy formulation in the reparations committee could be dealt with is also to be finalised soon, the TRC said.

The first reparations hearing is planned for the end of November — Sapa

■ See Page 11

# Madiba in row for supporting judge

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Sowetan 16/9/96

## President accused of taking sides and influencing vote

By Waghied Misbach  
Political Reporter

**P**RESIDENT NELSON MANDELA'S office has confirmed that his nomination of Judge Ismail Mohamed for Chief Justice is "straightforward" and that he has the right, like any other citizen, to support any nominee he wants.

However, the feeling in the legal profession is that although the President has this right, his public support for Mohamed influenced the selection process.

Presidential spokesman Parks Mankahlana told *Sowetan* yesterday that Mandela did not need the permission of the Judicial Service Commission before making a nomination.

"The commission does not exclude who can or who cannot make nominations. In any case the prospective nominees still have to be interviewed,"

Mankahlana said.

Mohamed is the deputy president of the Constitutional Court and has the support of a number of organisations, including the National Association of Democratic Lawyers (Nadel) and the Black Lawyers Association.

This week, Nadel called on the other candidate for the position Justice Henne van Heerden, to step down and make way for Mohamed.

Mandela has the power to make the final decision on who becomes chief justice. This follows reports that Van Heerden's supporters have called the process "a farce" because Mandela has taken sides already.

Apparently, Van Heerden has the support of about 100 judges, and virtu-

ally the entire Appeal Court Bench - the group with which the Chief Justice has to work.

Van Heerden's support comes from the largely white and politically conservative section in the judiciary while Mohamed's support base lies with the reformers, according to reports.

Mankahlana said there was clearly an "ideological divergence" between the two camps. He said that Mandela's nomination of Mohamed is not "something we should be shy about".

While the President's office tried to refute any notion of undue influence on the selection process, Van Heerden's supporters said the President was leading a kind of support "lobby" for Mohamed.

# Exposing more wrongs

**T**HE TRUTH AND RECONCILIATION Commission has been asked to investigate the most devastating yet least visible human rights violation of South Africa's past – the deliberate denial of education to millions of black people by the former National Party government

The suggestion has been made by the National Literacy Cooperation, (NLC), an umbrella body of 160 community and non-governmental organisations which deal with adult education

NLC national director Mr Kumi Naidoo says the educational underdevelopment of generations of people will remain as one of apartheid's worst legacies

"This was not an accident apartheid's planners from the early 1950s systematically implemented an education policy that subjugated millions and excluded even more"

Naidoo said that there are about 15 million adults in need of basic education

When examining the submission from the education sector, the TRC will take its work into a new realm

So far, hearings into human rights violations, applications for amnesty and certain events, like the Bisho and Boipatong massacres, have focused on the physical and overt. Now the TRC is being asked to go beyond the obvious and to acknowledge that the architects of apartheid committed the worst abuse when depriving people of education

## Profound damage

Profound damage was caused by apartheid education and South Africa could suffer the consequences for decades to come, says Naidoo

He says there are two aims behind the submission that society recognise the injustice of the past education policy and that reparations be made

"Society will not have a full picture of human rights abuses if we only look at the more obvious and physical violations," he says. It is vital that illiterate people – who he says suffer an invisible disability – do not continue to pay the price for their deprivation

"Illiterate people are treated as if they are stupid and are to blame for not being able to read and write"

He says society needs to keep in perspective that the denial of education was a cynical crime calculated to rob millions of South Africans of a chance to develop intellectually

There are millions of parents who can't read their children's school reports let alone help the kids with homework

And millions more are unable to read the

Up to now the TRC has focused on past physical injustices during the apartheid era. Now the National Literacy Cooperation wants the denial of education to blacks investigated. **Sharon Chetty** reports...

(252) Lowetian 16/9/96



victims of abuse is expected to be mainly symbolic and for individuals or small groups

Naidoo says that at present the NLC reaches only about 50 000 of the adults who need basic education – TRC examination of the subject would give it a higher profile and make reparations more urgent

He's confident that the damages can be reversed immediately if a special programme was put into place

"How long it takes to repair the damage will depend on society and ultimately on the commitment from all sectors, whether it's government, business or religious organisations"

## Education backlog

Naidoo adds that if there was a focused national programme with safeguards to ensure that there will be no repeat of the madness of the past, concrete changes will be seen in-between 10 to 15 years as the education backlog will have been contained

The personal changes experienced by formerly illiterate adults would be immeasurable. While the nation's productivity would increase, the government's idea of a participatory democracy would become more real. Not only will more people be able to read a ballot form, they would have more control over their lives. Newly literate people would certainly have a range of options when dealing with problems. For example, they'd be able to write a letter to the local council – a fact of life most take for granted

The TRC's investigation of and recommendations on how to deal with the educational deprivation suffered by almost two thirds of the population "will give hope to many, heal some wounds and help to restore the dignity of those marginalised in this way"

"No compensation can bring back the years lost by millions of adults. But we believe that the least society can do is recognise the hurt and humiliation and take concrete steps to help these people to recapture some of the wasted time and opportunity," says Naidoo

details on medicine bottles, properly understand a bus or train time table and get ripped off all the time when shopping as there's a correlation between numeracy and literacy

Naidoo emphasises that the damage is not always quantifiable. There are huge numbers of people whose confidence is eroded all the time as the world is rapidly advancing technologically while their universe remains limited

Simply put, apartheid education was designed to kill the spirit of black people

While access to basic education for adults is a right promulgated in the draft new constitution, TRC examination of the issue will make a huge difference, says Naidoo

"There are many adults who are ashamed to admit illiteracy. If the TRC acknowledges the extent of the problem, many people will realise that they are not alone. It's also a way to give back dignity to people"

The NLC will invite suggestions from the public and will work with other education groups and specialist research organisations when drawing up the submission. They will outline their expectations to the TRC which they hope will be incorporated into the TRC's final report

Ideally, Naidoo says, the TRC's recommendations to government at the end of their work will include the education sector's suggestions. If this is done adult education would be put onto the government's agenda and will be made a priority

Significantly, when the TRC deals with the recommendations for reparation, it will probably have the best opportunity to suggest concrete redress for a sizeable portion of South African society whereas reparation for other

# Chief Justice: Mandela nod

Star 16/9/96 (252)

# causes outcry

## President's written 'lobbying' for Judge Mahomed 'a silly mistake' that renders the selection process futile, say critics

By **MONDLI MAKHANYA**  
Political Reporter

The selection of South Africa's chief justice has been plunged into controversy after President Nelson Mandela drew a barrage of criticism for coming out in support of one of the candidates

Mandela wrote to the Judicial Services Commission (JSC), an independent panel which interviews and recommends candidates for judicial appointments, stating his support for deputy Constitutional Court chairman Mr Justice Ismail Mahomed for the post

Judge Mahomed's only competitor is Appeal Court Judge Hennie van Heerden, who has the backing of the traditional legal establishment, including most of the judges on the Bench.

Judge Mahomed, on the other hand, is backed by bodies such as Lawyers for Human Rights and the National Association of Democratic Lawyers

The JSC has to forward its assessment of the two men to Mandela by December. Mandela will then make the choice

Political parties joined legal organisations yesterday in criticising Mandela for taking sides in the matter, saying it cast doubt on the fairness of the selection process

Democratic Party justice spokesman Douglas Gibson said it "would have been preferable" if

Mandela had first consulted the JSC before making up his mind

"Neither of the two men needs to be knee-deep in controversy from the moment of appointment, (and) the president must live up to the letter and spirit of the constitution and therefore he must not appear to be taking sides," said Gibson.

The National Party's Sheila Camerer said Mandela's intervention was not in keeping with the spirit of the regulations which guided the appointments. The intervention had rendered futile the exercise of interviewing the two candidates

Freedom Front Senator Rossier de Ville described Mandela's move as a "silly mistake" that "smacked of lobbying" on the part of the president's office. He also warned against "politicisation of the nomination process"

Presidential spokesman Parks Mankahlana said Mandela was acting within his rights to make his preference known

"There is nothing untoward about it, and it does not indicate any preference on the part of the president. He was just exercising his right which any other citizen has"

Mahomed is a veteran human rights lawyer and already serves as Namibia's chief justice

Van Heerden is the most senior judge of the Appeal Court. Both men are highly respected in the legal fraternity



Judge Ismail Mahomed



MANDELA'S ROLE 'ILL-ADVISED'

# DP backs Mohamed for Chief Justice post

CT 16/9/96 (252)

**POLITICAL REPERCUSSIONS** are likely if Mr Justice Hennie van Heerden is made Chief Justice, whereas a backlash from the legal fraternity is possible if Mr Justice Ismail Mohamed is chosen, says Mr Douglas Gibson of the DP.

**T**HE Democratic Party has commended deputy president of the Constitutional Court Mr Justice Ismail Mohamed's being a candidate for the position of Chief Justice — although President Nelson Mandela's expressing his support for him has sparked controversy.

The other candidate is Mr Justice Hennie van Heerden, the Appeal Court's most senior judge

The DP's spokesman on justice, Mr Douglas Gibson, said South Africa was fortunate to have two candidates of high calibre, but it was unfortunate that the President had divulged his preference for Judge Mohamed.

The disclosure at the weekend that Mandela had nominated Judge Mohamed, thereby intervening in the process, raised eyebrows in the legal fraternity.

Gibson said the DP could express support for Judge Mohamed as the party was not part of the selection process. However, Mandela was an interested party as he would be required to make the



**MANDELA'S CHOICE:** Mr Justice Ismail Mohamed

final choice if the Judicial Services Commission reached a deadlock in selecting a successor to Chief Justice Michael Corbett, Gibson said.

Judge Van Heerden has the support of 10 judges

If Judge Mohamed was appointed there could be adverse reaction from other judges and the legal profession, whereas if Judge Van Heerden was appointed there

would be an adverse political reaction, Gibson said.

"The President would have been better advised to have sought a recommendation from the Judicial Services Commission and then to have entered into a dialogue with it before the whole matter became a public controversy"

Judge Mohamed had chaired the constitutional negotiations and had become well known, Gibson said.

He had built up "a solid record" in the Constitutional Court and would be seen as someone who could uphold the constitution "and the rights of individuals".

Judge Mohamed should have been appointed to the bench years ago, but had been blocked because of the apartheid system, Gibson said

Judge Van Heerden was an "outstanding, capable" man

Neither judge deserved to find himself in an embarrassing position of this kind, said Gibson

A presidential spokesman said at the weekend that Mandela's nomination should not be misinterpreted. The commission had agreed that he could propose candidates. The President kept an open mind, said Mr Joel Netshitenzhe — Political Staff

# Row over chief justice rages on

(252) Row over 17/9/96  
 PRESIDENT Nelson Mandela had acted constitutionally when he nominated Constitutional Court deputy president Mr Justice Ismail Mahomed as a candidate for chief justice, Mandela's office said yesterday.

It was reacting to criticism that Mandela - who makes the final choice on the recommendation of the Judicial Service Commission - had already prejudged the issue by backing one candidate at the nomination stage.

It has also led to at least one appellate judge calling for Mahomed to withdraw as a candidate.

The Appellate Division judge, Mr Justice Joos Hefer, was reacting in *Die Burger* newspaper to calls from the National Association of Democratic Lawyers that Mr Justice Henne van Heerden, the most senior appeal court judge, should withdraw his nomination.

Van Heerden, who has the support of the majority of appellate judges, is the only other nominee.

"If there is any honour left in this matter then the other man (Mahomed) should withdraw his nomination. I know that he (Mahomed) is under tremendous pressure to continue with his nomina-

tion," Hefer said yesterday.

Presidential aide Mr Joel Netshitenzhe said yesterday that the Constitution specifically provided that the President, in consultation with the Cabinet and the JSC, would appoint the new chief justice.

However, the Constitution did not provide for how candidates should be nominated and to ensure the process was more transparent and consultative than what was constitutionally required, it had been agreed with the JSC that a nominations committee would be established.

Mahomed had been nominated by Mandela and several other organisations, while Van Heerden had also received dual nominations, presidential legal adviser Mr Haysom said.

Mandela's decision to nominate a candidate had been wholly motivated by the need to disclose his preference so that the JSC would be better placed to scrutinise and evaluate Mahomed.

By disclosing his preference, Mandela had merely enriched the process, Haysom said.

Netshitenzhe reiterated that Mandela had an open mind on the appointment and would be guided by the JSC - *Sapa*.



M E W S

# Clanwilliam in chaos over prosecutor

## Probe sparks action *ARL 17/19/96 (252)*

**JOSEPH ABANES AND CHENE BIGNAUT**  
STAFF REPORTERS

Business in Clanwilliam came to a standstill when hundreds of people demonstrated outside the magistrate's court demanding that the town's prosecutor, under investigation by the attorney-general's office in Cape Town, be reinstated in his office after being moved to the kitchen.

Protesters also began a consumer boycott yesterday. Police closed part of Mann Road in front of the court building as the protesters toy-toyed while their leaders negotiated with chief magistrate Eric Louw. Trouble began a few weeks ago when the prosecutor, Jonas White, who is also a town councillor and chairman of the

African National Congress branch, led a protest against an alleged member of the Cape gang syndicate, The Firm, buying a house in the town.

The alleged gangster, known only as Tony, obtained a court interdict restraining people from protesting at his house. Mr White strongly criticised the magistrate who issued the interdict.

Yesterday, hundreds of residents marched to the court building, demanding that Mr White be given back his office and that Western Cape Attorney-General Frank Kahn tell them why disciplinary action was being taken against him.

A delegation occupied Mr Louw's office and faxed demands to Mr Kahn's office. Deputy Attorney-General Percy Sonn said he would meet them in Clanwilliam today.



LEON MULLER

Tough talks: prosecutor Jonas White tells residents that he will move back into his old office



Protest march: hundreds of Clanwilliam residents protest outside the court building

Wyndham Hartley

CAPE TOWN — The truth commission is on the verge of gaining access to the archives records of the former State Security Council and the National Intelligence Agency in its quest for answers

Head of research at the commission Charles Villa-Vicencio yesterday released the research strategy to investigate human rights abuses over a 33-year period

In response to a question at a news conference he said that fruitful discussions had been held with the national archives, which holds the transcripts and, in some cases, tapes of the meetings of the old security council and the NIA. He said that commission staff were at present undergoing security clearances so that they could

## Commission may get archives access

(252) BD 18/9/96

scrutinise these records

He announced significant advances in gaining access to the records which meant that "we know what they have" But he stressed that access to police and Military Intelligence files were behind He said the commission was concerned by intelligence committee statements that MI records had been destroyed

Villa-Vicencio announced that research would be concentrated on 17 themes These included the role of the security forces, role of the judiciary, the liberation movements and the white right wing

He said the commis-

sion's taking of statements, which would reach about 50 000, represented the largest field research exercise yet undertaken in the country if not the world

He said the final report of the commission which will be handed to President Mandela at the end of its two-year mandate would comprise research from its hearings and the work of researchers investigating the various themes.

Donor money, of which R11m from the European Union was announced this week, would be used to fund researchers under contract and conferences to decide the final report

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# Victims' hope of help

(252) Jonathan 18/9/96

**T**HE SUCCESS OF THE TRUTH and Reconciliation Commission (TRC) will be measured at one level by its ability to deliver appropriate reparation to the victims of human rights violations

A controversial issue under discussion at the moment is whether to give individual reparation to victims outside the normal state channels of pensions and bursaries, or whether reparation should be limited to development-oriented initiatives

Many of the victims and survivors of extreme abuse have put their trust in the TRC to ease their suffering as well as to provide answers to painful questions that have haunted them for years

The perpetrators of human rights violations who appear before the TRC may be able to give the long-awaited answers. But according to many human rights organisations worldwide, they should only receive amnesty if reparation is available to their victims

"If you do not have some form of reparation for the victims and the perpetrators receive amnesty, then they win all the way," says commissioner Hlengiwe Mkhize

Mkhize heads the TRC's reparation and rehabilitation committee (R&R Committee), which has recently drawn up proposals for urgent interim relief for victims and for a future policy

## Policy guidelines

This policy needs to be approved by the whole TRC before it forwards recommendations to the Government

"The TRC must only provide policy guidelines. It is up to the people of South Africa to make sure there is reasonable implementation," says Mkhize

The TRC's Eastern Cape office is holding a major workshop on reparations policy this month and committee members began monthly regional discussions in May to develop policy guidelines

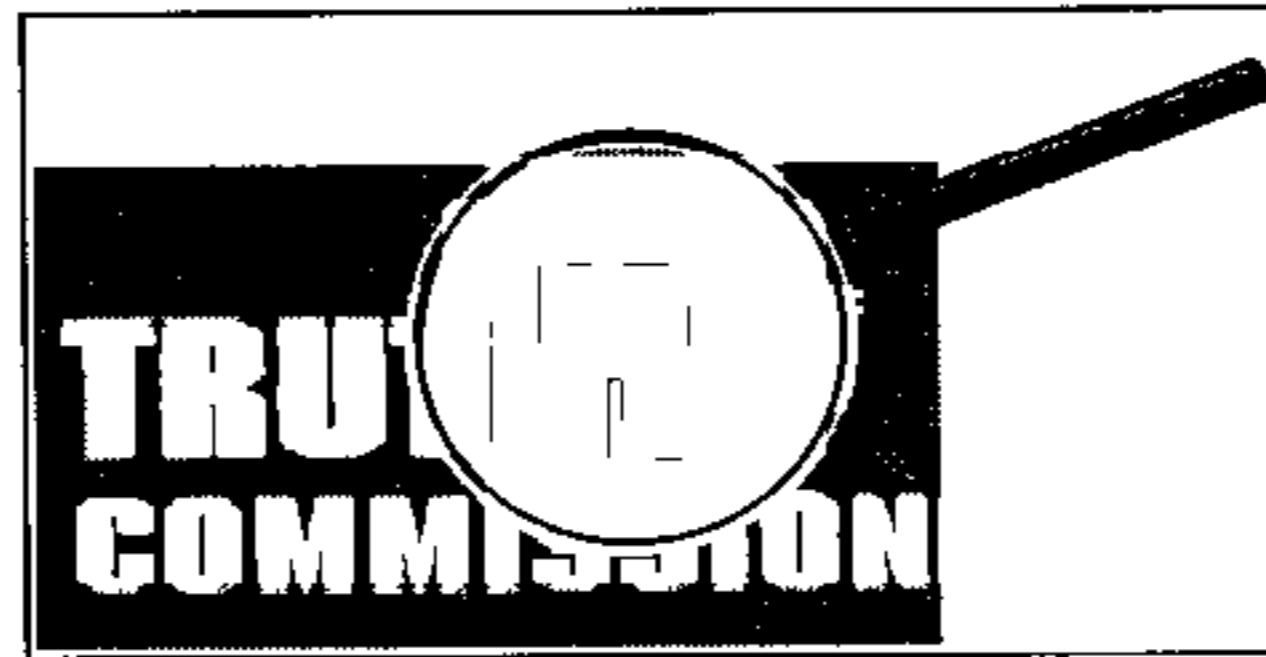
Non-government organisations, academics and informed parties have been participating in the debate

Mkhize says the discussions have clarified their thoughts on reparation, which are underpinned by the new Constitution. An acknowledgement of "the pain, anguish and loss suffered by victims" is central to the reparation framework

"We challenge not only the Government but business and people in South Africa who benefitted (under apartheid) to work out what they can do to make reparation"

Eastern Cape reparation and rehabilitation committee member the Reverend Mcebisi Xundu says "Whites who benefitted from the

The issue of reparation to sufferers of human rights violations is problematic. Many of the survivors of extreme abuse have put their trust in the TRC to ease their suffering. **Claire Keeton** writes...



system need to make meaningful redress, not in a legal sense but in way which will contribute to healing"

Mkhize says the committee feels it is important to take a "development-oriented approach" towards reparations, which will assist groups and not be limited to specific individuals

For example, a company may establish an industrial school for youth named after a human rights victim. This may serve to empower young people who lost out on opportunities and remember the victims

"Violations were often not aimed at individuals as much as at opposition groups. In reality Mr X is not the only victim of a particular violation but an index of many more victims," Mkhize says

She says the committee believes in restoring the dignity of victims so that the abuse – intended to dehumanise them – can be turned into a victory. "The victims should emerge more and more as heroes through events like national commemoration days"

Mkhize says this will make sure people who contributed to democracy in South Africa are not forgotten

## Individual reparations

There is broad agreement about this framework but concrete proposals such as the allocation of individual reparations are more controversial and likely to generate much debate

The committee's draft proposals support the need for urgent interim relief to individuals under particular circumstances

"Some victims as individuals still feel violated and they have specific needs to be met beyond development-oriented reparations

"We are thinking of reparation grants – though given the great number of victims and of years covered by the TRC (1960-93), they will

not be huge amounts

"They will not be automatic but be determined by a person's circumstances, including the damage they suffered physically, psychologically and socially"

The committee members feel they have a moral obligation to provide urgent assistance although they have no idea yet what resources will be available

She says the committee proposes urgent assistance in cases when a human rights violation has left the person with very limited resources and they are struggling to survive

The TRC will propose that the Government considers whether it could give these victims priority in national schemes, such as housing and pensions

Urgent interim assistance will cover five categories: medical care and assistance, access to and continuation of education, severe emotional suffering and pain, symbolic measures, and material or financial needs

The last category has strict limitations and will be likely to apply to high-risk, disabled people in rural areas

## Medical assistance

For example, a woman shot by police in Mpumalanga may qualify for a grant. Crippled in a wheelchair, she is struggling to cope after being rejected by her family and needs urgent medical assistance and shelter

"The personal circumstances and geographic location, and whether a person has tried to access existing financial aid and cannot, would be considered before giving a grant"

But reparations are not the committee's only priority since it is also mandated to look at rehabilitation. "We see a clear need for strengthening existing resources like trauma centres, which aim at mediating the negative impact of violence on victims"

It is critical that human rights education is part of healing and counselling

The TRC challenges all South Africans to examine what they can do to promote reconciliation. The Reparation and Rehabilitation Committee welcomes suggestions from the public about reparation and these contributions can help define the final policy

● If you have suggestions, write to Barbara Watson, TRC, PO Box 1158, Johannesburg, 2000

# Witness protection programme takes off

BY DAISY JONES

Although, for obvious reasons, staff on the witness protection programme (WPP) of the Truth and Reconciliation Commission have been keeping a low profile, they have been working extremely hard since April, when they started receiving an average of five applications per day for protection.

But Chris MacAdam, who heads the six person WPP team, says that owing to a sophisticated system and a network of co-operative organisations, only three people have required full witness protection.

Full protection entails relocation to a "safe house", 24-hour guarding by armed officials, and an impenetrable veil of secrecy being drawn over the witness's whereabouts and movements.

MacAdam, considered the country's specialist in witness protection since his development of a programme under Natal Attorney-General Tim McNally, told The Star problems associated with offering full protection in too many cases had been averted by identifying weak spots in other witness protection programmes, and trying out alternative methods.

The most important innovation made by the TRC's WPP had been to leave no stone unturned when it came to assessing

the level of threat to and truthfulness of witnesses who applied for protection, MacAdam said.

Witnesses were required to submit a written application to the WPP, which could go one of two ways, he explained.

If the context and history of the threat were familiar to MacAdam's handpicked team of five "police services people", who are all "expert investigators into political violence," the WPP would be able to move speedily towards an assessment of the danger to the applicant.

If not, information supplied in the application would be checked against information in the hands of "certain intelligence agencies", whose co-operation the WPP has secured.

Either way, applicants were obliged to "commit themselves to a security screening", which included having their fingerprints taken, MacAdam said.

There was a grave danger to the WPP - and the TRC as a whole - if adequate measures were not taken to establish the credibility of an application, MacAdam said.

He said if applicants falsified claims and were granted full protection, they could infiltrate the programme and

threaten the security of other witnesses.

In such a case, the WPP would have to change its logistical operation, starting with finding new "safe houses".

The WPP was vulnerable to lies, because the TRC was hearing testimony relating to events as far back as 1960.

State records of certain incidents had been erased, or did not exist, and applicants could claim knowledge which could not be confirmed, MacAdam said.

The WPP also had to protect itself against confidence

tricksters, like the applicants who had already lied for the sake of free board and lodging.

In terms of establishing the danger facing applicants, people could be classified as high, medium or low risk cases, said MacAdam.

High risk cases would warrant full protection but only after the approval of the WPP's recommendation to the TRC's Investigative Unit.

People considered to be facing a medium risk of attack would not be moved from their community, but would receive armed guard protection.

This protection could take the form of occasional bodyguard services, and/or a

hotline to guards in the area.

A guard or guards could also be posted in the vicinity of a medium risk case, MacAdam told The Star.

Police in the area of a low risk case would be notified of the applicant's problem, and the person would be advised to be in daily contact with the police.

The WPP was receiving "good co-operation" with local police agencies, who had made their radio control contact numbers available, and were patrolling potential trouble spots.

Visible policing and community-based WPP personnel in a neighbourhood were often enough to repel potential perpetrators who were quite frequently of unsophisticated means, MacAdam said.

Failing repulsion, the WPP, along with the Crime Intelligence Office (CIO), would conspire to arrest people named as threats.

The CIO would monitor an area, provide ongoing evaluations, and would not hesitate to arrest people for intimidation or any other classifiable offence.

"We are not going to sit back and let people intimidate our witnesses," MacAdam said.

Intimidation dating back to the early 1990s was still rife in some places, and "in certain areas very powerful elements" had gained ground, he said.

## People are classified depending on risk

STW/8/9/96

(252)

# Judge row: chief justice sees nothing improper

(252)

WILLIAM-MERVIN GUMEDE  
STAFF REPORTER

Chief Justice Michael Corbett has entered the row over his successor, saying nothing improper has taken place in the run-up to the appointment.

"I want to appeal to the media, political parties and the legal profession to put the events of the past few days

behind them and allow the Judicial Service Commission to proceed with its work without acrimonious debate," said Judge Corbett.

The procedure to select the chief justice "was open, transparent and allowed for public participation in the identification of candidates."

President Mandela raised eyebrows when he publicly nominated Judge Ismail

Mohamed, deputy president of the Constitutional Court, as his preferred candidate. The other candidate is Judge Henne van Heerden, a senior judge of appeal. There have been calls from supporters of both candidates that one candidate should step down for the other.

Judge Corbett said he wanted to "clear up the possible misconceptions by the public over the constitutional provisions

relating to the appointment of the new chief justice."

"In terms of the interim constitution the chief justice is appointed by the president in consultation with the Cabinet and after consultation with the Judicial Service Commission," he said.

"This means the president requires the concurrence of the Cabinet." But, he said, the president's

decision did not require the concurrence of the commission, nor was he obliged to follow the commission's advice.

But, the president was obliged to take his decision in good faith after consulting with and giving serious consideration to the views of the commission," he said.

Judge Corbett said calls for one or the other candidate to withdraw were irresponsible

ARU 18/19/96

# Dealing with the pain of loss

*Truth Commission's next job is to heal the wounds*

TERRIBLE TALES OF TORTURE, HARDSHIP AND HUMAN DEPRAVITY HAVE EMERGED DURING THE PAST FEW MONTHS OF TESTIMONY TO THE TRUTH AND RECONCILIATION COMMISSION'S 'CONFESSIONAL ROADSHOWS' AROUND THE COUNTRY JOHN YELD REPORTS THAT WHILE SOME OF THESE GROSS HUMAN RIGHTS VIOLATIONS WERE INFLICTED YEARS OR EVEN DECADES AGO, MANY OF THE SURVIVORS AND VICTIMS STILL ARE STRUGGLING TO DEAL WITH THE CONSEQUENCES

The Truth Commission's founding act makes provision for a President's Fund from which some form of compensation - such as bursaries for children or financial help to erect tombstones and memorials will be forthcoming once the commission's two-year term ends in December next year

In the meantime, the commission's Reparations and Rehabilitation Committee is grappling with the thorny issue of how to grant urgent interim relief to those victims who appear to desperately need help now - such as urgent medical treatment or psychiatric help, for example

This week, the committee is hosting a workshop in Johannesburg which will be attended by, among others, Graca Machel, widow of former Mozambican president Samora Machel who died in an aircraft crash on South African soil in 1986

The workshop will examine proposals for urgent interim relief. What sort of people are likely to be helped by such relief? It is impossible to rank the gross human rights violations that have been documented during hearings in any hierarchical order of abuse

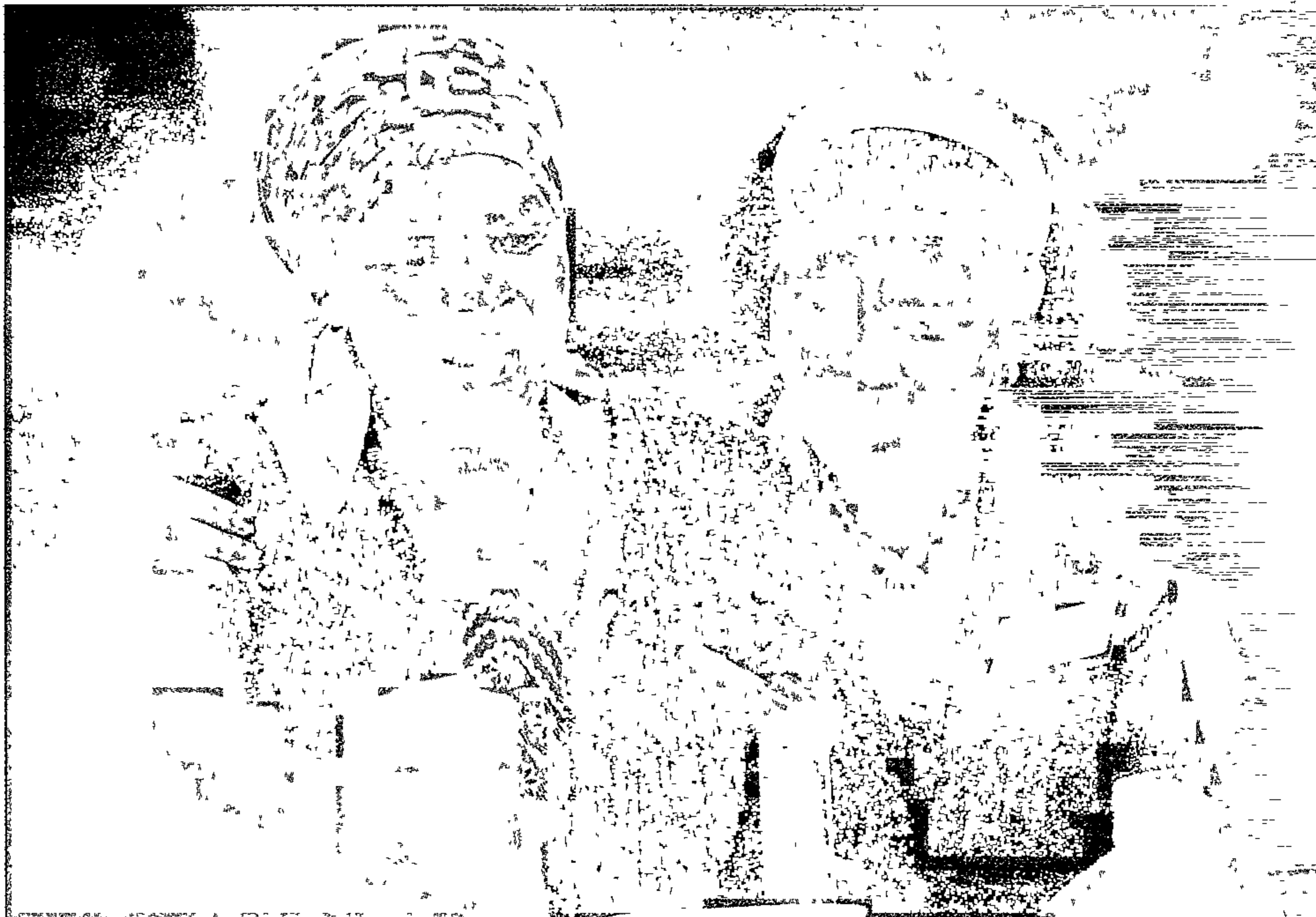
Is it worse to be suffocated with a piece of rubber tubing than to be half-drowned in a toilet bowl? Or to be beaten with fists, boots and batons so that you're crippled for life?

But there is one group of people who have been exposed to a special horror, and some of them quite clearly require urgent psychiatric and psychological help for their unbearable burdens

These are the parents whose children have gone missing, often in circumstances that suggest the worst, but where certainty has been lacking for weeks, months, years or - in the worst instance - even decades

One such person is Nohle Nika-Jonas, a 54-year-old Uitenhage woman who told the Truth Commission's human rights violations committee that her three sons had disappeared in 1976 and she still did not know what had happened to them

She testified that police and soldiers carrying rifles and shotguns had kicked open the door of their home in the Kwa-



LEON MUII

**Pain of a mother:** Mrs Nohle Nika-Jonas tells the Truth Commission hearing in Uitenhage of her tragic loss. A "briefer", Nocawe Mafu, consoles her

Langa shack area about 1 am on a July morning and called for her sons by name

"They found Thembinkosi in the house and they took him and loaded him in the Hippo. His cries are still haunting me today," she said

Vusumzi and Sabelo, who had been sleeping in their shack in the backyard, also were arrested and loaded into the armoured vehicle

"About 6 am I was called outside by a Mrs Mamebele, who has since died. She showed me pieces of clothing which belonged to my three sons, lying on the road. Sabelo's 'skipper' was in tatters and bloodstained"

Mrs Nika-Jonas collapsed with shock and had regained consciousness in the provincial hospital where she was kept for a day

Later, she was told that policemen had buried bodies in black plastic bags at St

Albans. Also, she heard stories that pigs had devoured these corpses

She had never reported her sons as missing because "it was the policemen and soldiers who killed my children - the police were the very perpetrators"

"I also feared being labelled an impimpi and being burned," she said

Asking the commission to help her find out what happened to her children, Mrs Nika-Jonas said "If they are dead I need to know who killed

them and why. I also need counselling and medical attention"

Commissioner Mapule Ramashala, a member of the "R&R" committee and a clinical psychologist by profession, agrees that there is a special torment for parents who don't know what has happened to their children

She believes the Truth Commission, through its investigative unit, has a spe-

cial duty to try and find out what happened, not only to missing children, but also to adults who "disappeared into thin air"

"We need to do this so that the families can be helped to close the book, to say finally, 'Our children and our loved ones are dead', because the lingering pain is too much to bear," said Dr Ramashala

"The disappearances without trace are, I think, the worst and really the most painful because you cannot close the book"

People suffering the trauma of disappearances probably would show both psychological and physical symptoms, said Dr Ramashala

She had spoken to Mrs Nika-Jonas after her testimony and found she had been affected in this way since 1976. "She's not very well and she really does need to get some help." "And we are recommending that people like Mrs Nika-Jonas should be referred for counselling. We've identified those who need urgent interim assistance, and we're trying to get them plugged into the system as quickly as possible"

***'The disappearances without trace are the worst and really the most painful because you cannot close the book'***

# Worthy contenders for SA's top law post

Mar 19/9/96 (252)

A controversy erupted this week when it became evident that President Mandela is openly advocating Mr Justice Ismail Mahomed's appointment as the new Chief Justice. Helen Grange profiles the outspoken judge and his only rival, Mr Justice Hennie van Heerden. The Judicial Services Commission has to forward its assessment of the two candidates by December for Mandela to make a final choice

## Justice Ismail Mahomed

When Mr Justice Ismail Mahomed moves forward in his seat during a Constitutional Court hearing, it can signal anything from a good humoured scrum to the quick obliteration of a hapless counsel's laboured point

Many an advocate has caught the sharp edge of his tongue. He can cut through a fatuous argument with clean precision and leave his adversary wounded

His famous *boni motis* have been recorded by court reporters looking for a "quotable quote" ever since he was appointed a judge in 1991, breaking the Bench's all-white mould. Today, as Constitutional Court deputy president, his intellect is as keen and his drive as daunting

His nomination for the position of chief justice, controversially backed by President Mandela, has shaken up the judicial establishment at its highest pinnacle - not because there is any doubt about his legal track record, but because the track he followed went against tradition

It has been loosely accepted in the higher judicial echelons to



date that the most senior judge in the Appellate Division would be appointed chief justice. Judge Mahomed's nomination is the first real challenge to this established practice

Unlike his only other rival, Appeal Court judge Hennie van Heerden, judge Mahomed left full-time academia and plunged into legal practice as soon as he completed his LLB degree

Born in Laudium, outside Pretoria, where he still lives, he quali-

fied at Wits University and joined the Johannesburg Bar in 1957. He remembers, with amusement, lurking around the men's toilet of the advocates' chambers at lunchtime, eating his own sandwiches because he was forbidden to dine in the whites-only restaurant

But his ability was recognised and he rose quickly through the ranks to become Namibia's chief justice and a leading figure in constitutional law. He is also a judge of appeal in Lesotho and Swaziland, and was appointed head of the SA Law Commission last year

His early days as an advocate in the Natal courts are remembered among his colleagues for a few legendary sparring matches with his CC colleague, Mr Justice John Diddcott SC, then a Natal Supreme Court judge. On one occasion, Mahomed was warned by Diddcott that he was coming close to being in contempt of court

Human rights and the fight against discrimination has been a passionate concern throughout his career, exemplified in the commentary of some of his judgments

In one of his CC judgments, he wrote "South African statutory law, prior to the enactment of the constitution, is replete with the

most disgraceful and offensive legislation which discriminates against South Africans of colour and criminalises, arbitrarily and purely on the grounds of race and colour, perfectly innocuous acts by such citizens"

As an advocate, he led the defence counsel in major treason trials during the P W Botha era and later co-chaired the 1991/2 Kempston Park talks, where he solidified his reputation for neutrality

Nevertheless, he was dubbed "arrogant and vindictive" by the Broederbond when, as a member of the panel choosing the new SABC board in 1994, he vigorously grilled the corporation's old guard, extracting from them some embarrassing admissions

Last year saw Judge Mahomed temporarily set back due to a heart attack and follow-up surgery, but he appears to have recovered well and shows no sign of wanting to relinquish any of his judicial responsibilities

As a candidate for chief justice, he has an impressive record of support from a number of legal bodies traditionally concerned with human rights. Should he become South Africa's chief justice, his iconoclastic mind will no doubt make its mark on the country's judiciary fairly quickly

## Justice Hennie van Heerden

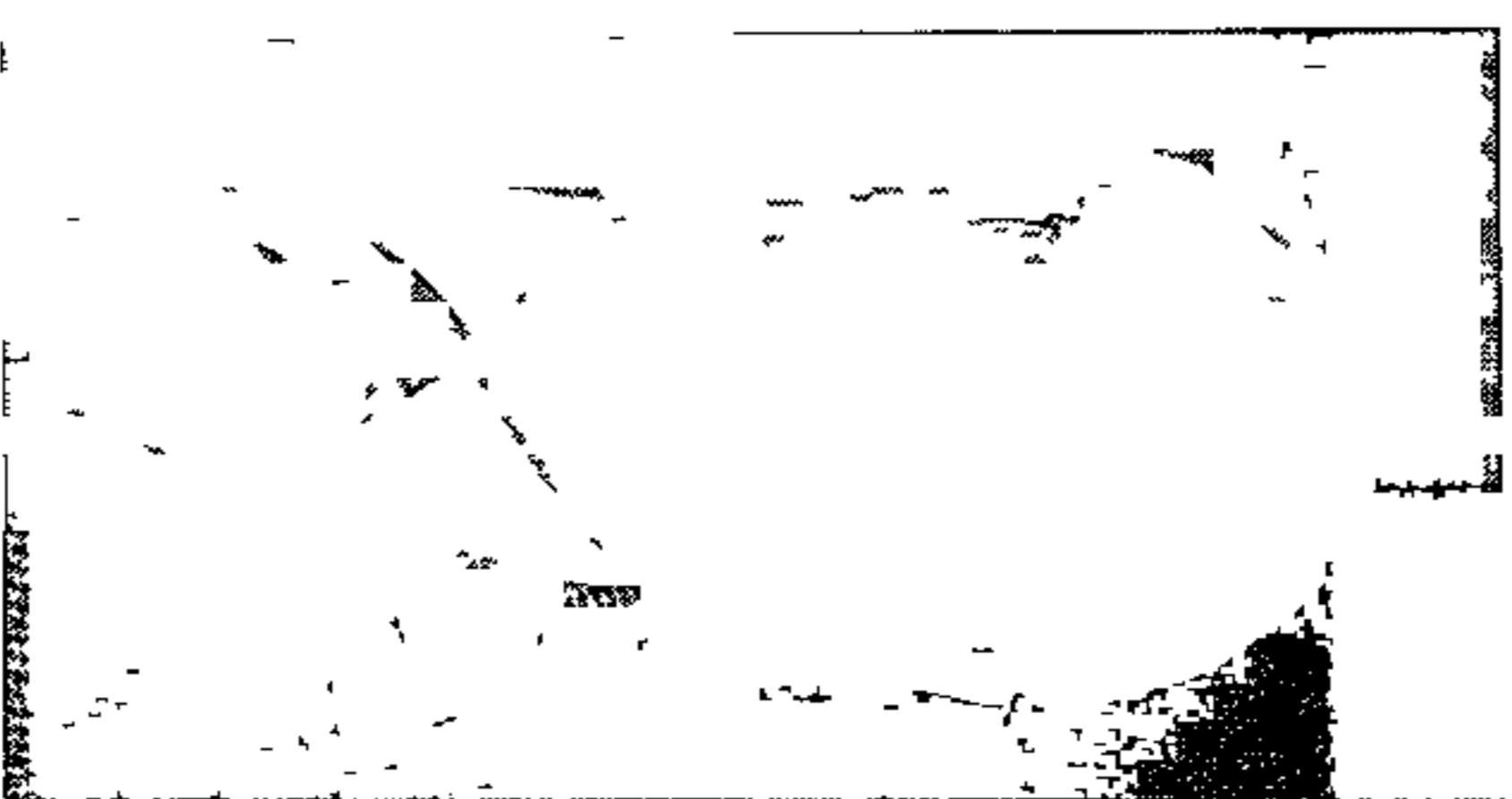
If Mr Justice Hennie van Heerden is more temperate than his rival for the position of South African Chief Justice, he is no less respected in the legal fraternity for his brilliance

Evidently adept at avoiding the media, he was very reluctant earlier this week to be photographed and The Star had a mammoth task tracking down the only dated picture of him at Bloemfontein's Volkstad newspaper

A hot favourite among the majority of judges on the Bench, Judge Van Heerden is much admired for his contribution in the field of commercial law - and particularly for his groundbreaking publication on unlawful business competition, based on his doctoral thesis exploring principles of the law of competition

Born in 1931 in Edenburg in the Free State, he got his LLB at Stellenbosch University and immediately afterwards became a senior lecturer in law at the University of the Free State

His love of commercial law blossomed through research under-



Until last year, he was the chairman of the SA Law Commission, now chaired by his current rival in the contest for chief justice, Mr Justice Ismail Mahomed

Judge Van Heerden has an impressive list of labour judgments under his belt, and holds the record for the most appearances as an advocate in the Appeal Court

Some in the traditionally left-wing legal fraternity have commented that his jurisprudence is quite conservative, but none doubt he is an intellectual of exceptionally high calibre

Constitutional law expert Professor Dennis Davis said this week he was a "sound jurist with an independent mind", but his judgments had not been very adventurous

Unlike his more contentious rival, any impatience Judge Van Heerden might have felt in court proceedings has been distilled to terseness at most

Leonora van den Heever, the first woman to be appointed to the Appeal Court and recently retired, commented in a letter supporting his nomination for Chief Justice

"I have never seen him angry or other than polite to, and za-

hent with, opposition at the Bar, members of the Bench before whom he appeared who may have seemed obtuse to one with a mind as incisive as his, counsel who appeared before him (even the most patience-trying jurors), or colleagues (even those who on occasion disagreed with his views)

"He is capable of firmness without bullying, compassion without sentimentality, has not a whisper of a skeleton in any cupboard of which I am aware, but indeed has a strong sense of responsibility, and appears to be equally at home with commoners and kings"

Judge President of the Transkei, Mr Justice C L (Ted) Beck, is equally glowing "I gained enormous respect and admiration for his exemplary qualities as a man of absolute integrity, compassionate insight, formidable intellect and unwavering tenacity"

Some legal observers contend, however, that the country's chief jurist needs to possess a strong streak of adventurism and a supreme understanding of the changing legal terrain

It is on this aspect that Judge Mahomed may have an advantage over Judge Van Heerden

## HRC resignation stands

Nov 19/9/96

(252)

Cape Town - Max Coleman wanted to withdraw his resignation as commissioner of the Human Rights Commission, but it had been submitted to Parliament already, the chairman of the joint parliamentary committee on the commission, Bulelan Ngcuka, said yesterday.

The committee, which wanted the HRC to explain why Coleman had suddenly resigned, also

wanted a meeting with the HRC because it was concerned that the commission was not living up to expectations.

The HRC's annual report was almost ready to be submitted to the committee, Ngcuka said.

Shortlists for the vacancy would be submitted by each party next Thursday and interviews would take place from October 21-23 - Sapa



# 'Used, shunned, betrayed' De Kock hits at generals

'Each one was going to try and get amnesty. The very last thing on their agendas is to be discredited'

By **NORMAN CHANDLER**  
Pretoria Bureau

Eugene de Kock said yesterday he had been betrayed by former police commissioner General Johan van der Merwe and other top generals

He displayed visible anger towards his senior police colleagues for no longer supporting him

"I knew every one of them and the final message to me that they were not giving their support was when I saw them get off a bus outside the Durban Supreme Court and go inside to support General Magnus Malan. They had dissociated themselves from me," he told the Pretoria Supreme Court

The final straw was when he heard that General Nick van Rensburg had applied for amnesty to the Truth and Reconciliation Commission but had requested that his name be kept secret.

"Each one was going to try and get amnesty. The very last thing on their agendas is to be discredited. They and Van Rensburg are not man enough to stand up and say 'I am going to seek amnesty'. It was then that I decided to look after myself," he told Mr Justice Willem van der Merwe.

De Kock said his life had never been the same since Butana Almond Nofemela and Dirk Coetzee - both former policemen - had revealed in 1989 the existence of a police hit squad.

When the 1989 Harms Com-



Angry De Kock yesterday.

mission sat, "the interest of higher authority in Vlakplaas slumped dramatically. Headquarters had fallen all over us previously but that all ended. Generals who greeted us now shunned us."

After the unbanning of the ANC, the Pan-Africanist Congress and the SA Communist Party in 1990, he was told by General Willie van Rensburg that the time had come to "scrap Vlakplaas".

De Kock told the court "This was my work. The enemy was the ANC, PAC and SACP. I felt the state had decided we had to go, to cut us loose. My loyalty was to the government and the police. It was absolute.

"I did not leave voluntarily. It has been made to look as if I took pension. General (Krappies) Engelbrecht is the only one who supported me."

De Kock was originally offered a R1,45-million retrenchment package but finally left with R1-million.

"When I was told this by Engelbrecht, he was so emotional I thought he would cry. He told me it was unnecessary to buy a house out of my settlement and that before I left I had to put in false claims for R250 000 in order to buy a house. This I did, and later sold it. I don't feel too happy about this," he told the court.

He had then tried to become an arms dealer, selling G-5 and G-6 artillery pieces on behalf of a partner called Verster, whom he said worked for the Reutech company, to the Serbian army at a cost of \$1,5-million (about R6,7-million) each. The deals had fallen through when the United States got wind of them.

After being arrested by the police in connection with Vlakplaas activities, he had asked a friend to deposit R365 000, US\$16 000 and £43 000 in a bank account in Portugal on behalf of his family.

The friend, who is linked to the French Foreign Legion, stole the money and then telephoned him, taunting him.

De Kock disclosed that before he finally left the police, he had spent hours burning tons of files connected with covert operations, while the technical division threw their files into two cement-mixer trucks, churned them up and then burnt the documents.

STAN 19/9/96

(252)

ONLY WAY TO KEEP SYSTEM WORKING

CT 19/9/96  
Crisis management an art at Wynberg Court

THE JUSTICE DEPARTMENT staff at Wynberg Magistrate's Court has decided on a common approach to make the creaking justice system work there and beat the problems. Contributing Writer EUGENE HUGO reports

JUSTICE Department officials at Wynberg Magistrate's Court are becoming adept at crisis management — the only way they can keep an overloaded, understaffed and worn out criminal justice system operational

This is the situation in one of the more modern courthouse complexes in South Africa where provision has been made for many of the facilities that do not exist elsewhere in the country

An example is Wynberg's special G-court which deals exclusively with sexual offences and has an intermediary camera to protect victims from face-to-face confrontations with the accused

But it has emerged during a Cape Times investigation that Mr Dullah Omar's Department of Justice is putting a pretty face on a situation in which it is throwing away the only initiative which makes it look good

Wynberg's G-court is stagnating and Mitchells Plain is screaming for similar facilities to handle the proliferation of child sexual abuse cases, in what was supposed to be an ambitious pilot project eventually extending throughout South Africa

At the same time, Wynberg has to handle an enormous case-load with too few prosecutors, piles of paperwork, witness intimidation and dockets that have gone miss-



NO POSTS?: Ms Susan Ringstad

ing, presumably stolen

The worst scenario for senior prosecutor Mr Frank Davids is the bureaucratic approach which informs him and his colleague Ms Susan Ringstad that all posts are filled when they are still desperately short of staff.

Davids knows that he and Ringstad have only two prosecuting staff for every three of the 18 courts at Wynberg — a situation which is "impractical"

Perhaps the difference between Wynberg and other similar situations throughout South Africa is that regardless of jurisdictional allocations, the Department of Justice staff has decided on a common approach to make even this creaking system work.

Chief Magistrate Van Reenen, while claiming that he has virtually the best lawcourt in the land, waxes fanatical about how he and the prosecutors work together to handle all their problems. One is reminded of the unfortunate SABC commentator who described Victor Verster as "the most beautiful prison in the world" when Mandela was released

This "co-operation" goes to fine detail — they have changed the Yale locks to stop any interference with court documents and as double security the department has provided 49 steel cabinets in which to file them

Davids explains "We have accepted that the courts, the magistrates and the prosecutors are overworked. But we have to make the system work and we can do this with better courtroom management. We have the complete co-operation of the senior magistrates, including the chief"

Van Reenen says "Our motto is to assist people and deliver a service to the public"

The message from Wynberg Magistrate's Court is that while there is a resource squeeze, they are going to do the best they can to deliver within its confines

The chief magistrate and the prosecuting staff are determined to "prioritise" and then try to solve problems. They are looking at

- Too many awaiting trial children in Pollsmoor prison
- The refinement of the assessor system, including, if possible, training for the laymen who give a valuable input in court decisions



DOLL COMFORT: Social worker Ms Elzabe Durr-Fitschen with the dolls

- The "humane" administration of justice.
- Becoming as "user-friendly" as possible, including refreshment, and information kiosks for the public
- Introducing a second special sexual offences court
- Getting a legal aid office on the premises
- Asking the business community to donate a computer system to streamline the process of justice
- Having previous convictions

Buckling under pressure of sex offence cases

EUGENE HUGO

SENIOR public prosecutor Mr Frank Davids and attorney-general Mr Frank Kahn are upset about what is happening to G-court in Wynberg

Their precious baby is being slowly throttled to death by mindless bureaucracy

G-court is the first of two Cape Town courts to deal exclusively with sex offences — the fruit of co-operation between Khan and women's organisations

The court's high conviction rate is regarded as an indicator of its

success, but social worker Ms Elzabe Durr-Fitschen points out that the "good" conviction rate of about 70% is also achieved because cases tend to be selected.

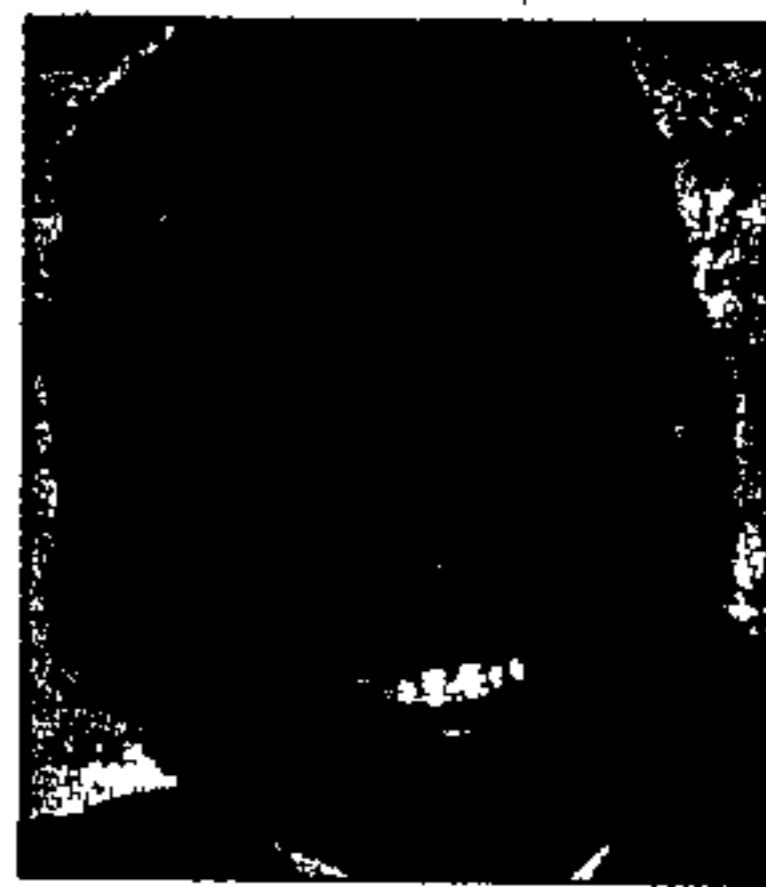
This court illustrates the overload of cases at Wynberg — aggravated by the fact that cases are referred from Langa, Nyanga, Guguletu and Khayelitsha

Adults can wait up to four months from their complaint, and children face a six-month wait — mainly because of the intermediary system. Cases can then be postponed three or more times, often starting a year after the offence

Durr-Fitschen notes that even though Cape Town is leading the rest of the country, there is no permanent Xhosa-speaking official and the case load is putting an extraordinary strain on this "model" court

Davids agrees. He would love to open more of these special courts, but points out that he is short of experienced prosecutors

"There are more than 1 000 applicants, but they are not hiring. If only they would understand that if we hire from the bottom we can release more experienced people to do specialised work."



PROSECUTOR: Mr Frank Davids

SA, Belgium

THE head of the Belgian Gendarmerie yesterday announced a joint five-year community policing project with the South African Police Service at Antwerp.

Lieutenant General Willem Deridder said the agreement would entail joint communication and two-way traffic between the two countries, how to improve community

Initially 42 police units nationwide will take part in the project.

# Fight against crime gets R20-m boost

(252) Sowetan 20/9/96  
Donation to be used to train judges,  
magistrates and admin staff

By Waghied Misbach  
Political Reporter

**S**OUTH AFRICA'S ABILITY to fight soaring crime was given a major boost with a R20 million donation by the Canadian Government for the training of judges, magistrates and other judicial personnel

At a Press conference in Parliament yesterday, Justice Minister Mr Dullah Omar signed a memorandum of agreement with Canadian high commissioner Mr Arthur Peron, which will see the money being used over the next four years for projects including the training of prosecutors and other administrative staff

The Canadian government will also be sending some of its judicial experts to the country to assist in needy areas

Omar told journalists that his department had consulted extensively with magistrates, judges, non-governmental organisations and prosecutors

before coming to the agreement with the Canadian government. He has the support of the Judicial Service Commission

He said South Africa could learn a great deal from the Canadian government, which had just become a constitutional state and had drawn up a Bill of Rights

"We are going through that process right now, so we can learn a great deal from them," Omar said.

A management plan is expected to be finalised in the next 90 days, which will outline the time frames and areas of assistance that need priority

Omar said there were no strings attached to the agreement and South Africa would have complete control over the project and how the money was spent

However, this country's Government would keep its Canadian counterparts informed on the progress of the projects to be undertaken

# Legal aid row jeopardises submissions by police

Former police generals have warned they will be unable to make their submission to the Truth and Reconciliation Commission unless police commissioner George Fivaz agrees to pay the legal costs of police wanting to testify.

Negotiations with Commissioner Fivaz's office on legal aid for serving and retired policemen were at a "critical stage", former police commissioner Johan van der Merwe said.

"The date for the (commission) hearing is dependent on the outcome of the negotiations."

If no agreement was reached, it would be "very hard" for the gener-

als to go ahead with their submission, in particular in detailing incidents of gross human rights abuses in which police had been involved, he warned.

At a recent meeting with senior commission officials, General Van der Merwe and former police commissioner Mike Geldenhuys and Johan Coetzee undertook to provide details of about 50 incidents of politically motivated abuses.

The meeting, in late August, took place after Deputy President Thabo Mbeki reportedly intervened to stop the commission from issuing subpoenas to the men. Mr Mbeki said the generals were assisting the Ministry of Safety and

Security with its own planned "truth submission".

Yesterday, General Van der Merwe said for the first time that the only information the generals had on the 50 incidents had been compiled from court records and police dockets.

"We have said we have a list of incidents which fall within the (mandate) of the commission. We never said these incidents were committed by policemen."

"There is a possibility that police were involved, but it may also have been other security force members or members of MK (Umkhonto weSizwe)." He said the generals were rely-

ing on individual policemen to provide them with details of atrocities.

This could be done only through the offices of attorneys, as it would be illegal for him and his colleagues to "consult with anybody who confesses to a crime."

"If they (the policemen) are not afforded legal assistance that will hamper the proceedings and make it difficult for us."

"It is important that the members should consult attorneys to advise them on how they should proceed."

Without their help, the submission to the commission could not go ahead as there were "very few cases in which the commissioners have

personal knowledge", General Van der Merwe said.

A spokesman for the commissioner's office, Director Joseph Ngobeni, confirmed the discussions between Mr Fivaz and General Van der Merwe.

He said the request for legal aid needed to be looked at by the departments of justice, finance and the SA Police Services.

"The matter has various legal implications," he said.

The present policy of funding the legal costs of a policeman charged with criminal offences "resulting from the execution of his official duties" was being reviewed, he said. Sapa

# Why generals are silent

## While De Kock sings

(252) (252) M+G 20-26/9/96

Questions are being asked about Thabo Mbeki's deal with the police commissioners over the truth commission, reports **Stefans Brummer**

**T**RUTH commission investigators have been left frustrated by an "intervention" of Deputy President Thabo Mbeki and Safety and Security Minister Sydney Mufamadi which they say gave former police generals a strategic reprieve before they face questioning on apartheid crimes.

The truth commission is also under fire from within its own ranks for having acceded to the political intervention, which some say could create an impression the commission is not as autonomous as it should be.

But Mbeki this week said the initiative had originated with the commission itself, while the generals put the blame on the truth body — saying it had caused the delay as it has not yet responded to a plea for certain assurances before all can be told.

The *Mail & Guardian* learnt this week that four of apartheid South Africa's three commissioners have handed a written submission to the truth body. The submission was voluntary, which

was one of the terms of a deal in which the body dropped its plans to subpoena them and other senior officers.

But truth commissioner Dumisa Ntsebeza, who heads the commission's investigative unit, this week slammed the generals' submission as a "philosophical" treatise which did not live up to the commission's expectations to be given at least some particulars on specific instances of serious human rights abuse. "I certainly did not get the feeling we got what we wanted," he said.

The submission is under embargo and the contents are to become public only when the generals appear in person. No date has been set.

The commissioner's original plan last month was to subpoena seven senior police officers, including former commissioners Johan Coetzee, Henne de Wit, Mike Geldenhuys and Johan van der Merwe, to answer questions about apartheid crimes.

Ntsebeza said the strategy had been to hear at least some of the generals' testimony concurrently with that of former Vlakplaas commander Eugene de Kock, who took the stand in mitigation of his own sentence in the Pretoria Supreme Court this week.

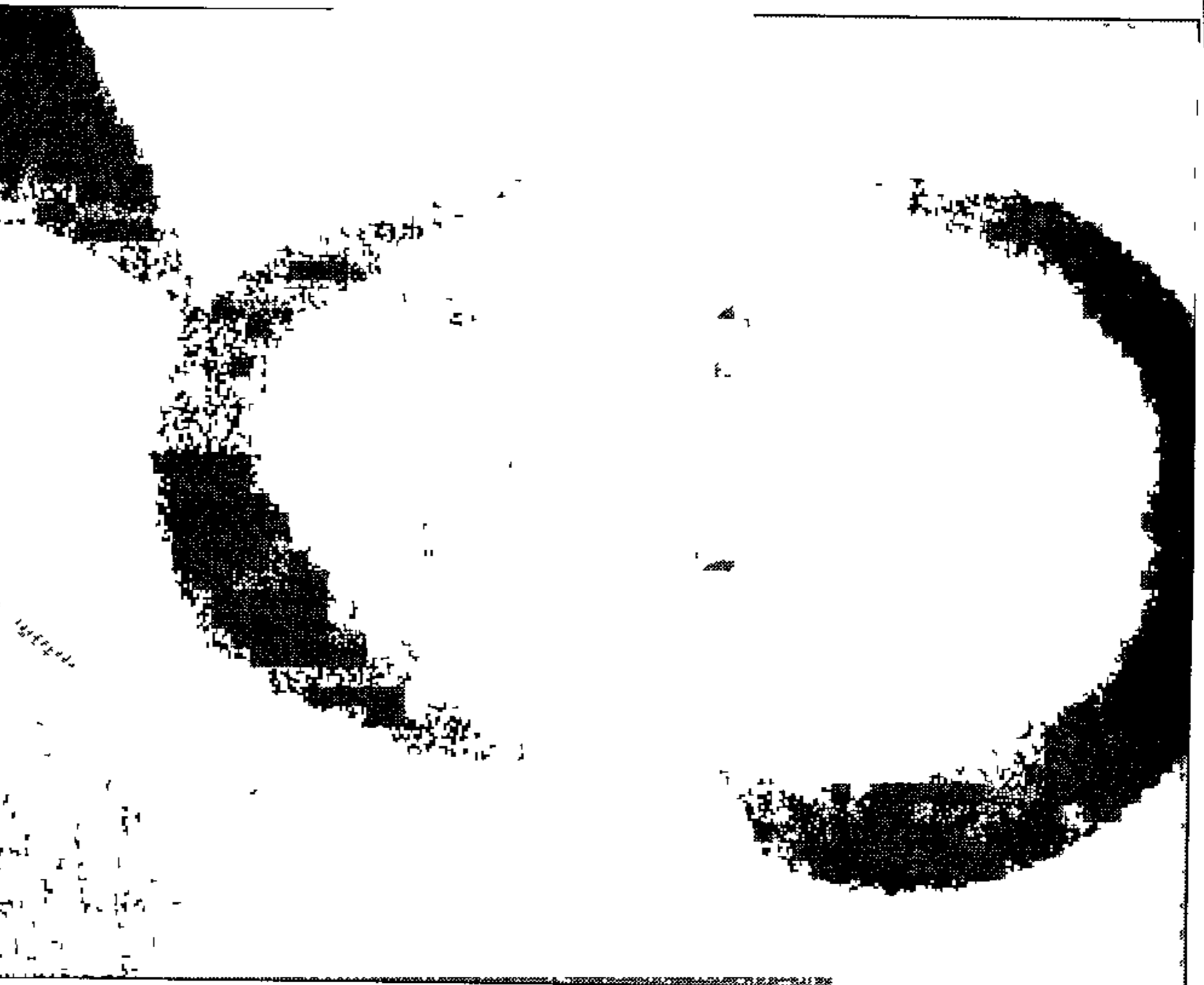
The investigative unit believed the threat of De Kock telling all in court about his former masters would have encouraged them to give detailed and truthful answers to the commission.

Had they given less than the full truth — De Kock's evidence could have given useful tips on that — they might have prejudiced their chances of successful amnesty applications later.

The deal Mbeki helped broker after a request by Mufamadi gave the generals a breather to prepare their submission on their own terms — and pass the crucial time frame of De Kock's evidence. Sard Ntsebeza "The generals did not want to be put on the spot, they first wanted to hear what De Kock said. Then they could turn their sails to suit the wind."

**N**tsebeza hinted at unhappiness within the commission that political intervention had been allowed. "There is something to be said about the correctness of a criticism that may be levelled at the commission that it may appear to have been influenced, however well-meaning [the intervention] may have been. Another commission official said Mbeki's intervention had been "extraordinary".

On September 29 Mbeki met the commission's head, Desmond Tutu, and national director of investigations, Glen Goosen. The view was forwarded that a non-confrontational approach would be more likely to succeed, as the generals' co-operation was necessary to encourage lower-ranking security force personnel to provide testimony.



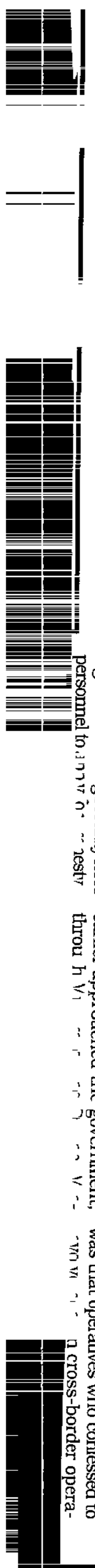
**Dumisa Ntsebeza: Unhappiness about political intervention**

eral terms initially." Tutu warned that while it would be mostly "generalised", if there was nothing more specific, "we will obviously not be satisfied".

Mbeki's spokesman, Ricky Nardoo, this week said Mbeki's intervention was only another step in a process initiated by the truth body itself. It had earlier approached the government,

mission, contextualising the apartheid struggle from the old South African Police point of view.

The officer charged the truth body itself was holding up the signal that the generals would give their subordinates to confess, as it had not yet replied to a request that legal obstacles be dealt with first. One concern was that operatives who confessed to



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Two days later generals Van der Merwe, Geldenhuys and Coetzee met Tutu, his deputy Alex Boraine, Ntsebeza and Goosen. At a media conference afterwards, Tutu said it had been agreed the subpoenas would not be issued.

He said the thrust of Mufamadi and Mbeki's intervention had been "that these former commissioners and other high-ranking police officers were ready to co-operate with the commission and [they] thought the use of subpoenas would be counter-productive."

"They were saying — and we have agreed — that they would want to voluntarily make an omnibus submission. Then there would be a supplementary list in which they would list certain incidents — they spoke about, at this stage, 50 or so incidents where they would be able to speak in gen-

eral Joe Modise, to encourage former security force members to appear voluntarily before the commission.

"Consequently, the ministers met [the generals] to put forward the commission's request. At these meetings they agreed to appear, voluntarily, before the commission. These ministers then requested Mbeki to meet Tutu.

It was agreed at the meeting that the issuing of subpoenas was entirely the prerogative of the commission."

**A** top officer close to the former police commissioners this week said it was not true that their approach through Mbeki had been merely in reaction to the subpoenas. There had been a series of meetings long before the subpoenas were mooted, laying the groundwork for the generals to encourage their former subordinates to make their own approaches to the commission.

He said it had been proposed that a broadly philosophical document be submitted by the generals to the com-

missions would not be safe from prosecution in their countries.

He said the generals also needed assurances that security force members would not lose their right to state legal representation, should a matter come to trial in ordinary courts, when a confession is made to the commission. At present security force members only qualify for state legal representation when they plead not guilty, which they cannot do if they have already confessed to the truth body.

The officer confirmed the generals had mooted the possibility of helping the commission get closer to the truth in an estimated 50 cases, and was ready to put out a signal to former subordinates to confess. But he said that could only be done once the assurances had been given.

"We want to act as a catalyst, but we have to be convinced first. We don't have the military authority anymore that we can say [to former subordinates], 'Left, right, left, right, you go there.'"

CHIEF JUSTICE

# ACRIMONIOUS STORM BREWING

By endorsing Judge Ismail Mahomed as a candidate to succeed Judge Michael Corbett as Chief Justice, President Nelson Mandela may have hindered rather than boosted Mahomed's chances of securing the coveted judicial post

Mandela's controversial intervention in favour of Mahomed and, by implication, against rival candidate Judge Hendrik Van Heerden, has been a major talking point in legal circles

Two issues have been central to these discussions whether Mandela's intervention has been helpful to Mahomed and, as important, whether it may lead to a constitutional crisis

Peter Leon, DP leader in the Gauteng Legislature, believes it may have harmed Mahomed. Describing Mandela's nomination of Mahomed as "unfortunate," Leon says "It may make Mahomed look like the President's man." Worse still, Leon adds, the furore surrounding Mandela's action may blind the public to Mahomed's strengths as a prospective Chief Justice and even result in him being forced to withdraw

Leon describes Mahomed as "an outstanding candidate, a first-rate lawyer and a man of intellectual independence." He believes Mahomed's appointment as Chief Justice would "send an important message to the community"

Dennis Davis, director of the Centre for Applied Legal Studies and a man who is by no means hostile to the ANC, reckons that Mandela's intervention may even work to Van Heerden's advantage

Under the interim constitution, the Chief Justice is appointed by the President "in consultation with the Cabinet and after consultation with the Judicial Service Commission"

After appraising the candidates, the 17-member commission will make a recommendation to Mandela. If, Davis reasons, the recommendation favours Van Heerden, Mandela will be hard-put not to heed it to show that he is not sticking obstinately to his own nominee

The issue has immersed one of SA's two most important judicial appointments — the second is that of the president of the Constitutional Court — in controversy and raised profound legal and political questions

Mandela, observes Leon, is obliged to apply his mind to the commission's recommendation on who should succeed Corbett. The question raised by Man-



dela's intervention is whether he will be able to apply his mind without bias when he has already declared for Mahomed

Denials to the contrary by the President's Office have not convinced many legal observers that the issue has been foreclosed by his intervention

Judge J J F Hefer, like Van Heerden a judge of the Appeal Court, observes "Mandela has told the commission '(Mahomed) is my choice' That is the sting of it"

In the circumstances, it is not clear whether the commission will make a recommendation, he says, adding "Whatever it does will have to go back to the same man. The legitimacy of that is not beyond doubt"

Hefer has dismissed calls by the National Association of Democratic Lawyers for Van Heerden to withdraw. He has called instead for Mahomed to withdraw

"I know Mahomed as an honourable person," he says. Therefore, in the light of

"his lack of experience on the bench and in the Appeal Court," the support of Van Heerden by all the permanent Appeal Court judges, and the intervention by the President, he should "consider whether it would not be the honourable course for him to stand down"

Leon's riposte to Hefer is "Mahomed was kept off the bench for a long time because of apartheid but has served as president of the Appeal Court in Lesotho and Chief Justice of Namibia."

Since the unbanning of the ANC in 1990, Mahomed has moved rapidly up the ranks of SA's judiciary. He is now deputy president of the Constitutional Court

Van Heerden, a former chairman of the General Council of the Bar, is a respected figure in the legal fraternity, he has been an Appeal Court judge since 1980 and is praised in an article in the *SA Journal of Human Rights* for an enlightened dissenting judgment on the State of Emergency imposed by ex-President P W Botha in the Eighties. A co-author of the article is Nicholas Haysom, now Mandela's legal adviser ■

## SCANDALOUS DENIAL

A government committed to transparency and open governance, with full accountability, should not accept anonymous gifts in cash or kind

This statement made in parliament by Deputy Finance Minister Gill Marcus last week is the bottom line in the *Sarafina 2* donor row. It is regrettable that Health Minister Nkosazana Zuma and President Nelson Mandela have failed to grasp its import. Instead, they retreat behind Public Protector Selby Baqwa's finding that she has not acted illegally

Baqwa recommends that in future anonymous donations be turned down unless the political office bearer, accounting officer, Public Protector and Auditor-General are apprised of the

Continued on page 50

and 'apolitical' judge favoured by his colleagues?

# chief justice

(252) MtG 20-26/9/96

Judge Ismail Mahomed: In the middle of a controversy over whether he should get the job of chief justice

chief justice appointment under the new Constitution

The widespread attacks on Mandela prompted Chief Justice Corbett who as a matter of policy refuses to talk to the press, to take the unusual step of publishing a statement. The statement backed Mandela, by explaining that the Constitution said that the new chief justice was appointed by the President "in consultation with the Cabinet after consultation with the JSC. As far as the JSC is concerned, the President's decision does not require the concurrence of the commission, nor is he

obliged to follow any advice which the commission tenders"

But the most startling aspect of his statement was an apparent side-swipe at Judge Joos Hefer — his colleague on the 17-strong Appellate Division, who publicly called on Mahomed to withdraw his nomination. "I might just add that calls for either candidate to withdraw are wholly unjustified and an improper interference with the procedures of the commission," said the chief justice.

The last time the South African judiciary suffered a comparable spat

of controversy was in the 1950s, when the National Party twice snubbed the man described as "the greatest chief justice South Africa never had", Oliver Schreiner, for the top post.

At the time, convention was that the position went to the longest-serving judge in the Appellate Division, which was Schreiner. But the NP government, which was having a constitutional show-down with the judiciary over the coloured franchise, ignored the convention and appointed a more junior man and NP sympathiser, LC Steyn, instead.

## Van Heerden: Judge with a low profile

Mungo Soggot

**A**CADEMICS and legal professionals this week described Judge Henrie van Heerden as having an exceptional legal mind with an impressive track record on the bench.

He has a low profile — several lawyers were unable to offer an opinion of him — but most of those who had had contact with him sung his praises. A minority said Van Heerden was too staid for the job and had given several conservative decisions.

One prominent legal academic said "He is austere and unrelenting. He runs a tight but traditional court." The academic, who is backing Constitutional Court deputy president Ismail Mahomed, believed Van Heerden was not the man to reform the Appellate Division, saying his appointment "would probably perpetuate the marginalisation of the Appellate Division". Another academic described Van Heerden as "apolitical".

Van Heerden, 65, was educated at the universities of Stellenbosch and the Free State, where he obtained an LL.D. in competition law. He became senior counsel in 1972, was appointed to the Free State Provincial Division in 1978 and the Appellate Division in 1980.

Van Heerden emerges as a voice of reason in academic analyses of the Appellate Division's support of State of Emergency legislation during the 1980s. In the case of *United Democratic Front v State President* the majority of the appeal bench — who included Judge Joos Hefer and the then Acting Chief Justice Pierre Rabie — refused to uphold a lower court's decision to strike down certain Emergency media regulations for their vagueness.

The regulations held, among other things, that it was subversive to

incite or encourage members of the public to attend a public gathering. The regulations defined a "subversive statement" as one which incited or encouraged an act or omission identified by the commissioner of police as threatening the public order or prolonging the State of Emergency.

In an article called *The War Against Law*, published by the *South African Journal of Human Rights* Professor Fink Haysom and Clive Plasket said that in this case Rabie effectively held the courts had no role in checking abuses of power. He said the courts' intervention was not necessary because the executive would control its own excesses of power.

After Rabie left open the question of whether the commissioner had uncontrolled powers, Judge Grosskopf stepped in. He made the "bold assertion" that the commissioner had not been given unfettered powers because the state president had called on him to clamp down on "subversive statements" which were easy to identify.

"There can be no more effective critique of this reasoning than that offered by Van Heerden in his dissenting judgment," said Haysom and Plasket. Van Heerden held the power given to the commissioner was unacceptable, amounting to *carte blanche* to amend the regulations.

He also said one of the regulations was defective because, among other reasons, the absence of clear guidelines meant the commissioner would be unable to decide whether his decision coincided with the opinion of the state president.

## Bloem ironies for Mahomed

M&G Reporter

**I**F Ismail Mahomed does get the post of chief justice, there will be a sweet irony about it when he moves into the office in Bloemfontein. When he appeared before the Appellate Division in his days as South Africa's first black silk he was forced to flee across the border before dusk in accordance with the ban on the presence of Indians overnight in the Free State.

Mahomed's life and career have been marked by a personal struggle against racism which helped make of him probably the finest civil rights lawyer in the country. His grandparents fled the poverty of India to settle in the Transvaal as traders early this century. Mahomed himself was born in Pretoria in 1931, the oldest of six children in a devout Muslim family.

Taking his law degree at the University of the Witwatersrand, he joined the bar in 1957 and found himself facing ludicrous handicaps in the pursuit of his professional duties. He was unable, during his earlier years, to rent chambers in the building which housed the Johannesburg Bar, because it fell into a white area under the Group Areas Act.

For 12 years he was forced to borrow desk-space from colleagues who were out in court, resorting to the library when there was no room available — making it impossible at times to hold consultations with clients. Even after obtaining a Group Areas "permit" in 1969 he was barred for another five years from using the common room, by which time he had already become South Africa's first black SC.

But he turned such handicaps to professional advantage. A notorious workaholic, he became an authority on the Group Areas Act and then won recognition as one of the leading experts on administrative and constitutional law.

He was widely recognised as one of the most gifted orators at the South African bar, on occasion being brought in to capital cases to argue in mitigation in the belief that his silver tongue was the only chance of cheating the hangman.

Appointed to the South African bench in 1991, he wrote Namibia's progressive Constitution and is that country's chief justice. He underwent major heart surgery shortly before the announcement of Arthur Chaskalson's appointment to the presidency of South Africa's Constitutional Court — a post for which Mahomed was strongly tipped. He is currently deputy president of that court.

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MAIL & GUARDIAN



# Who'll be chief justice: the one-time human rights lawyer and gifted orator, or the quiet

# Battle lines drawn over

Mungo Soggot

**J**UDGES across the country are taking sides in the furious controversy over who is to succeed Michael Corbett as South Africa's chief justice. In one of the most divisive rows to hit the judiciary since the 1950s, some 100 judges have backed appeal court Judge Henne van Heerden against Ismail Mahomed — the first black appointee to the supreme court — for the top post. It is believed all but one of the members of the Appellate Division have

backed Van Heerden, the exception being Ralph Zulman, a personal friend of Mahomed. No judges have officially nominated Mahomed, according to President Nelson Mandela's office, although it is believed that a small group are quietly backing and advising him. The row hit the judiciary after the Judicial Services Commission (JSC) set up a three-man committee to oversee the selection process, made up of Mandela's legal adviser, Professor Fink Haysom, Chief Justice Michael Corbett and Constitutional Court President Arthur Chaskalson.

The committee invited the Appellate Division and the nine provincial judge presidents to put forward nominations. Haysom told the *Mail & Guardian* the committee also asked Mandela and several legal associations, such as the National Association of Democratic Lawyers, for their nominations. The committee — which was looking for possible names, rather than a vote — was astonished to receive a deluge of nominations from judges around the country in favour of Van Heerden. It is believed that five out of nine of the judge presidents called

meetings of their members to lobby for Van Heerden. Mahomed — formerly one of the country's outstanding human rights lawyers and now deputy president of the Constitutional Court and chief justice of Namibia — has been nominated by the Black Lawyers Association and the National Association of Democratic Lawyers. The spotlight has so far focused on Mandela, who has been accused of riding roughshod over the appointment process by coming out in support of Mahomed before making his final decision. But although several in

the African National Congress agree it was, politically, an unwise move, his action was consistent with the Constitution and with the process agreed between the president's office and the JSC. The selection process is considerably more democratic than that under the old regime, where the appointment of the chief justice was an executive decision which enabled apartheid governments to mould the judiciary in their image. It is also an executive decision in the US and the UK. Mandela was keen to set the right precedent as this is the first

## The 'honorable' judge who called on Mahomed to back off

Mungo Soggot

**T**HE appeal court judge who called on Ismail Mahomed this week to withdraw from the race for the position of chief justice was a champion of apartheid Emergency legislation during the late 1980s.

Described as a "vigorous and ingenious defender of Emergency authority", Judge Joos Hefer sat on a string of Emergency legislation appeals which backed Pretoria.

Hefer this week notched up another controversial chapter in his career when he said in *Beeld* that Mahomed should do the honourable thing and pull out of the race — because of his inexperience on the bench, because all permanent members of the appeal court backed Judge Henne van Heerden and because of President Nelson Mandela's controversial intervention in the selection process.

Hefer described the call by the National Association of Democratic Lawyers (Nadel) for Van Heerden to withdraw as "ridiculous and nonsense. If there is still any honour left in this game the other man should withdraw."

Hefer featured in a 1988 article entitled *The War Against Law*, which appeared in the South African Journal of Human Rights. Before detailing Hefer's contribution to this war, Professor Fink Haysom — who is now President Nelson Mandela's legal adviser — and Clive Plasket wrote: "One might recall that it was Hefer, while chief justice of the Transkei, who attempted to construe the power to detain in such extreme and generous terms that they were held to be out of line even with South African decisions. In this

article we argue that Hefer's recent contribution to our administrative law jurisprudence has been that of an activist judge."

Among Hefer's more celebrated findings during the "Emergency cases" was that detention without trial could be valid even if less drastic alternatives could serve the same purpose. The judge also amended the long-established principle that where there is an arrest, the onus of proving the validity of that arrest must be discharged by the arrestor. And in *Castel NO v Metal and Allied Workers Union*, Hefer decided that an application in terms of the 1982 Internal Security Act to organise an outside gathering could be refused without giving the applicant a right to a hearing.

Between 1986 and 1988 the Appellate Division heard 12 cases dealing with the Emergency laws — legislation that was effectively insulated

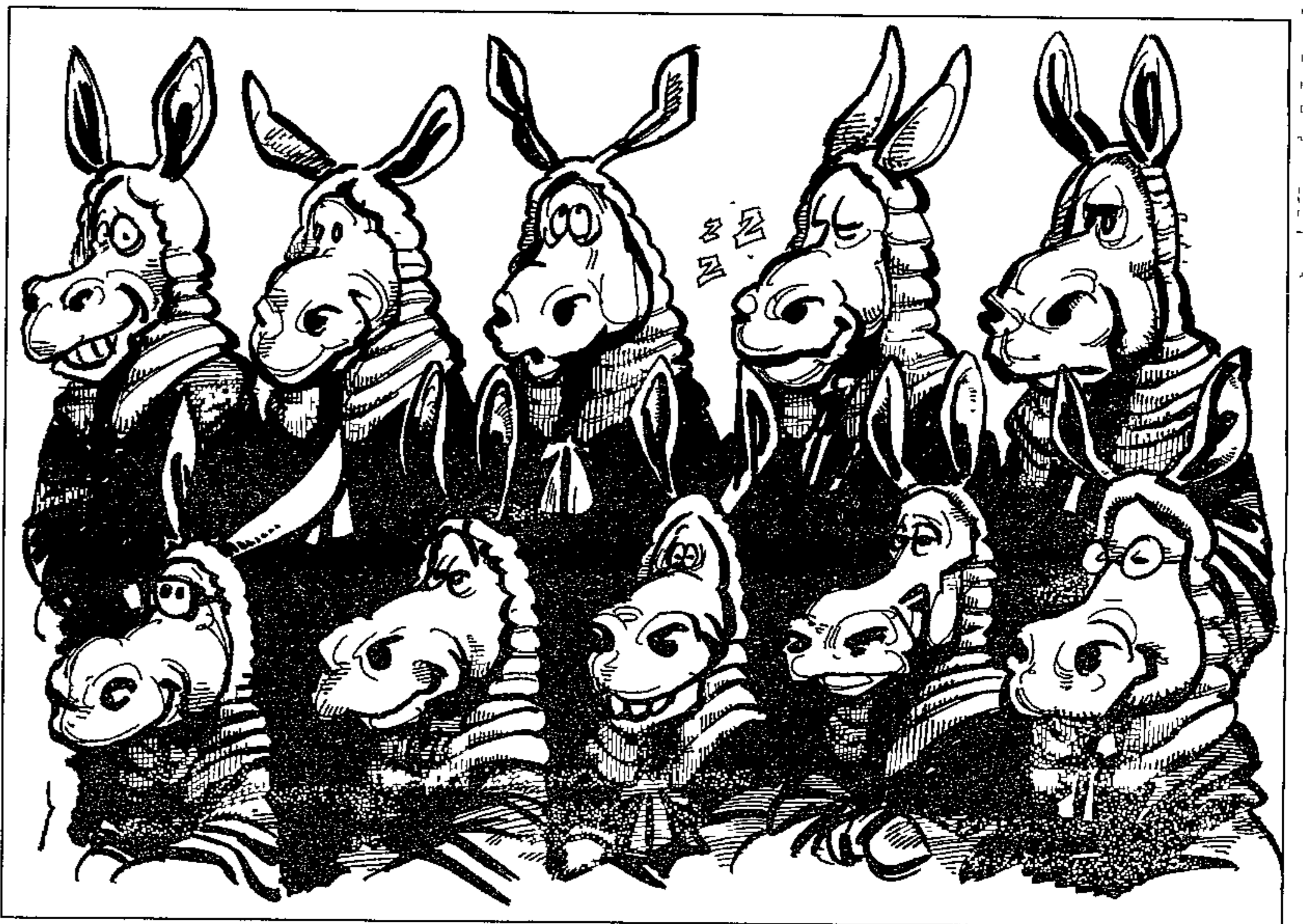
from scrutiny by the courts and the press — which granted massive powers to the security forces to maintain "law and order".

Haysom and Plasket say Hefer was picked to hear more of these cases — nine — than any other appeal judge during Pierre

Rabie's reign as acting chief justice. (After Chief Justice Rabie reached the mandatory retirement age of 70, the government took the controversial step of making him acting chief justice for a further five years.)

Rabie himself was an architect of the infamous security legislation and, the authors note, "must bear some responsibility for the composition of the courts which hear security-related matters".

Haysom and Plasket were not



'So the neighs have it for Mahomed?' See editorial, PAGE 24

impressed with the legal reasoning and "selective use of authorities" Hefer employed to arrive at his decisions. They say a reader of Hefer's judgment in *United Democratic Front v State President* — where the majority of the appeal judges refused to invalidate vague Emergency regulations — "will, no doubt, be struck by the extensive quotations from Professor Wade and the leading case of *Short v Poole*. These sources are most eloquent expositions of administrative principles and do much to argue against the propositions and conclusions found in the judgment, the contrast between the English authorities and the new brand of South African jurisprudence, as disclosed by Hefer's judgment, highlights the sorry state of this branch of the law in this country."

Judge Gerald Friedman, currently judge president of the Cape, made quite clear his unhappiness at making a decision in which he was bound by the precedent set by Hefer

in the UDF case. When he was asked in the case of *Natal Indian Congress v State President* to shoot down Emergency regulations because of their unreasonableness he said he could not because of the all-embracing UDF decision.

Stephen Ellman, a US legal academic who wrote a book in 1992 on the role of the courts during the Emergency era and who described Hefer as a "vigorous and ingenious defender of Emergency legislation", said of these cases: "Most of them are decided against human rights claims, and they reflect the court's intense fear of revolutionary onslaught, and its trust [in] and sympathy for those dealing with it."

Ellman coined the phrase "the Emergency team" when explaining the phenomenon of how the same appeal judges popped up in those 12 Emergency cases. He said that in each of these cases at least three of the five judges were from the Emer-

gency team — of which Hefer was a leading light — and that the members of the team never disagreed with each other on these cases. Another member of the "team" who is still with the Appellate Division is Judge Vivier. Judge EM Grosskopf, who sat on four Emergency cases, is also still serving the appeal court. Another controversial judge still sitting in Bloemfontein is Louis Harms, who headed the unsatisfactory commission of inquiry into security force hit squads in 1990.

Hefer's decisions before becoming an appeal court judge included taking the unusual step of sentencing an ANC activist to death for high treason. During the trial the accused — charged with planning a bombing campaign — sang loudly to frustrate the proceedings. In his judgment, Hefer complained of "provocative and contemptuous" conduct. The appeal court overturned his decision to impose the death sentence.

## MAIL & GUARDIAN

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# Mahomed's challenging ascent of the legal mountain <sup>(292)</sup>



Ismail Mahomed, deputy Constitutional Court, is being thrust forward as the future chief justice  
**PRAKASH NAIDOO**  
reports on an intensely compassionate man with a devastatingly sharp wit

Controversy may surround the nomination of Ismail Mahomed for the post of South Africa's chief justice, but his supporters in legal circles believe that this commanding figure, with a devastating wit, is the only man for the job.

Therefore comes as no surprise that whenever the retirement of Chief Justice Michael Corbett crops up in conversation, Ismail Mahomed's name is fired back as quick as a reflex action.

By the sheer weight of his credentials, Ismail chooses himself" said one close colleague.

So the controversy surrounding his nomination for the post, when President Nelson Mandela openly signalled that he favoured Mahomed over his only other contender, Mr Justice Henne van Heerden, is described as nothing short of "intertaining" by friends.

"It is surely disingenuous to focus the debate on the issue of Mr Mandela's intervention," said London-based advocate Clifford Maller, who served as junior counsel to Mahomed on several occasions.

"The real issue is whether Ismail Mahomed should be the first judge appointed in the new South Africa to grace the high office of chief justice.

"The simple answer is this: there is no real contest," he said.

turn the propaganda into poignant exhortations and make legal jargon sound incisive, are his stock in trade.

His colleagues at the bar were often awed by his command of the language.

"He has a sharp ear for saying something at just the right moment," said one.

His courtroom repartee is now almost legendary and within days of his appointment to the bench, anecdotes were being exchanged on the legal cocktail circuit.

In response to one witness's statement that she "had to pay the boys", the judge retorted, "And how old are these boys, Madam? Do you mean to tell me you employ child labour?"

"The sharp wit is tied to the personality," said another former junior counsel. "But those devastating epigrams are really part of the moment and get lost when you take them out of context," he said.

As co-chairman of the historic Codrus talks in 1991, his favourite phrase to those who rambled on and repeated themselves was "Yes, to encore is not necessarily to augment."

"That might sound flat on paper, but coming from Ismail it just bounced off the wall with vigour," said one politician on the receiving end of such retorts.

His defence of Willfried Marwaal in the Appellate Division in 1991 was considered his severest test at the bar.

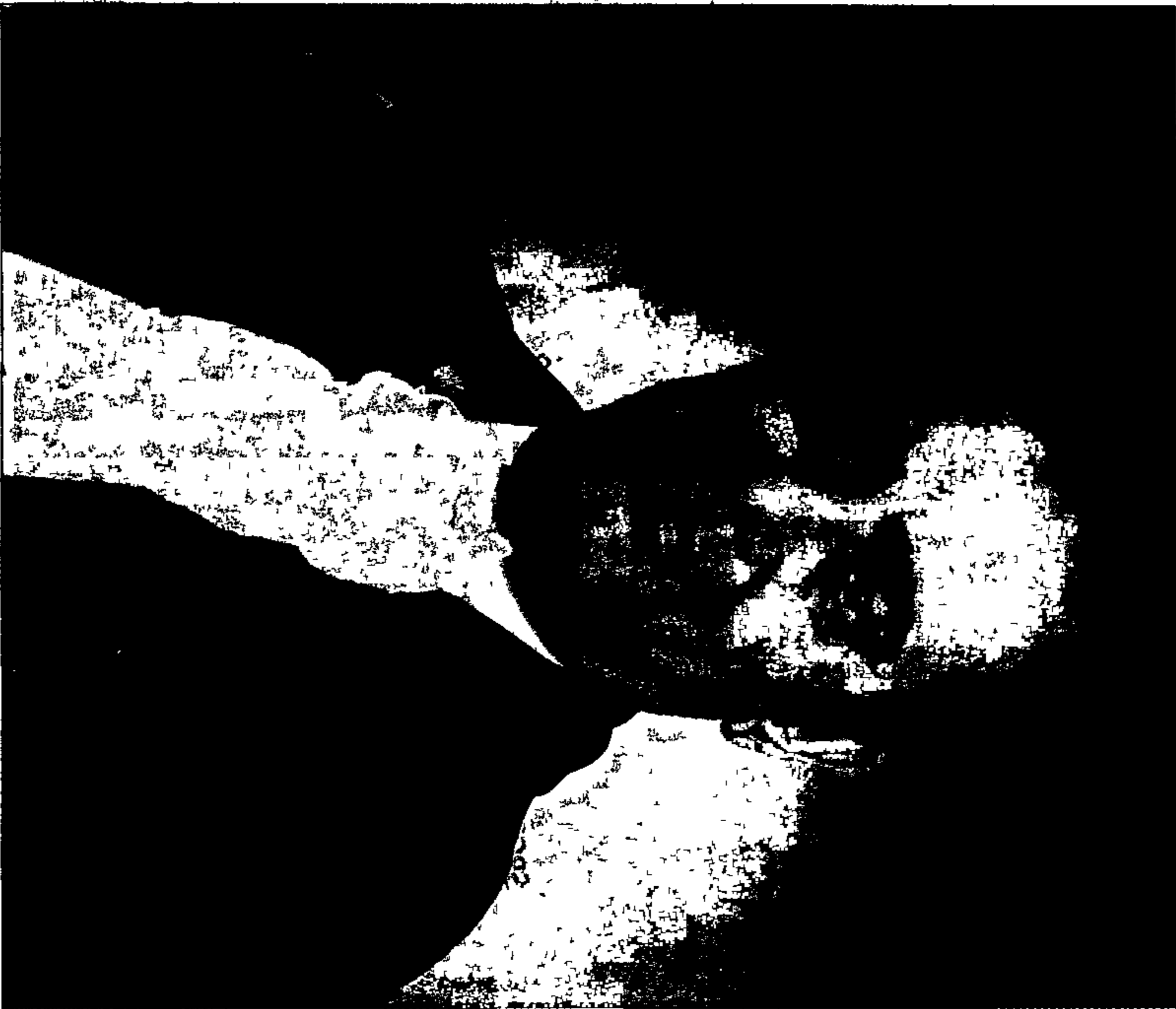
Arguing before 11 judges - only the third time in the country's history that an advocate addressed the bench - he won the appeal on the submission that Marwaal's conviction under the Terrorism Act in Bophuthatswana was invalid.

Interestingly, his one confrontation with Judge Van Heerden came in the late 1980s, when he appealed against the conviction of Umkhonto we Sizwe member Ebrahim

Ebrahim for high treason. Ebrahim was abducted from Swaziland by South African security officials, tried for treason, and sentenced to 20 years imprisonment.

Appearing before Judge Van Heerden, Mahomed argued not against the conviction, but on the fact that Ebrahim was abducted illegally from Swaziland.

He drew heavily on American authorities to support his argument



MAN WITH A MISSION: Ismail Mahomed's style on the bench has been described as "more than robust" by many

STAR 21/9/96

and when Van Heerden asked Mahomed if the case laws quoted were not peculiar to the United States, his flash response was "Americans may well be credited with many advancements in technology, but they certainly cannot claim a monopoly on fair and proper legal procedure."

He won the case and rewrote the law on the subject.

Indeed, the intensity may be veiled by the no-nonsense tones, but the vocabulary belies moderation. "Yes he does turn it on a bit for the audience," said one colleague.

But the reality is that this is no act, only a profusion of a lifetime commitment to alleviating the human rights abuses that history has imposed on himself and his clients.

For Mahomed, the public person is the private person, and his years as a victim of apartheid have been woven seamlessly into a single fabric. Ironically, should he be appointed chief justice, he would have to move to Bloemfontein where, less than a decade ago, legislation prevented him from staying overnight.

Indians were not allowed to stay overnight in the Free State and whenever he had to appear before the Appellate Division, Mahomed would have to take the overnight train from Johannesburg, which arrived in Bloemfontein at 4am.

He would then sit in the station's waiting room, sometimes in sub-zero temperatures, waiting for the court session to begin at 9.45am.

"If he now chooses to live in Bloemfontein, then he is a better and more forgiving human being than most of us could be," said Maller. For years, even after he took silk, the Group Areas Act prevented Mahomed from having chambers in the city centre and he was forced to "borrow" friends' offices, at times even being reduced to consulting clients in the waiting rooms.

Those close to him say these experiences have left him more sad than bitter and have never impinged on his personal relationships.

"He is an infuriatingly good friend," said a former junior counsel. "He is a deeply emotional person in the best sense of the word." Born in Laditladi, where he still lives, Mahomed has been married for more than 40 years, but has no children.

He is known to form close relationships with his young staffers and virtually everyone interviewed considers their lives "touched and privileged" by his influence.

"He has not been my boss. He has been my teacher, my mentor and my friend," said one young staffer.

"He has a unique ability to combine passion and compassion with intellect in his approach to life and law," she said.

The flip side of Mahomed's passionate commitment and intellect is an arrogance that makes him bluntly impatient with anyone less smart, less quick and less decisive.

"It's true, he does not suffer fools gladly," said one advocate.

But there is no question of the authenticity of his commitment, the ferocity of his passion to end injustice and to seek out those loopholes where all else seems doomed.

Some of the country's best advocates - Gilbert Marwaal, Shannu Naidoo, Paul Kennedy, Clifford Maller and Martin Brassey - have acted as junior counsel to Mahomed and have come through as protégés of the judge.

"I am not ashamed to say he frequently made my life a misery," said one advocate, who pulled an 18-hour stretch over a weekend with Mahomed when preparing for a treason trial during the mid-1980s.

"But he has this extraordinary sense of discipline and he exacts the same standards from his juniors."

"I wouldn't trade that experience for anything."

His style on the bench at times is "more than robust" and as one colleague pointed out, "Ismail sometimes forgets that he is no longer an advocate."

He is said to be immensely shy, which comes across as awkwardness and even arrogance, but the reality, according to friends, is a man who is deeply introspective and emotional.

"He just doesn't take himself at face value," said one friend.

"He subjects himself to rigorous self-examination and is constantly searching for answers in areas that do not always offer the easy option."

# Generals hint at details, but turn to

By JOHN YELD

A submission by former South African police commissioners to the Truth Commission has been described as "deeply disappointing" as it contains none of the expected details of police involvement in more than 50 incidents of gross human rights abuse.

Some of the abuses which the policemen - who include former commissioners Johan van der Merwe, Mike Geldenhuys and Johan Coetzee - were believed to have been ready to detail were listed in a lawyer's letter to the commission three months ago.

In June, the Pretoria-based lawyer asked about the possibility of amnesty applications on behalf of his clients, 22 senior officers all below the rank of general. Incidents listed included the deaths of the "Pebco Three" in Port Elizabeth in 1985; the 1988 bombing of Khotso House in Johannesburg; the 1991 bombing of Cosatu House in Pre-

toria - mentioned this week by Eugene de Kock in his trial - several murders and disappearances; and the blowing up of a Gauteng power station, previously blamed on the ANC.

The lawyer said the tentative move for amnesty was supported by the former commissioners.

Last month, the Truth Commission had been on the verge of subpoenaing seven former generals, including Van der Merwe, Geldenhuys and Coetzee.

But a last-minute agreement was brokered by Deputy President Thabo Mbeki, and the three former commissioners and senior Truth Commission representatives agreed to hold off the subpoenas. This would be in return for an "omnibus" submission and a supplementary list containing information on at least 50 incidents of human rights abuses.

The generals told the commission they were ready to cooperate, but they thought the subpoenas would be counter-

productive.

At a press conference afterwards, Truth Commission chairperson Archbishop Tutu said they had agreed to go the route of a voluntarily submission.

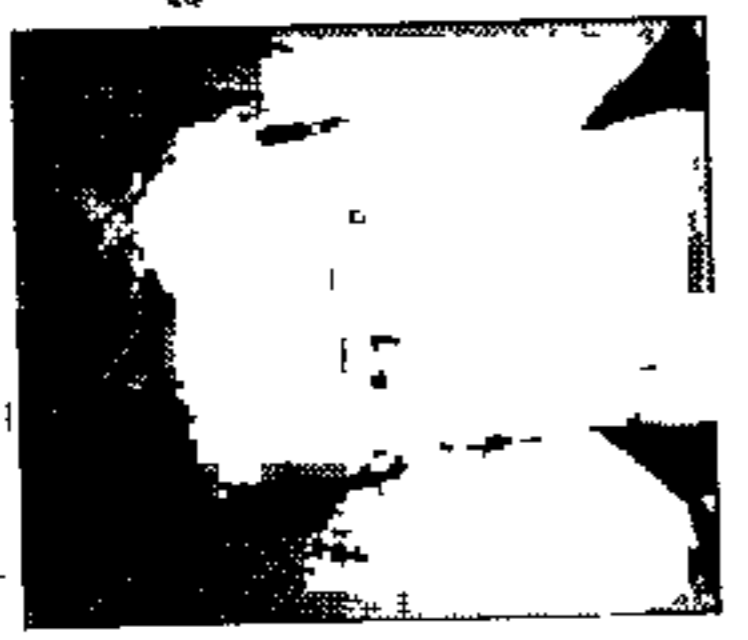
"Obviously, we will continue to retain the right of issuing subpoenas at any stage and we will evaluate the process."

His deputy, Alex Boraine, said the commission and the generals had agreed they would make their submission by the middle of this month, as the cutoff date for amnesty submissions was mid-December.

The generals had also agreed that the commission would have a prior look at their submissions to prepare pertinent questions.

But the submission, now being studied by the commissioners, apparently contains no significant details of names, places and operations.

Instead, it is reportedly only a "philosophical background" in which the generals seek to justify police conduct during the



**THREE WISE MEN:** Now former commissioners Mike Geldenhuys, Johan Coetzee and Johan van der Merwe threaten not to testify before the Truth Commission if their costs are not paid

commission has yet to respond formally to the generals' apparent renegeing on their agreement to testify.

The head of the Truth Commission's investigative unit, commissioner Dumisa Ntsebeza, confirmed that the generals' submission - like that of the political parties last month - would do nothing to help his unit.

"I've become completely disillusioned, and in fact this is going to make our work harder," he said.

Negotiations with Fivaz's office on the matter were at a "critical stage", Van der Merwe told Sapa this week.

"The date for the (commission) hearing is dependent on the outcome of the negotiations," he said. If no agreement were reached, it would be "very hard" for the generals to go ahead with their submission.

Both Tutu (bronchitis) and Boraine (pneumonia) have been out of action this week, and the

Ntsebeza said he had hoped that the political parties' submissions to the Truth Commission about their policies would have allowed the commission to map out the country's political framework and identify individuals who had been in charge of the security forces and liberation armies.

"This had not happened, as the political parties had largely tried to whitewash their roles in human rights abuses."

"The National Party did not even acknowledge the establishment of front companies. F.W. de Klerk was very thin when it came to detail."

The submission of the ANC had come closest to what the

philosophy  
instead

21/9/96

commission had hoped for, Ntsebeza suggested.

"You may still question their level of preparedness to say it all and to say it truthfully - the Tham Zulu story, for example, just does not wash."

"There's something they are not telling about Zulu, but at least they have listed some of the things they have been responsible for, not all of which are complimentary."

"The ANC annexed copies of all the commissions into the murders and the tortures at their Angolan camps. They have talked about people who were killed by ANC cadres and about people whom they have unjustifiably framed and whom they now want to rehabilitate."

But, for instance, "(Freedom Front leader) Constand Viljoen just kept on wanting to horse-trade with us. He wanted guarantees that as a commission you simply cannot give."

The NP's claim that it had never sanctioned murders and

torture was contradicted by the large number of deaths in detention and by findings by "even the most conservative" judges who had ruled that supposed confessions had been extracted under torture, Ntsebeza said.

No one had ever been suspended or dismissed as a result. In several cases, those involved had subsequently been promoted, he noted.

"So De Klerk (is) making a mockery of the entire process."

"I've now heard four histories about this country - from the NP, ANC, FF and PAC - and they are all different."

The investigative unit still believed that its preferred tactic of forcing alleged perpetrators to testify under oath through the judicious use of subpoenas would be the most effective way of uncovering details of human rights abuses, Ntsebeza added.

"We must do this now, otherwise we will be losing credibility with the public."

# Wit and wisdom - the case for Mahomed

ARG 21/9/96

## 'No contest' in race for chief justice job

(252)

OWN CORRESPONDENT

Johannesburg - The nomination of Ismail Mahomed for the post of South Africa's chief justice may have been dogged by controversy, but it is widely believed in legal circles that this commanding figure with a devastating wit is the only man for the job.

It therefore comes as no surprise that whenever the retirement of Chief Justice Corbett crops up in conversation, Judge Mahomed's name is fired back as quick as a reflex action "By the sheer weight of his credentials, Ismail chooses himself," said one close colleague

So the controversy surrounding his nomination for the post, when President Nelson Mandela openly signalled that he favoured Judge Mahomed over his only other rival, Justice Hennie van Heerden, is described as nothing short of "irritating" by friends.

"It is surely disingenuous to focus the debate on the issue of Mr Mandela's intervention," said London-based advocate Clifford Mailer, who has served as junior counsel to Judge Mahomed.

"The real issue is whether Ismail Mahomed should be the first judge appointed in the new South Africa to grace the high office of Chief Justice "The simple answer is this: there is no real contest"

It is a sentiment felt widely across the legal fraternity by Judge Mahomed's supporters, who believe the deputy president of the Constitutional Court has too long been cheated of his place on the judiciary. The first black person to be appointed a Supreme Court judge in 1991, Judge Mahomed's face has come to represent a new era on the bench

Words, and a razor-sharp talent for choosing the right ones to turn tired propaganda into poignant exhortations and make legal jargon sound incisive, are his stock in trade. His colleagues at the bar were awed by his command of language.

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His courtroom repartee is now almost legendary "The sharp wit is tied to the personality," said another former junior counsel. "But those devastating epigrams are really part of the moment and get lost when you take them out of context"

As co-chairman of the ground-breaking Codesa talks in 1991, his favourite phrase to those who rambled on and repeated themselves was. "Yes, to encore is not necessarily to augment"

"That might sound flat on paper, but coming from Ismail it just bounced off the wall with rigour," said one politician

His defence of Wilfred Marwani in the Appellate Division in 1981 was considered his severest test at the bar.

Arguing before 11 judges - only the third time in the country's history that an advocate had done so - he won the appeal on the submission that Mr Marwani's conviction under the Terrorism Act in



Ismail Mahomed: represents a new era

Bophuthatswana was invalid.

Interestingly, his one confrontation with Judge Van Heerden came in the late 1980s, when he appealed the conviction for high treason of Umkhonto we Sizwe member Ebrahim Ebrahim. Mr Ebrahim had been abducted from Swaziland by South African security officials, tried for treason and sentenced to 20 years imprisonment.

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Indeed the intensity may be veiled by the no-nonsense tones, but the vocabulary belies moderation.

"Yes he does turn it on a bit for the audience," said one colleague.

But the reality is that this is no act, only a projection of a life-time commitment to alleviating the human rights abuses that history has imposed on himself and his clients. For Mahomed, the public person is the private person and his years as a victim of apartheid have been woven seamlessly into a single fabric.

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"He subjects himself to rigorous self-examination and is constantly searching for answers in areas that do not always offer the easy option."

# Bisho massacre: Did jumpy troops panic?

## Questions remain after TRC probe

(252) ARG 21/9/96

JOHN YELD

ON THE TRUTH COMMISSION

Were 29 people shot to death during the infamous "Bisho massacre" because a South African police helicopter clattering overhead sounded like gunfire to terrified Ciskei soldiers? That unfortunate possibility emerged from testimony during last week's special Truth Commission hearing which provided some answers but left several questions hanging.

Several victims of the massacre on September 7, 1992 insisted they had heard shots being fired from a police helicopter flying overhead as they made their way towards the Bisho stadium.

This claim was contradicted by ballistics expert Jacobus du Plessis, who told the commission he had not found any evidence of shooting from the helicopter.

In response to a question by commissioner Denzil Potgieter, Mr Du Plessis said the blades of a helicopter banking sharply could make a sound like gunfire, although he was hesitant to suggest this as an explanation.

The commission heard from former senior Ciskei Defence Force (CDF) officers, including chief Marius Oelschig (then a brigadier, now a major general) that they had instructed troops to shoot at marchers only after the soldiers had reported they were under attack and being fired at.

General Oelschig confirmed that he had been at the top of the chain of command and had issued the vital order to fire.

But, the commission also heard, there was no ballistic evidence to support the claim that Ciskei troops had been shot at.

Some observers suggested this left only one possible conclusion: the Ciskei troops, already terrified by the size of the crowd and the rumours that a detachment of Umkhonto weSizwe (MK) cadres would lead an attack on them during the march, had panicked when they heard the "gunfire-like" noise of the helicopter and believed they were being fired at.

Observers at the commission's hearing also remarked on what appeared to be a significant discrepancy in evidence about

the shooting: the time taken by soldiers to respond to the supposed "attack" by marchers.

It was common cause that senior ANC leader and current Deputy Defence Minister Ronnie Kasrils, accompanied by colleagues Chris Hanu, Smuts Ngonyama and Linda Mti, had led a charge by a "flanking" group of several hundred marchers through an already flattened section of the perimeter fence around Bisho stadium. It was this that triggered the first shots.

This is composite reconstruction of CDF communications via a radio network.

■ An unnamed major reports to field commander Vakele Mkosana that a crowd of marchers is "coming forcefully" towards them and that his troops are being shot at.

■ Colonel Mkosana reports to Dirk van der Bank, CDF commander who was standing on the roof of the National Assembly building, that soldiers are being shot at. He asks for orders.

■ Colonel Van der Bank instructs him to hold fire and asks Brigadier

Oelschig, inside the building, whether he has been monitoring this exchange.

■ Brigadier Oelschig says he has

■ Colonel Van der Bank asks Brigadier Oelschig whether the field commander can give an order to open fire.

■ Brigadier Oelschig tells Colonel Van der Bank to confirm the soldiers are under fire.

■ Colonel Van der Bank asks Colonel Mkosana for confirmation.

■ Colonel Mkosana (presumably after another exchange with the unnamed major) confirms.

■ Colonel Van der Bank passes on this confirmation to Brigadier Oelschig.

■ Brigadier Oelschig then gives the order for the troops to fire, "meaning those who were in immediate danger."

■ Colonel Van der Bank conveys this order to Colonel Mkosana.

■ Colonel Mkosana tells the major the troops can fire "with minimum force."

■ The major relays the order to an unnamed captain for the troops to use "single shots."

Truth Commissioner Dumisa Ntsebeza,

who heads the commission's investigative unit, said he was not aware of the theory about the noise of helicopter being to blame, but agreed there were still crucial gaps in the explanation for the massacre. "If I look back on the evidence, it may well be that the soldiers believed the noise of the helicopter was shots being fired. Because of the state in which the soldiers were at that time, they were ready to believe anything," Mr Ntsebeza said.

Although properly trained soldiers should have been able to distinguish between the noises of shots being fired and a banking helicopter, the intelligence reports which had been fed to the Ciskei soldiers in the run-up to the march - such as the "planned MK attack" - had made them nervous. "So anything that sounded even even remotely like gunfire could have been interpreted by them as gunfire."

"But the problem is it is not the soldiers who should be asked that question - it should be directed at Colonel Dirk van der Bank, but unfortunately he also stayed away from our hearing. What exactly was it that he heard over the radio that made him seek the authority from General Oelschig to open fire?"

Mr Ntsebeza said he was inclined to believe Colonel Mkosana's version of events, that he (the colonel) had ordered a small detachment of soldiers who genuinely believed they were under fire to shoot back, using minimum force, and that those soldiers deployed at other points had never been ordered to shoot.

"It was the soldiers elsewhere who started to shoot at people who were not threat to them. Not only were these marchers not going through that gap in the fence, but in fact they were trapped. On Colonel Mkosana's own evidence, soldiers became excited and they acted contrary to orders."

Brigadier Oelschig and, indirectly, Colonel Van der Bank had failed to condemn an obvious act of indiscipline, Mr Ntsebeza said. "And in fact Oelschig still perpetuates the view that this massacre was a set-up and that the ANC has to assume sole responsibility."

"This is rubbish - all the evidence shows the conduct of those Ciskeian troops, was reprehensible, they just went crazy. And this is something that Oelschig would have known immediately from the board of inquiry instituted by the CDF."

***'I feel there is not enough evidence to conclude this person was shot from above'***

September 23 1996

## Generals not co-operating, says TRC

(252)

Cape Town - Former police generals were deliberately putting obstacles in the path of the Truth and Reconciliation Commission's investigations and making unreasonable demands before agreeing to testify in full, Dumisa Ntsebeza, the head of the TRC's national investigations unit, said yesterday.

"They are interested in horse trading, asking for things I cannot guarantee," he said.

These included assurances from the commission that they would be immune from prosecution in neighbouring countries and that their legal costs would be covered.

At a recent meeting with senior TRC officials, former police commissioners Johan van der Merwe, Mike Geldenhuys and Johan Coetzee undertook to provide details of about 50 incidents of politically motivated abuses.

Van der Merwe said on Friday that if no agreement was reached as to who would cover legal costs, it would be "very hard" for the generals to go ahead with their submissions.

Ntsebeza downplayed reports that the commission was at loggerheads with Deputy President Thabo Mbeki after he apparently intervened to stop the commission issuing subpoenas to the generals.

"I don't know if we are making a mountain out of a molehill," said Ntsebeza.

While he accepted that Mbeki had acted in good faith, he said the commission's timing had been disrupted because the generals would now be able to examine the testimony of convicted hitsquad killer Eugene de Kock before testifying.

The commission had lost the advantage of having them testify first, he said - Sapa.

# Death penalty poll demand

(252) Star 23/9/96

An overwhelming majority of readers in The Star's survey want harsher penalties for rapists, murderers and hijackers

By **GRAHAM REES**  
Marketing Editor

An overwhelming 93% of readers who have responded to The Star's "Tell it to the President" survey have demanded a national referendum on the reintroduction of the death penalty. 973 replies from all ethnic groups have been analysed and only 7% were against the referendum.

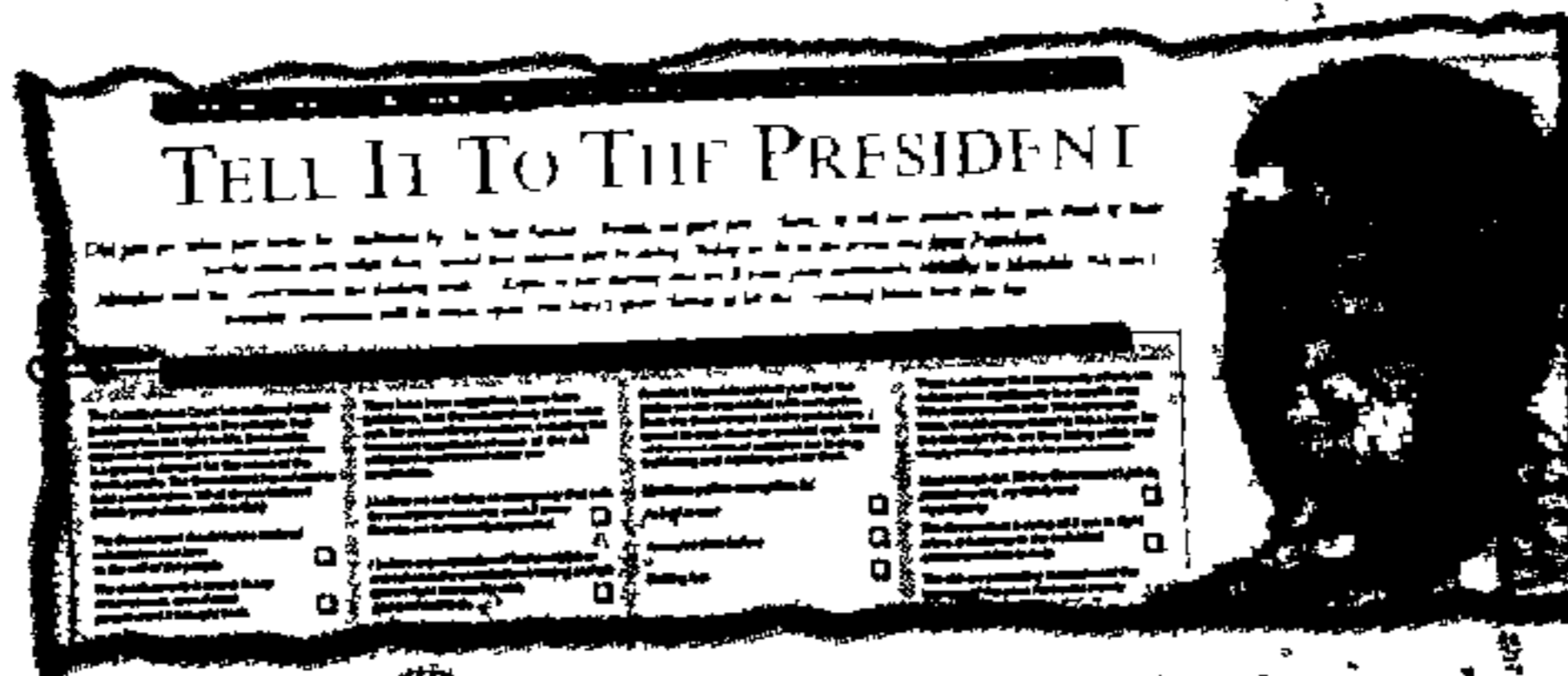
Of those, many were strongly in favour of life imprisonment without remission for murder, and much harsher penalties for rapists, hijackers and child molesters.

At least 90% of the readers believed the rising crime wave called for special measures to combat it.

They believed the temporary introduction of emergency regulations and the suspension of some civil rights would be justified.

One reader, who preferred to remain anonymous, wrote: "No murderer or rapist has ever committed another crime after being hanged. That is a deterrent."

Among the minority against capital punishment, Albert Mangena said: "Most of the black people are poor and cannot afford to pay lawyers. In this way it is only black people who will be hanged in great numbers."



Dear Mr ma  
dela. I like you  
I wish I can see  
you someday.  
Please can you  
do something to  
stop crime.  
I am 8 years old  
from Caroline W

Dear Mr Mandela ... Little Caroline van der Merwe's letter.

B Ismail of Fordsburg said: "If democracy supports the majority view, then the death penalty must be brought back."

An Eersterus, woman, N Makalane, wrote: "Mr President, I feel the people who commit all

the murders, hijackings and rapes are slapping you in the face after you spent 27 years (in jail) for our freedom. That is how they repay you."

Graham Dlamini of Dobsonville called for the referendum and stronger measures by the courts against criminals.

He also wants to see more black magistrates appointed.

"People prepared to take a life, forgo the right to their own," a Cramerview couple, W and N Pretorius, said.

Writing from Sasolburg, Jabulani Tshabalala said: "The power of the Government is vested in the people and is subject to the people's will."

He also called for the death penalty.

"The victim also has a right to life," was the view of D Meyer of Randburg.

"What the hell happened to

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P.T.O.

## Death penalty poll demand (252)

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► From Page 1

democracy?" asked pro-hanging R Steenkamp of Bromhof. Andrew Rex of Randburg said: "Since the ANC came to power, the crime rate has become increasingly evident. Having explored alternatives and failed, the death penalty seems a plausible option."

Pro-hanging Prince Patrick Dlamini from Mpumalanga in KwaZulu Natal said: "If South Africa is truly democratic, then it is definitely our right. The Government should and must listen to our laments about crime."

Respondents to other sections of the survey were equally divided on the question "Do you believe police corruption to be as bad as ever?" The vote was exactly 50-50.

There was a large majority who believed they were already paying enough taxes to enable the Government to provide adequate protection for themselves, their families and their property.

The Star has received wide support for the continuation of the "Tell It" survey, and many topics have been suggested for the future.

Top of the list of topics suggested for the next survey was again one for the president. That is on the Government's qualifications to run the country efficiently and the issue of accountability.

Next was the subject of education, with taxation and the inland revenue service, abortion and child abuse all getting strong support as well.

All replies to the survey will now be sent to the Office of the President with the request that they are studied and a reply given to the concerns voiced by readers.

The Star's campaign against crime goes a step further next week when we link up with a major national financial institution to test in even greater depth the feelings of readers on the prevention and punishment of those who break the law with no respect for life or property.



# Co-operate or face search and seizure, TRC warns military

ET 23/9/96

(252)

## Ex-generals' demands are 'unreasonable'

THE Truth and Reconciliation Commission would not hesitate to search for and seize any documents it required, if the military failed to co-operate fully with it, Mr Dumisa Nisebeza, head of the TRC's national investigations unit warned yesterday.

The commission, not the military, would decide what was relevant to its investigations, he said.

A letter had been sent to the defence ministry on Friday requesting it to ensure military personnel refrained from hampering the TRC in accessing information.

A Sunday newspaper reported that the commission had conducted six search and seizure operations at military bases in the Western Cape. TRC investigators had, however, been refused access to Youngsfield air force base, despite having a valid search warrant.

TRC investigations unit director Mr Glen Goosen confirmed the Youngsfield raid, saying: "Next time we will execute the search

warrant."

Commission spokeswoman Ms Christelle Terreblanche said the report of six raids having taken place "appeared to be a distortion", but a statement on the matter would be issued on today.

Search warrants would be obtained under provisions of the Criminal Procedure Act, she said. The commission could only conduct search and seizure operations in exceptional circumstances, such as where it suspected files would be destroyed.

Nisebeza said the TRC's Western Cape investigations team, headed by Ms Zenariah Barends, had complained to him the military were making it very difficult to conduct investigations.

The commission and senior military officers had met earlier this year and decided to establish a national point of contact, or nodal



point, to facilitate TRC investigators' work. The defence force was represented on the body by Major-General J A Kloppers, a former head of military intelligence.

While military officers had been willing to co-operate, the commission was still unable to get what it wanted, Nisebeza said.

Once when Barends contacted Kloppers for information, he told her she needed a valid warrant to obtain it, Nisebeza said.

"If they don't co-operate we are going to search and seize anyway," said Nisebeza.

The military were allegedly involved in a number of cases of human rights abuses, he said.

"We want to be supplied with information on who exactly was involved and which high-level figure authorised such actions," said Nisebeza — Sapa

FORMER police generals appeared to be deliberately putting obstacles in the path of the TRC's investigations, and were making unreasonable demands before agreeing to testify in full, Mr Dumisa Nisebeza, head of the TRC's national investigations unit, said yesterday.

"They are interested in horse trading, and are asking for things I cannot guarantee," he said.

These included assurances from the TRC that they would be immune from prosecution in neighbouring countries and that their legal costs would be covered.

At a recent meeting with senior commission officials, former police commissioners General Johan van der Merwe, General Mike Geldenhuis and General Johan Coetzee undertook to provide details of about 50 incidents of politically-motivated abuses.

Van der Merwe said on Friday if no deal was reached on the legal costs, it would be "very hard" for the generals to go ahead with their submissions. — Sapa

# Will the JSC be a rubber stamp?

**GERALD GORDON QC** questions whether President Mandela has not reduced the Judicial Services Commission to a rubber stamp.

THE controversy about whether Mr Justice Hennie van Heerden or Mr Justice Ismail Mahomed should succeed Chief Justice Michael Corbett when he retires as head of the Appeal Court, several issues have been raised, quite apart from the merits of the two eminent candidates.

The debate has ranged around the transformation of the justice system, the status of the courts, the conservative against the progressive approach to the judiciary and the issue of affirmative action.

There is, however, a very important aspect which seems to have been ignored, one that goes to the root of the new democracy. This arises out of the fact that Mandela has nominated Mahomed for the post.

This nomination has a direct bearing on the independence of our judges and although the present case may not be a major upheaval in the smooth course of our democracy — for the building of which so many have battled and not a few have died — a precedent may emerge to influence greater conflicts in future.

Judicial independence depends on the separation of the three powers of the state — the executive, the legislature and the judiciary, democracy demanding that none of these three shall be able to gather in its hands all the important branches of sovereignty. The first bastion of this independence is

secured by providing that a judge cannot be removed from office save by the President on grounds of misbehaviour, incapacity or incompetence upon receipt of an address from both Houses of Parliament. There has been no such removal of a judge in South Africa this century.

But this protection against dismissal is not the only element that founds a soundly independent judiciary. There must also be freedom from executive influence in the appointment, as well as in the removal, of a judge. This element was completely lacking under Nationalist rule.

Constitutional history abounds in examples of appointments being made to the bench of a country by its ruler, in order to serve the latter's political interests. In the US there was Roosevelt's famous packing of the Supreme Court to get his New Deal through. In dictatorships, tampering with the judiciary, including the appointment of lackeys serving the ruler's interests, is, sadly, found only too often. One recalls the dictum of Charles I of England "Let the judges be lions, but lambs under the throne."

Probably the most outrageous case was in Germany in 1934, when Hitler had hundreds of men — suspected by him of being involved in an attempted coup — rounded up and shot, and shortly afterwards told the Reichstag "For 24 hours I appointed myself

the Supreme Court of Germany."

In South Africa, when the Appellate Division threw out as illegal the apartheid government's regulations reserving amenities, such as certain train carriages and waiting rooms for "Europeans Only", the government was furious and one of its henchmen, Mr G F van L Froneman MP, told the House of Assembly "if the Appeal Court wants to be treated with respect it should give decisions interpreting the sentiments of the people who stand supreme in the country".

Accordingly the government passed the Separate Amenities Act in 1953, giving it full powers to reserve all public amenities for whites.

*Is not the JSC rendered redundant by the fact that the President appears to have pre-empted the final result? And will this not be a precedent in future...?*

When it could not get the required two-thirds majority in Parliament to abolish the voting rights of the coloureds, the government broadened the Appellate Division, adding a number of judges it hoped it could rely on.

It is this issue of the appointment of members of the bench that is so important in the present controversy. And it was of vital consequence in the debates that occupied the many parties and interested groups who, at the World Trade Centre, ironed out the basic principles for South Africa's new constitution. In essence the appointment of judges was to be by democratic process, not by decree. So the constitution that emerged provided for the establishment of a Judicial Service

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Commission, which was to be as widely representative of all sections and interests of the South African community that could contribute to the appointment of a fair, unbiased, competent judiciary, uninfluenced by racial, political or gender motivation.

This body would advise the President as to the appointment by him of judges of the Supreme Court. It would represent a cross-section of every legal and other interest concerned in the appointment of a truly impartial and fair bench.

It consists of the Chief Justice (who presides), the President of the Constitutional Court, one Judge President, the Minister of Justice, two practising advocates, two practising attorneys, one professor of law (designated by all the law faculties at SA universities), four senators, and four persons (two being practising attorneys or advocates) designated by the President.

This system is a far cry from the apartheid (and pre-apartheid) days when judicial appointments were entirely in the hands of the Minister of Justice, with the background approval of the Cabinet. The appointment now of the new Chief Justice has to be recommended by the JSC, which will have before it all the nominations.

They will be meeting early next month upon consideration of all aspects, they will recommend either Mahomed or Van Heerden.

This recommendation is to be made to the country's President, who will be "advised", but not bound by, the JSC. And here lies the rub. Mandela has nominated Mahomed. In other words, he has told the JSC that this is the man he would like to

nomination of anyone and then sit in at the JSC's hearing and take part in adjudication of all the nominations, including the one he or she has made.

An extraordinary position and, it is submitted with respect, not one calculated to serve the future of democracy in South Africa.

□ Gerald Gordon received an honorary doctorate of laws from the University of Cape Town in June, in recognition of his contribution to law, human rights and democracy in South Africa.

tions recommended to him by the JSC. There will be a blurring of two positions — citizen and President.

And when this goes to its final conclusion, will the whole episode not serve as a dangerous threat to the system of fair appointments in future, to the so carefully built-up independence of the judiciary and ultimately to the separation of powers?

Finally, if Mandela's nomination is in order, then any of the 17 members of the JSC has the same citizen's right as Mandela and might equally well have made his or her

see made Chief Justice. That being so, what point is to be served by the JSC considering any other nomination?

Is not the JSC rendered redundant by the fact that the President appears to have pre-empted the final result?

And will not this be a precedent in future for reducing the JSC to a rubber-stamp?

Mandela is, of course, legally entitled as a citizen to make a nomination, but the fact remains that he will figure both as a nominator and as the final arbiter of all the nomina-

# Coleman's resignation from commission 'stands'

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Reneé Grawitzky

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MAX Coleman said yesterday there had been no truth in reports last week which implied that he had had a change of heart and wished to withdraw his resignation from the Human Rights Commission

It was reported last week that Bulelani Ngcuka, chairman of the joint parliamentary committee on the human rights commission had been quoted as saying that Coleman had wished to withdraw his resignation, but it had already been submitted to Parliament

Coleman said he had submitted his resignation in July and at no time had he contemplated withdrawing it "The die has been cast", he said

A number of members of the commission had tried to persuade him otherwise, but "my resignation stands", he said He rejected the notion that the report of his change of heart was an attempt to force him to withdraw his resignation

Coleman said he had resigned for personal reasons, which he would not elaborate on His term of office expires at the end of next month.

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# Events leading to Duncan Village massacre recalled

(252)  
ET 24/9/96

**EAST LONDON:** A violent uprising in Duncan Village in August 1985 was suppressed by police and troops who sealed off the township, cut electrical supplies and telephone lines, and then went on a shooting spree, the Truth and Reconciliation Commission heard yesterday

At least 23 people were killed and scores injured in clashes between residents and the security forces in the days after the funeral of slain activist Mrs Victoria Mxenge, widow of murdered human rights lawyer Mr Griffiths Mxenge, the commission was told

The commission is holding a two-day event hearing on the week-long wave of unrest, which became known as the 1985 Duncan Village Massacre

In a five-page submission on the shootings, the ANC called on the commission to ensure that victims' families and survivors were "reasonably compensated"

It also apologised for what it called "excesses" committed in the township in its "just war against the apartheid state".

ANC MPL Mr Joe Jordan admitted innocent residents had been targeted as informers and collaborators by the "very commu-

nity organisations that should have protected them"

Those at the forefront of organising community resistance had been forced to resort to "desperate measures" to keep the community together, he said.

The measures had included the merciless treatment of informers, the setting up of people's courts to maintain order and discipline, and a community ban on alcohol consumption

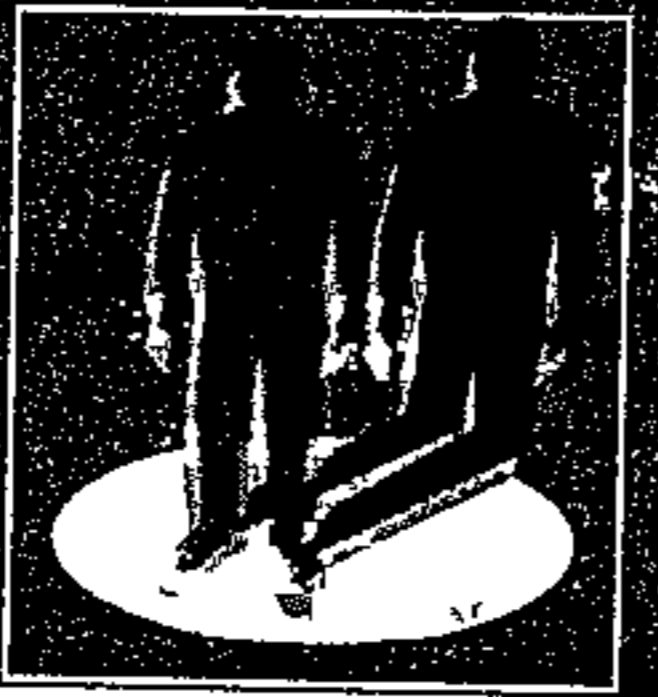
In detailing the steps taken by security forces to crush the uprising, Jordan said in one incident a military Casspir had driven over a car used to transport shooting victims to hospital, killing a local activist

The soldiers had set up bases around Duncan Village and had turned the township into a "war zone"

Jordan said Victoria Mxenge's funeral had triggered the violence in which rent offices, beerhalls and homes of collaborators and policemen had been burnt down "The golden rule, however, was that no person should be harmed or killed"

The SADF and the not unit had started shooting at everyone they came across in the street — Sapa

## TRUTH & RECONCILIATION COMMISSION



## Hospital superintendent helped to find suspects

**EAST LONDON.** A former superintendent at Frere Hospital here co-operated in the police search for shooting victims of the Duncan Village massacre in August 1985, the Truth and Reconciliation Commission heard yesterday

A spate of arrests at the hospital had prompted township residents to set up a first-aid post at a Roman Catholic church for the scores of people injured in clashes with security forces, the ANC said

During the week of violence that followed the funeral of Mrs Victoria Mxenge, security forces blocked entrances to the township, preventing many wounded people from seeking proper treatment Those wounded who managed to get to Frere Hospital were arrested by police, said Mr Joe Jordan, an ANC member of the provincial legislature

"The acting superintendent had a negative attitude towards the people When we asked him why our people were being treated in this manner, he said they had been involved in a riot against the government"

Jordan said East London's then-district surgeon, Dr Basil Wingreen, had "mishandled" relatives of those shot

"He was very negative We cannot forget him I would be glad if he could give evidence on his role" — Sapa

## Farmer's killing a senseless act — wife

**KLERKSDORP.** The wife of a Swartklip farmer killed by guerrilla fighters in 1978 in the Thabazimbi area, yesterday told the TRC's human rights violations committee that South Africans should learn violence was not the best method to solve problems

Mrs Susan van der Merwe told the commission her husband, Mr Jacob van der Merwe, disappeared on November 1, 1978

A search for him continued until several years later, when she was informed he

had been shot in the head by guerrilla fighters

Van der Merwe said her husband's killing was unnecessary because he was a good man

She said she wanted to find her husband's body to give him a proper funeral

Her family wanted to know why the freedom fighters killed her husband and what they gained from his "senseless killing", she said — Sapa

# Bid to unravel riddle of 'blackbag'

## Official navy records at Wingfield may hold the key

JOHN YELD  
ON THE TRUTH COMMISSION

Truth Commission investigators are to visit the South African Navy base at Wingfield tomorrow to take possession of official records that may include reference to mysterious "blackbox" or "blackbag" operations.

These are understood to refer to attacks during the 1980s in which anti-apartheid activists were targeted in military-style operations.

The investigators have come across references to these "code" names in the course of their work, and are hoping that the material at SAS Wingfield may shed further light on operations to which they

apparently refer.

"These terms have come up in their investigations, but they don't know what they mean," said Truth Commission spokeswoman Christelle Terreblanche.

Previous attempts to seize the material were unsuccessful after naval authorities denied commission investigators access to the base without a search warrant.

This included a visit to the base on Friday when, despite the investigators having obtained a warrant, they were still blocked from taking the material.

There had been "disagreement" with the base's Officer Commanding, Ms Terreblanche said.

After a subsequent agreement with this officer, the investigators would return

tomorrow.

The investigators have previously taken material from Youngsfield, another local defence force base.

But the national director of the investigative unit, Glenn Goosen, denied a weekend report that there had been six "search-and-seizures" at military bases during the past few months.

"We wish to place on record that no military bases have been raided," he said.

Members of the unit would be having discussions with J A Klopper, who had been appointed liaison officer to handle contact between the Truth Commission and the SANDF.

Ms Terreblanche said the investigative unit felt there had not been 100 per cent co-

operation from General Klopper and that the commission investigating unit's head, Dumisa Ntsebeza, might consider liaising directly with the defence force ministry.

"However, he is still hoping that a meeting will clear up any misunderstandings," she said.

Referring to comments last week by the head of the Truth Commission's research team, Charles Villa-Vicencio, that his researchers had not experienced any problems yet in gaining access to state information - in apparent contrast to the experience of investigators - Ms Terreblanche said this did not indicate a problem.

"Essentially they are looking for different things. There is no tension between the two departments that I know of," she said.

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# TRC asks *sowetan 25/9/96* for full list *(252)* of officers

Doctors and lawyers of victims have been asked to make submissions

By Mzimasi Ngudle

**T**RUTH AND RECONCILIATION Commission convenor Reverend Bongani Finca yesterday asked former security authorities for a full list of officers who were in charge during the 1985 Duncan Village massacres

Addressing the last day of the commission's hearings in Gompo near Duncan Village, East London, Finca also asked doctors who treated the victims and attorneys who represented them to make submissions to the TRC

Meanwhile, the two-day hearing saw tears streaming down the faces of widows and mothers of those who died

Survivors related their close brush with death when former South African Defence Force members went on a shooting spree, killing 23 people and injuring 138 others in 1985. The violence

erupted after the funeral of activist Mrs Victoria Mxenge

Sports Minister Steve Tshwete, a former activist who came out from hiding to deliver a militant speech at the funeral on August 11 1985, was one of many speakers who sparked the ire of residents in their fight against state-imposed councilors, forced removals and rent increases

"People were shot at randomly, even when going to the toilet," said Mrs Mtswembeyi Zenzisi, whose husband was shot dead by the SADF while going to buy milk from the shop

Mrs Jane Mxoli said her son Nothozayo Suthu died instantly after he was shot by the SADF on August 13 1985

Mrs Nonkululeko Ngcaka said the SADF shot dead her eight-year-old son, Thembekile, who was playing with other children near Douglas Smith Highway in Duncan Village

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## Bosses of fired workers must 'explain actions'

**EAST LONDON** The managing directors of companies which dismissed workers wounded in the 1985 Duncan Village massacre are to be called before the Truth and Reconciliation Commission to explain their actions, it was announced yesterday.

The SA National Defence Force and SA Police Service would also be asked as a "matter of urgency" to provide the names of senior officers based in East London during a violent uprising by Duncan Village residents in August 1985.

The uprising followed the funeral of slain human rights activist Mrs Victoria Mxenge, widow of murdered lawyer Mr Griffiths Mxenge. At least 23 people were subsequently killed and scores injured in clashes between residents and the security forces.

The spate of deaths, referred to as the Duncan Village massacre, had left the former NP government "cold", Eastern Cape commission head Mr Bongani Finca said.

He was speaking after the commission completed a two-day sitting on the massacre.

"No judicial inquiry was ordered into the event," he said.

"According to the evidence placed before us even so-called opposition parties, who claim to have clean human rights records, did nothing to force the government to order the inquiry."

Finca said the commission was not in a position to close its file on the massacre, as many questions remained unanswered. A second hearing would be held when army and police officers would be called to give evidence.

"We also need the names of doctors and other medical staff who were in charge of the hospitals treating the victims of the massacre," he said.

The commission heard on Monday that a spate of arrests at Frere Hospital in East London forced Duncan Village residents to set up a first aid post at a Catholic church to treat massacre victims.

Finca said the managing directors of companies which dismissed workers wounded in the violence would also be called to testify.

Among the companies named in testimony yesterday was National Converter Industries (NCI), Plascon Paint and Hamlong Electrical.

Mr Rogers Gqeme, who was shot in the spine when police allegedly opened fire on a crowd of protesters at the height of the unrest, testified yesterday that he had been sacked by NCI on his return to work. — Sapa

## Lebaleng residents speak of suffering

**KLERKSDORP** The core of submissions to the Truth and Reconciliation Commission sitting in Klerksdorp yesterday focused mainly on the sufferings of the people of Lebaleng township in Makwassie from the mid-1970s to the early 1990s.

Six of the 11 witnesses told commissioners the police had made their lives unbearable, harassed them continually, beat them and injured their genitals for crimes they had not committed.

Ms Kedibone Cynthia Morake and Mr Thabang Reginald Mopeloa told of their suffering.

Morake said youths had usually been picked up at their homes and beaten by the police, who had accused them of attempting to burn municipal offices and of being political activists.

She recalled the night of June 17, 1976, when she had been arrested with other youths, taken to open veld and severely beaten up by the police.

They were then taken to a Stilfontein police station, where the torture had continued.

Mopeloa said the police had tortured him, injured his genitals, resulting in sexual problems and his inability to father children.

An elderly Leeuwduingstad woman, Ms Meriam Mmolawa, told of constant harassment and torture her family endured from the police in the late 1980s.

Her pensioner husband had been continually beaten and harassed by police, who accused him of encouraging a "black spirit" and inciting the youth against coloureds.

Ms Helena Kroon de Kock said the hatred of people who lacked vision for a changing South Africa had led to the bombing of a private school in Klerksdorp late in 1991.

The trouble had been sparked by one "beautiful little black girl" being admitted. The town council had refused to register the school.

Mr William Nxanxa, a taxi driver from the Ottosdal township of Letsopa, said he had been assaulted by four AWB members who had found him and friends in a parked car in September 1990.

They had then been taken to a police station, where the torture had continued. — Sapa

**TRUTH & RECONCILIATION COMMISSION**



## Mother tells of infant's death by police teargas

**EAST LONDON**: A 16-month-old baby became one of the first fatalities of a security force crackdown on Duncan Village township in August 1985 after inhaling teargas, the TRC was told yesterday.

The commission also heard more tales of random shootings by soldiers on the second day of its special hearing on the 1985 Duncan Village massacre.

The "massacre" refers to the security force clampdown on a violent uprising by township residents which left 23 dead.

Mrs Noretse Wili told the commission how her infant son Goodbye was injured on the first day of the unrest, following the funeral of human rights lawyer Mrs Victoria Mxenge.

Wili said she had been at home with Goodbye and her husband when police fired teargas canisters in the direction of her shack.

"As we went out another canister landed near the door. We were forced to run away with the child."

Shortly afterwards Goodbye developed respiratory problems. Wili took him to hospital. "The doctor gave him cough mixture and we went home. That night we could not sleep because he was coughing," she said.

The following day Goodbye was admitted to Frere Hospital.

When she visited him later that day she was told he had died. "I would like to request that an investigation be done into the death of my child," she said. — Sapa

# TRIO TO EXTEND PROBE TO

# Europe

(252) ET 25/9/96



**THE HAGUE.** Mr Klaas de Jonge, who set off a major diplomatic incident 11 years ago when he escaped from the South African police and took refuge in the Dutch embassy in Pretoria for 780 days, is probing the apartheid regime's links abroad. **ROGER FRIEDMAN** reports

**T**HE Truth and Reconciliation Commission has extended its investigations into South Africa's murky past links abroad with the appointment of former arms smuggler and Dutch embassy fugitive Mr Klaas de Jonge to probe international operations of former apartheid agents

De Jonge's research — he is working from the Institute for Southern Africa (IZA) headquarters in Amsterdam — is being funded by the Dutch government through its embassy in Pretoria

"My primary research focus is on the covert operations of South African security agents in Europe and North America, especially the operations in Europe by the CCB (Civil Co-operation Bureau) and some of its front organisations," he said in an interview with *The Cape Times*

De Jonge hopes to obtain clarity on the Samora Machel plane crash, South African operations to circumvent the United Nations arms and oil embargoes, attacks on ANC installations in London, Paris and Brussels, links between the CCB and right-wing groups in Europe and the United States, and an alleged gun-running operation between the CCB and Protestant loyalist paramilitary groups in Ulster

He has already submitted preliminary reports to the TRC on the 1981 Seychelles coup attempt, the murder of ANC Paris representative Ms Dulcie September in 1988, attacks against ANC Brussels representative Mr Godfrey Motsepe in 1987 and 1988, and the plane crash in which Mozambique's President Samora Machel died

He also hopes to obtain information on various Stratcom projects run by SADF elements but conducted outside South Africa, including Project Arianne, which used a

Moroccan newspaper to build South Africa's image as an African power, Project Flask, which intended to improve South Africa's image as a reliable negotiator in Iraq, and Project Layer, which co-ordinated and propagated military co-operation between South Africa and Israel

De Jonge is also looking into certain Southern African operations of the South African security forces, including the SADF raid on the Cassinga camp in Angola in 1978

"I have started this task in Holland by doing research in the archives of anti-apartheid movements and other organisations that possess documentation on the subject, such as the Centre for African Studies (University of Leiden), Jansen and Jansen (watchers of intelligence services), Amok (anti-militaristic research), and Fok (research on right-wing groups)," wrote De Jonge earlier this month in a letter to various agencies he believes could help him

Of course, De Jonge is no stranger to South Africa. He was arrested with his former wife, Ms Heleen Pastoors, between Johannesburg and Mafikeng in June 1985 for arms smuggling and treason

They were accused of being involved in the May 1983 Pretoria bomb blast, which killed 19 people and injured 200. Pastoors was eventually jailed for 10 years for treason, but De Jonge's escape into the Dutch embassy in Pretoria was to create an international incident. Days after his arrest — wearing leg-irons and handcuffs — De Jonge duped the security police to take him to the embassy to point out the location of an alleged arms cache.

Escorted past the embassy entrance De Jonge lunged his way through the door, only to be pulled back out by his captors, thus setting off a major diplomatic row. Ten days later the police handed him back to

the embassy after the Netherlands threatened to break off diplomatic ties with SA.

He spent 780 days holed up in the embassy, guarded by Dutch police inside and South African police outside

Eventually De Jonge was freed in a mass swop of prisoners involving six governments, the International Red Cross and Unita of Angola. The swop was hailed as a major diplo-

matic coup for then-Minister of Foreign Affairs Mr Fik Botha and French Prime Minister Mr Jacques Chirac

In the deal, South Africa got official recognition from the French for its ambassador, France secured the release of Mr Pierre Albertini, who had been jailed in the Ciskei for refusing to turn state witness in a treason trial, and Angola secured the release of 133 prisoners held by Unita

De Jonge was escorted out of South Africa

to Mozambique by the then Dutch ambassador, and the captive South African SADF officer, Major Wynand du Toit, was freed by the Angolan government

De Jonge's investigation into the CCB is one of three simultaneous probes. The TRC Investigative Unit, headed by commissioner Mr Dumisa Ntsebeza, is probing the organisation's South African operations, and a Cape Town-based non-government organisation is also trying to fit together the pieces





## Truth commission to 'raid' Cape naval base

(252)  
Wyndham Hartley

BD 25/9/96

CAPE TOWN — The truth commission's investigating unit will make its first "raid" on a military facility today when it visits a Cape naval base to "take possession" of certain material.

Unit head Glenn Goosen has confirmed that SAS Wingfield, one of a number of bases that served as a base for elements of military intelligence, was visited last week. Media reports that the unit had conducted any raids were incorrect, he said.

Goosen's statement comes in the wake of predictions of a serious collision between the commission and the SANDF over access to files.

It was confirmed that when the SANDF was approached for material held in Western Cape bases, the investigations unit was told it would need a search warrant.

Goosen said members of the investigations unit would be holding further discussions with Maj-Gen JA Klopper, a former head of military intelligence, who has been appointed the liaison officer between the commission and the SANDF. Klopper heads up the so-called nodal point established to improve communications between the commission and the SANDF.

These developments follow criticism by overall TRC investigations head Dumisa Ntsebeza of the way in which the nodal point is operating, and his vow that the commission will have to get tough if it is blocked from gaining access to military files. He said that he would not hesitate to use subpoenas.

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PAC President Clarence Makwetu chairs a news conference at the organisation's convention in Mamelodi outside Pretoria. Picture: GARTH LUMLEY

## PAC to set up own truth commission

**Nomavenda Mathiane**

THE PAC would establish its own truth commission, to be chaired by Bishop Stanley Mogoba, PAC political commissar Johnson Mlambo said

This emerged yesterday at the three-day PAC convention held at the Mamelodi Vista campus outside Pretoria at which the organisation resolved it would continue with the liberation struggle until Africans were politically and economically liberated

Convention organiser Ike Mafule said the party had achieved the purpose of the convention, which was to unite PAC members and reintro-

duce a culture of open debate in keeping with PAC tradition.

The convention followed a decision taken at the Bloemfontein congress in April where delegates were outspoken about lack of confidence in the leadership, and blamed it for the party's failure to win both the 1994 national elections and local government elections last year.

Issues discussed at the convention ranged from whether the party was relevant to the present SA, whether to change its strategies or abandon its principles, and how to position the PAC in the new political dispensation

Inside sources said the party also took a critical look at itself

Several members who had been in exile told how fellow members had abused them while they were in other countries, which led to the decision to set up an internal truth commission

In one debate, PAC president Clarence Makwetu accused MP Patricia de Lille of making media statements about anonymous assassination calls made to her without telling him about them. De Lille said she had several times informed Makwetu and nothing had come of it. She said she had reached a point where she trust-

ed none of the security structures, be they those of the state or the PAC.

Resolutions adopted included a leadership training plan in preparation for the party's December elections.

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# Law Commission finds banning of polygyny to be ill-advised

PRETORIA — Banning polygynous marriages was inadvisable even though the practice was seen as lowering the status of women, the SA Law Commission said yesterday.

The commission said polygyny in itself was not necessarily disadvantageous to African women but the institution of marriage itself was, "whether monogamous or polygynous".

"The case does not seem to be conclusively made that a bilateral arrangement between one man and one woman is the only valid and morally defensible method of constituting a family in a multicultural society."

But it was questionable whether men should continue to enjoy unrestricted freedom to contract additional marriages to the detriment of existing wives, the commission said.

A first wife's right to object to subsequent marriages might have to be recognised.

The commission also proposed the African tradition of paying a woman's father for marrying her be retained because of its cultural importance and the difficulty in enforcing prohibition.

The commission also proposed the patriarchal status of African men be re-examined

whereby African men often claimed ill-defined rights to chastise wives, demand sexual favours at will and make decisions about birth control measures and education of children.

A new code of marriage law should seek to balance the husband-wife relationship. The powers of family heads over their children should be based on the interests of children.

The commission said customary law made no clear provision for spouses' proprietary relations, resulting in wives more often suffering losses on the dissolution of a marriage.

Women should therefore be given the pro-

prietary capacity enjoyed by men.

It proposed customary marriages in future be terminated by the courts, which should also administer a common code of divorce law.

The courts should be empowered to give maintenance orders and to give partners equal rights and powers over minor children.

Other recommendations included making the registration of a marriage non-compulsory and fixing the legal marriageable ages at 18 for men and 15 for women.

The commission invited comment on its proposals before October 31 — Sapa.

# PAC sets up own 'truth commission'

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*Sowetan 26/9/96*

By Pamela Dube  
Political Reporter

Party has never publicly admitted human rights abuses in exile

**H**UMAN rights abuses in the military training camps of liberation movements in exile were rife but not only in the African National Congress camps

Pan Africanist Congress cadres from exile this week went public about the party's abuses and have requested the PAC to investigate

As part of reconciliation within the PAC, the party's four-day convention at Vista University in Mamelodi, near Pretoria, party members from exile revealed how they were illtreated by colleagues

*Sowetan* learnt that some PAC members from exile – particularly youths – told the convention that some commanders and administrators of the

Azaman Peoples Liberation Army and PAC leaders were notorious for abusing their positions. In some cases, members complained of torture

Apla cadres complained of being denied access to educational institutions and also accused some leaders of nepotism. This sometimes led to cadres being denied United Nations scholarships

The convention decided to establish "its own truth commission" to investigate these allegations

PAC secretary for political affairs Mr Johnson Mlambo said the commission, to be established soon, would be headed by Bishop Stanley Mogoba of

the Methodist Church

The admission of abuses by the PAC, however, did not come as a surprise to the rank and file

Just like the ANC, the PAC in the past used to complain about infiltration by agents of the National Party government. This led to innocent cadres being tortured. But unlike the ANC, the PAC never went public about its human rights abuses

During a submission to the Truth and Reconciliation Commission last month, PAC president Mr Clarence Makwetu did not touch on alleged abuses particularly in its military camps in Tanzania

## NEWS NATIONAL

# Madiba won't even review death penalty

Public concern about the matter due to what he called a lack of information

**P**RESIDENT Nelson Mandela yesterday rejected calls for a review of the death penalty, saying public concern about the matter was due to what he called a lack of information

"I will not even ask that the matter be discussed in the national executive committee of the African National Congress," he told reporters in Pretoria

Recent surveys have indicated the majority of South Africans favoured the return of capital punishment

In a poll conducted by a Johannesburg newspaper, 93 percent of its readers demanded a national referendum on the reintroduction of the death penalty

Mandela said the Constitutional Court had ruled that capital punishment was contrary to the Constitution

"There is going to be no review whatsoever," he said "Our task is to indicate the strategies that should be adopted if we want to reduce the level of crime"

Mandela earlier met the SA Human Rights Commission, which stressed human rights should not be disregarded in the fight against crime

Welcoming Mandela's stance on the death penalty, commission chairman Barney Pitjana said South Africa should remain faithful to the Constitution in dealing with crime

"In all the discussions about crime, very little cognisance is given to the importance of our constitutional responsibility in terms of human rights"

"It appears that there is a great deal of ignorance or lack of confidence in the capacity of the criminal justice system to deal with crime," Pitjana said

## Gathering momentum

Mandela said the tide against crime was gathering momentum

"We do not want to arouse false expectations, notwithstanding the success we have achieved in our strategies"

The anti-crime plan, which had proved to be successful in KwaZulu-Natal, was being put into action in Gauteng

"We believe that we will be able to bring down the high level of crime in the province in due course," Mandela concluded - Sapa

Sowetan  
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(252)

# Ban on death penalty stays, says Mandela

(252) Star 26/9/96

President Mandela said yesterday he would not consider reinstating the death penalty despite a survey in The Star that showed 93% of readers wanted a referendum on hangings to combat increasing violent crime

"There will be no review by this government. We have outlawed the capital sentence," Mandela said

Rapidly escalating crime, from car hijackings to commercial fraud, is a main obstacle cited by the business community to economic growth and by South Africans who are leaving the country

A poll published this week by The Star showed only 7% of its readers, of all ethnic groups, opposed a return to state hangings. Of those, many wanted life imprisonment without remission for murderers

The majority wanted a state of emergency introduced and said a suspension of some civil rights

## Your views

...the death penalty are to be delivered by the Department of Justice...  
...3,5% of its readers...  
...paid against...  
...depth...

was justifiable to counter the nearly 2 million serious crimes reported last year, including 18 983 murders and 66 838 robberies

But Mandela said the death penalty went against fundamen-

tal human rights and was an outdated answer to crime "Our task is to go to the grassroots, to modernise them and indicate the strategies that should be adopted if we are going to bring down the level of crime"

Pledging his faith in anti-crime measures begun during his two years in office, Mandela said a campaign to root out corruption in the police force had led to the arrest of 708 officers between July 1994 and June this year

"So, the tide against crime is gathering momentum. We believe that in due course we will be able to bring down the high levels of crime," the president said

The crime wave prompted Justice Minister Dullah Omar to announce recently that the ANC would reassess its opposition to the death penalty

But Mandela has always made clear that state hangings are repugnant to the human rights culture he wants to uphold - Reuters

# TRC raids navy base to secure documents

HENRY LUDSKI  
POLITICAL WRITER

TRUTH and Reconciliation Commission investigators — armed with a search warrant — retrieved a batch of documents from the SAS Wingfield naval base yesterday

But the base's Commanding Officer, Commander Gerry de Vries, expressed "surprise" at the particular documents the investigators had requested, saying that they contained "nothing"

"If the Defence Force was involved in any dirty dealings then we (the navy) certainly don't know anything about it," said De Vries, who described the TRC visit to his base as something of a "fishing" expedition

It was the first time TRC staff — or anybody else — had entered a navy base with a search warrant to take possession of highly-classified documents. But it is unlikely to be the last.

"Should we in future require other documents and encounter procedural problems which prevent us from doing so we will have no hesitation in executing a search warrant," said TRC Western Cape

CT 26/9/96 (252)  
media spokesperson Ms Christelle Terreblanche

The TRC's investigating unit would be going through the documents to satisfy itself it had retrieved the correct information, and would return if it required additional documents, she said

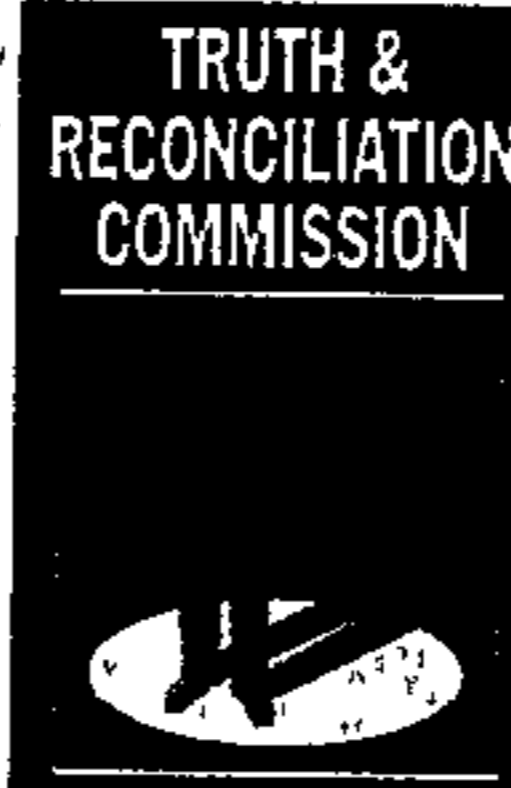
Terreblanche refused to reveal the nature of the investigation, saying that doing so could "compromise" the particular investigation

However, it is understood it could be related to military-style attacks on anti-apartheid activities at the height of the struggle against the previous regime

TRC investigators previously took documents from the Youngsfield military base near Wynberg, but they met with resistance when they tried to conduct a similar operation at Wingfield

Last Friday they left Wingfield empty-handed when they were prevented from taking the material, in spite of having obtained a search warrant

However, after what the TRC described as "protracted negotiations" yesterday, they left Wingfield with the documents



## Former Broederbond asks Tutu for forgiveness

OWN CORRESPONDENT

PRETORIA: Truth and Reconciliation Commission chairman Archbishop Desmond Tutu was faced with hands-on truth and forgiveness here last night when a former foe stepped out of an audience and asked for forgiveness

Tutu was the speaker at a Rainbow Nation celebration at the University of Pretoria last night when former member of the Afrikaner Broederbond, Pastor Blackie Swartz, stepped up to the podium and recalled how he witnessed the mistreatment of the archbishop

Swartz said he was working with the defence force in a security operation on the border of the former self-governing state of Venda in the early 80s

The archbishop — who was the general secretary of the South African Council of Churches — came to the border post and I saw how he and others were manhandled by soldiers, he said

As a Christian I must ask for his forgiveness because as a Christian I did not speak up for him and help him when I was in a position to do so

Tutu and Swartz then embraced

Tutu told the small audience that if only a third of former Vlakplaas commander Eugene de Kock's testimony is true, it should serve as a reminder of all that has been accomplished since 1994

There's been an incredible transformation in this country. We have very short memories, making people forget that we were on the verge of an awful bloodbath just before 1994 elections, he said

Referring to the TRC's request that the SANDF reveal the names of soldiers involved in the 1985 Duncan Village massacre in the Eastern Cape, he said more names of army personnel involved in similar massacres should also be forthcoming

Particular events such as these serve as a window on this type of activity

We would obviously want the judiciary, the medical profession and business to come forward and state what their role in this tragedy was, he said

The TRC already indicated earlier this week that the managing directors of companies which dismissed workers wounded in the Duncan Village massacre will be called to explain their actions

# Rights body unveils proposals on racism

BD26/9/96 (252)

PRETORIA — Proposals that racism be outlawed in SA were released by the SA Human Rights Commission in Pretoria on Wednesday. It also recommended all public and private institutions be subjected to an annual racism audit by an independent evaluator.

"Such an audit should have the same force in law as a financial audit, and the results should be published," the commission said in a report recently submitted to the government.

It had been compiled after a request by the UN to the government earlier this year for information on what SA was doing to curb racism and racial discrimination. The matter was referred to the commission, which drew up a proposed programme of action. The recommendations were adopted by the commission last week.

The commission proposed legislation to declare all forms of racism and racial discrimination punishable offences.

Such legislation should outline national policy guidelines on affirmative action, procedures to ensure compliance, and incentives for promoting good race relations. The SA Law Commission should amend all laws perpetuating racism and racial discrimination.

It said a commission member should be appointed as public investigator to inquire into

racism. The commission should furthermore set up a national racism barometer, which would publish details of anti-racism practice in schools, public service, commerce and industry.

All organisations making bids for state tenders should be expected to present a satisfactory racism audit. In terms of media, the report recommended laws to punish the dissemination of ideas based on racial hatred or superiority.

Meanwhile, an SA Human Rights Commission request yesterday for R6m to spend on a human rights awareness programme was met with a call by President Nelson Mandela for state bodies not to exceed their budget allocations.

After meeting Mandela in Pretoria, commission chairman Barney Pitso said the body had a vital role to ensure that human rights were not disregarded in anti-crime strategies.

A national public awareness programme on this topic would cost at least R6m — almost as much as the commission's total budget. "We are told if we want to do it well, we have to think about R12m," Pitso said.

Mandela said government had inherited a R254bn debt, and was operating under tight financial constraints but the issue raised by Pitso was an important one, and he would take that into account — Sapa

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# Deeper motives behind Mandela's move

THE controversy over President Nelson Mandela's apparent public endorsement of Constitutional Court deputy president Ismail Mahomed's nomination as the next chief justice leaves many questions unanswered.

The president's action, to call the writing for Mahomed to be included among the list of nominees, appears, superficially at least, to have been quite irrational.

Mahomed had already been nominated by, among others, the Black Lawyers' Association, the National Association of Democratic Lawyers, various university law faculties and, no doubt, a number of others besides.

The four-person committee appointed to pass the list of nominees on to the Judicial Services Commission (JSC) included three people seen as close to the President: Justice Minister Dullah Omar, presidential legal adviser Cholas Haysom and Constitutional Court president Arthur Raskelson (the fourth was incumbent Chief Justice Michael Dube). They, surely, would have made sure that Mahomed's name appeared on the list of nominees.

Beyond that, the 17-member commission, which Mandela is alleged to consult before appointing the new chief justice, is expected to lean towards Mahomed in legal circles to a comfortable degree. And even if it did not, Mandela is constitutionally and politically entitled to take an interest.

If all this is so, why did Mandela stir up this hornet's nest by offering his support—only implicitly, it is true, but nevertheless clearly—to Mahomed?

His action has served only to divert attention from the real debate, over whether Mahomed or Appeal Court Judge Henne van Heerden is the right candidate for the position, to a debate over the correctness or otherwise of Mandela's intervention.

This has been particularly useful to those opposed to Mahomed's appointment, including the more conservative sections of the press

There is more to President Mandela's intervention in the contest for chief justice than meets the eye, reports Alan Fine

and Judiciary Appeal Court Judge Joos Hefer has gone so far as to call for Mahomed to "do the right thing" by standing down.

Another consequence, unconfirmed but widely discussed, is that the debate has led to the mobilisation of about five judges who have let it be known that they will resign if Mahomed is appointed to the post over the head of Van Heerden, whom they believe is entitled to the promotion.

All this would appear to raise serious questions about Mandela's political rationality and judgment. That is, unless his aim was not to influence the commission unduly, as has commonly been assumed, but rather to achieve some other goal.

And that is the picture now emerging.

Legal and government sources indicate that Mandela's real motive was less to advance Mahomed's candidature with regard to Van Heerden, than it was to take a public stand designed to convince a reluctant Mahomed to accept nomination and go through with the process.

Senior lawyers and government sources say Mahomed has let it be known he is not at all keen to accept the post.

Personally, this appointment would mean an inconvenient relocation by him and his family to Bloemfontein, a city of which he does not have pleasant memories, given the history of its treatment of people of Indian origin.

Professionally, he is in his element in the sphere of constitutional law and there would be far less opportunity for him to practise in this field as head of the Appeal Court.

When this information was conveyed to Mandela, apparently by Omar, it appears the president

decided that urgent measures were justified. Already unhappy with pressure from top judges to give the position to Van Heerden, Mandela penned the controversial letter regarding Mahomed.

This possibly does make it difficult for Mahomed to refuse the calling if and when it arises, although it seems Mahomed had already decided, reluctantly, to accept the nomination prior to the publication of Mandela's letter.

The primary motive, then, would have been to reinforce the determination of a possibly wavering Mahomed to go through with the process.

It appears that Mandela was also keen to set a precedent for the future that the president should have the right to nominate candidates for the top posts in the Appeal and Constitutional Courts. There was, apparently, a strong judicial lobby against this.

All this renders more understandable Mandela's intervention. Although it was politically messy, it at least suggests a good reason for doing it.

Even so, was it wise or necessary, and what does it do to the standing of the commission?

There is certainly a good case to be made that Mahomed's appointment as chief justice is important politically. This is not to say that Van Heerden would not have done the job competently. He is, by all accounts, a sound judicial officer. However, as a legal mind, it is generally accepted that Mahomed is at least Van Heerden's equal.

In addition, Mahomed would bring to the Supreme Court a credibility and legitimacy among the country's people which it still lacks, notwithstanding former judge Rex van Schalkwyk's protestations. That is not unimportant, given

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the sorry state of SA's criminal justice system. Mahomed is of the new order rather than the old. Were it not for SA's political history, he would almost certainly have earned the seniority which traditionally, though not invariably, is a prerequisite for elevation to the post of chief justice.

And he would certainly not be a token appointee of limited experience and experience put there simply because he is black—a charge laid by Van Schalkwyk as regards other recent appointments.

There is unlikely to be another black judge ready to take the top post for at least 15 to 20 years, the minimum time period it would take for the best members of the recent intake to develop the necessary experience.

One suggestion is that a group of eminent people of the likes of Desmond Tutu should have been mobilised to do the job. Mandela was attempting—to convince Mahomed that his appointment is in the national interest and that this should override his personal and professional misgivings.

Does the president have the right, procedurally, to intervene as he did? That, as they might say in law school, is a moot point.

The commission is a device designed to bring an element of legal expertise and objectivity to a profoundly political process. A good case can be made that the president has every right to intervene at any time given that the appointment is ultimately his to make.

However, it is equally arguable that, given its supposed function, the commission should be allowed to develop its view without influence from above.

Thereafter, if the president chooses to override its recommendations (as he did the selection panel in the case of the truth commission) there would be a fair amount of political flak.

But then, at least, it would be a direct overturning of the commission's views, rather than what has been seen, albeit mistakenly, as an underhand way of influencing it in advance.

That, perhaps, is the more appropriate form of consultation the law requires.



Judge Mahomed, reluctant nominee?

# TRC to rethink amnesty cut-off date

By ROBERT BRAND AND SAPA

A possible extension of the December 6 1993 cut-off date for amnesty would be a "major item" on the agenda of the Truth and Reconciliation Commission's next meeting, commission deputy chairman Dr Alex Boraine said in Cape Town yesterday.

Boraine said commissioners had already discussed the matter but felt that it needed to be debated formally at a full meeting of the 17-member panel, Sapa reports.

The commission is due to meet on October 7.

Boraine said there were mixed feelings among commissioners on extending the cut-off date. While some believed the date should remain fixed, others were pushing for it to be moved to May 10 1994, the date of President Mandela's inauguration.

(252) Stan 27/9/96  
Freedom Front leader General Constand Viljoen recently told the commission the present cut-off date discriminated against Afrikaners who had committed politically motivated offences after December 6. He said he was unable to encourage supporters to appear before the commission as they could incriminate themselves.

The commission is going ahead with preparations for a submission by officers of the former SA Defence Force on Monday despite the military's "unilateral" cancellation, Boraine said.

"It is totally unacceptable to issue a one-liner to the media calling the meeting off. We can see no genuine reasons for the delay. We are expecting the submission to be made at 10am on Monday as per arrangement," Boraine said.

He added that he was "extremely angry and annoyed" by

the cancellation.

SA National Defence Force spokesman Major Fanie Pretorius said the submission had been cancelled because of "unforeseen delays in obtaining certain inputs" from the officers concerned.

The SANDF clashed with the commission last week over access to documents at military bases, and the cancellation has plunged the relationship between the TRC and the military to new depths.

Pretorius denied the SANDF was unwilling to co-operate with the commission, saying Monday's submission would have been on behalf of members of the former SADF. The SANDF was preparing a separate submission, which would be made at a later date.

A spokesman for the defence department said a retired officer would attend Monday's hearing to ask for a postponement.

# Mandela promises tight bail conditions

(252) 80 27/9/96  
PRETORIA — Legislation to tighten bail conditions would go ahead despite threats by "idealists" to take the government to the Constitutional Court over the matter, President Nelson Mandela said yesterday. "We are prepared for that," he told reporters after meeting an SA Council of Churches delegation at the Union Buildings in Pretoria. Mandela said he had assured the council that legislation on stricter bail conditions would be introduced during the current session of Parliament.

"But I must point out, these are not easy issues. Among us we have idealists .. who are not concerned with what is happening on the ground."

These people were of the opinion stricter bail conditions would be contrary to the Bill of Rights.

He said he agreed with the delegation there was widespread dissatisfaction about crimes committed by suspects out on bail. "We had to listen to this outcry, and we will be introducing legislation to tighten bail conditions."

In a memorandum handed to Mandela, the council delegation said crime was affecting every facet of life in SA. The delegation expressed concern at education subsidy cuts, saying this was aggravating the crisis in education, as well as in church schools.

On vigilante groups, it voiced understanding for communities' striving for security, but said it could not condone such behaviour. The delegation pledged the council's support of government efforts to fight crime and violence, and said a church campaign in this regard would be launched.

Mandela also renewed calls on skilled South Africans not to leave the country, saying their expertise was vital to transformation.

Reacting to reports linking emigration to crime and violence, he said his appeal applied especially to those who had enjoyed education and other opportunities which the majority had been denied.

"You can't transform the country without people who have skills and training. That is why it is so critical for those groups who have had this opportunity to stay with us and to help us."

A human resource consultancy on Wednesday reported most people emigrating had cited crime and violence as the reason. — Sapa.

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## 'No budget cuts for Truth and Reconciliation Commission'

Star 28/9/96 (252)

Both President Nelson Mandela and Deputy President Thabo Mbeki had given the assurance that no final decision had been taken on cutting the Truth Commission's budget, deputy chairman Dr Alex Boraine said yesterday. He said the matter had been raised when he and commission chairman Archbishop Desmond Tutu met Mandela and Mbeki recently.

The meeting followed a warning from the Cabinet that the commission's R150-million budget might have to be trimmed in line with national priorities.

Boraine believed the proposed budget cuts were the result of a misunderstanding.

"It seems they (the Government) thought we were asking for additional funding" - Sapa

# De Kock determined to get amnesty from TRC

By NORMAN CHANDLER

Eugene de Kock intends to go down fighting.

He made this clear yesterday when he told the Supreme Court in Pretoria that he would be seeking amnesty from the Truth and Reconciliation Commission by again naming the top securocrats who ordered him and his Vlakplaas-based C-10 counter-insurgency unit into action against the opponents of apartheid in the 1980s

He has already named former presidents P W Botha and F W de Klerk as well as former cabinet ministers Pik Botha, General Magnus Malan, Louis le Grange and Adriaan Vlok and top police generals of being aware of dirty-tricks operations launched from Pretoria

Among the operations, he told the court, was the bombing of the London headquarters of the ANC and the killing of Swedish prime minister Olöf Palme 10 years ago in an operation called Long Reach which he claimed was masterminded by superspy Craig Williamson

Mr Justice Willem van der Merwe told De Kock yesterday he would be asking questions about the Palme assassination, which has never been solved despite international efforts to find the killer.

Swedish police have said Williamson had been a suspect several years ago in regard to the assassination but no firm evidence could be obtained

Earlier yesterday, De Kock agreed with Transvaal Deputy Attorney-General Anton Ackerman that his Palme revelation was "the most astonishing statement"

He said he had not mentioned it earlier because he had not recollected being told about it "in about 1992-93" but had, however, made a statement on the matter to Antoinette de Jager of the attorney-general's office

"There was no specific reason why I had not said anything earlier," he told the court

He was merely pointing out that there was "a huge (security) system in operation in South Africa at the time"

The trial, which has already run for more than 18 months, has been adjourned until October 7, when cross-examination by Ackerman will be completed and expert testimony for the defence, led by Flp Hattingh, SC, is provided by five witnesses, including psychiatrists, psychologists, medical doctors and criminologists

One aspect which is to be covered concerns De Kock's statement that he is suffering from post-traumatic stress syndrome (PTSS), a condition first diagnosed among returning American soldiers from the 1960s Vietnam conflict

De Kock says he is suffering from strange dreams, lack of sleep, nervousness and stress as a result of his experiences in the Koevoet



**SPILLING BEANS:** Eugene de Kock to name securocrats

army and police unit which operated in the former South-West Africa (now Namibia) during the so-called bush war, and with C-10

He has been receiving treatment for PTSS for two years

It is expected that sentence will be passed by the end of next month De Kock has already been

found guilty of six murders, two conspiracies to murder and numerous charges of fraud

De Kock - nicknamed "Prime Evil" by his colleagues and "Scourge of God" by the ANC during the "total onslaught" years of the former government - told the court that he had made an application to the TRC for amnesty, but had received a letter which stated that he had incorrectly

filled out a form detailing his experiences

He had not yet replied to the Truth Commission but was determined to seek amnesty "even from behind bars".

"I am not far away from sentencing," he said "The end result of my amnesty application is to go free Had I not been sitting in this court, I would have already applied for amnesty"

De Kock said he would be making full confessions to the TRC as he believed he had had "heaps of dirt" piled on him by police generals, whom he said no longer supported him as a result of testimony he gave last week

"The generals have decided among themselves not to support police personnel," he commented

In cross-examination this week, De Kock again named top officers who he believes have turned their backs on him

They include generals Basie Smit, Krappies Engelbrecht, Johan Coetzee, Nick van Rensburg, Johan van der Merwe, Jac Buchler, Gerrit Erasmus, H G de Witt and Herman Stadler

He denied that he would have killed his own colleagues unless he had been ordered to do so - as was the case at Motherwell, near Port Elizabeth, where four people, including three policemen, had been murdered

# Judges take sides in hunt for new chief

ST 29/9/96 (252)

**FIFTEEN** judges have broken ranks to back Justice Ismail Mahomed for the country's next chief justice — a move which comes only days before the Judicial Service Commission is due to interview the only two candidates for the post.

Justice Mahomed, deputy president of the Constitutional Court, and Appeal Court judge Henne van Heerden will be interviewed by the commission in Cape Town on Friday. It will be the first time a South African chief justice has been chosen after a process of nomination and public interviews.

The final selection will be made by President Nelson Mandela in consultation with the cabinet.

Among the 15 judges who have declared their support for Justice Mahomed's candidacy are judges Mohammed Navsa, Robert Nugent, John Myburgh, Chris Nicholson and Edwin Cameron.

The process has already proved controversial, with up to 100 judges throwing their weight behind Judge van Heerden, leaving support for Justice Mahomed to be expressed by a number of legal organisations involved in human rights work, and, most controversially, by President Mandela.

In their memorandum to the commission this week, the 15 judges said they had

By CARMEL RICKARD

no objection to either of the candidates and that they would normally have left the matter to be decided without any comment on their part.

However, because other members of the judiciary had informed the commission of their preference for one candidate, they felt obliged to say they did not share this view.

Explaining their support for Justice Mahomed, the 15 judges said that under the new Constitution, the traditional role of a judge had to be reappraised. Judges had to infuse the law with a proper recognition of the rights of all and to ensure public confidence that the judiciary would carry out this function.

They said they believed Justice Mahomed was best able at this time to provide the leadership needed to carry out this task.

He had a record of commitment to the values of the new Constitution which the courts had to apply, he would be able to give the guidance needed and, in a sense, he would be able to symbolise the judiciary's commitment to applying the values of the new Constitution.

The public interviews will take place at the Waalburg Conference Centre.

# Our readers are sick to death of criminals

By CP REPORTER

(252)

"HANG THE criminals", "Yes, to the hangman", was the outcry from the majority of City Press readers, who voted overwhelmingly for the re-introduction of the death penalty

With the scourge of crime currently

## Your vote: bring back the death penalty

□ FROM PAGE 1

"Any society is in the first instance a moral society. Many of its aspirations, for instance for reform and redistribution, are important. But the essence of a society is its moral values.

"Something must be done to restore that, and people see the death penalty as a symbol of that," said Schlemmer.

Schlemmer said it did not mean that the 93 percent who voted for the death penalty wanted to kill other people, but that they wanted to send out a strong message.

He said the readers who took part in the poll do not necessarily represent the masses. The masses are much more apathetic.

"Those readers who took part are more politicised, with a greater sense of their responsibilities and civil rights. They have the most developed social and political conscience.

"They are a selective but significant sample of society.

"One would have expected that more of them should want to maintain the abolishment of the death penalty, because they uphold values such as human rights and the protection of human lives.

"It is therefore interesting that so many voted for the death penalty."

It was reported that President Mandela

sweeping South Africa, it was clear from the readers' votes that a "desperate situation demands desperate means".

As Tunu wa Motau of Diepkloof, Soweto, put it: "Criminals execute their dastardly acts with impunity, fully aware that President Mandela has assured them of the right to life at the expense of us law-abiding citizens."

on Wednesday rejected calls for a review of the death penalty, saying public concern about the matter was due to what he called a lack of information.

"I will not even ask that the matter be discussed in the national executive committee of the African National Congress," he told reporters in Pretoria.

But recent surveys have indicated that the majority of South Africans favoured the return of capital punishment.

In a poll conducted by a Johannesburg daily newspaper, 93 percent of its readers demanded a national referendum on the reintroduction of the death penalty.

Mandela said the Constitutional Court had ruled that capital punishment was contrary to the constitution.

"There is going to be no review whatsoever," he said.

"I appreciate the concern of the public, which is due to a lack of information. Our task is to go to grassroots to mobilise them, and to indicate the strategies that should be adopted if we are going to reduce the level of crime."

Meanwhile crime has been cited as the main reason people emigrated from South Africa, a report released on Wednesday by human resource consultants FSA-Contact showed. Other reasons were a fall in living standards, health and education.

abiding citizens"

"Bring back the noose, because it is a deterrent," added Motau.

Of more than 1 000 votes we received, only a few were against the death penalty.

Says Lazarus Mohlala of Springfield: "I hate the death penalty and I hate to support criminals with the taxpayer's money."

## Zimbabweans divided over death sentence

HANGINGS are set to continue in Zimbabwe, despite calls by human rights and religious activists for the abolition of capital punishment.

Zimbabwe's Justice Minister, Emmerson Mnangagwa, said this week that a new hangman had been hired after a lengthy search. His predecessor died in March.

Capital punishment in Zimbabwe is constitutional only in cases of murder where there are no extenuating circumstances, but human rights groups there argue that the death penalty should be abolished for all crimes.

"We are opposed to this old-fashioned way of punishing criminals. Death should be replaced by life imprisonment," said Elizabeth Feltoe, acting director of the Catholic Commission for Justice and Peace in Zimbabwe (CCJP).

"We petitioned the government to stop this, because we believe in the reform and rehabilitation of offenders," Feltoe added.

David Chimhini, director of Zimrights, another human rights group, said capital punishment was morally unjustifiable.

This is an emotive issue for most Zimbabweans. Some believe it to be the only way to achieve stability in their society, and some believe the State has no justification for killing criminals - Sapa-IPS.

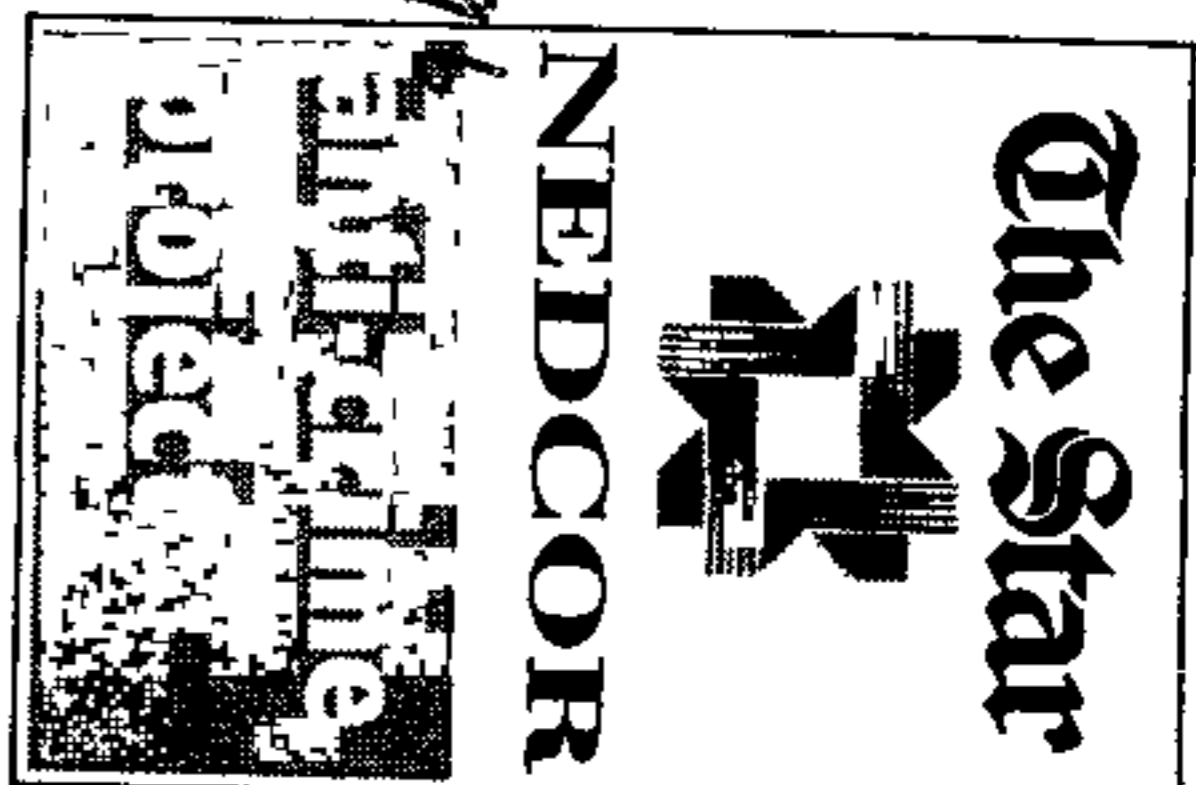


# Lang's 'em mentality' abounds in SA

This is the first of a series of articles in The Star/Nedcor anti-crime project. In her report on Punishment and Protection, Helen Grange says that with a revised approach to crime, talk of reinstating the death penalty will vanish

(252)

Star 30/9/9



Four-wheeling it up a dirt road in the northern province recently, the driver, a local farmer, turned me and said "You know, if you it all those hijackers and publicly executed them, that would be care of the problem."

The sentiment is widespread South Africa. Modern civilisation, while it may have tempered methods of punishment and effectively out-tended eye for an eye justice, has housed that impulse.

Thus, South Africa's notorious re-ridden society finds itself at its with the abolition of death a penalty for crimes such as under - and the administrators law and order are in the unenviable position of trying to protect

zens within the constraints of epiable judicial standards. The Government has been re-ndingly unsuccessful to date stemning spiralling crime v it took the seat of power, and xeleagnered security chiefs, in about-turn betraying the level ter frustration, recently called 1 review of the party's position apital punishment.

Paradoxically, the new Bill of Rights and its interpretation in the Constitutional Court (CC) has watered down some of the punishment options available to the courts and afforded law breakers unprecedented protection.

Corporal punishment may no longer be administered to juveniles, debtors may no longer be jailed and, the onus is now on the state to prove its case against those found in possession of guns or drugs.

Nevertheless, the public call to get the criminals behind bars has reached fever pitch, and in response, the Government has pulled a host of crime combating strategies out of the hat.

The call to review the death penalty is somewhat of a red herring - since it would require re-wording constitutional clauses already agreed and sanctioned by the Constitutional Court.

And while public surveys have shown a large majority of the population is in favour of capital punishment, human rights bodies remain vociferous in their opposition to it, recently posing the question. If ANC leaders are prepared to ditch a principled position because they are alarmed at the threat to stability, would they consider breaking other human rights principles?

Of far more immediate importance at this stage are the legislative moves currently being mooted by the security ministries and the policy ideas germinated at the ANC's safety and security summit last month.

The parliamentary justice committee has already started drafting three pieces of legislation - the Proceeds of Crime Bill, which will empower the courts to confiscate the proceeds from criminal activities; the Interna-

tional Co-operation in Criminal Matters Bill, which will allow courts to request help in obtaining evidence, and the Extradition Amendment Bill, which should smoothen the transfer of suspects to and from South Africa.

These new laws will give police investigators the teeth they need to tackle money laundering, drug trafficking and corruption. Simultaneously, the Correctional Services department has proposed laws which will ensure that proper effect is given to life sentences and that lesser criminals serve a substantial portion of their sentences.

The proposals empower a court to lay down a minimum mandatory prison term to be served by a convict, and to have a say in determining when he or she could apply for parole.

The justice department, on the other hand, is considering intro-

ducing minimum sentences for certain crimes, such as gang and drug-related offences.

The expense and logistics of imprisoning law offenders remains, however, a major headache for the State. It costs R61 30 a day to keep our deviants behind bars, amounting to more than R22 000 for each inmate per year.

There are about 120 700 prisoners in jail, although more than 20% of this figure are released every month. The failure of effective rehabilitation programmes and the massive levels of recidivism have prompted Nicro to call on the State to make more use of alternative forms of punishment, such as community service.

The police, meanwhile, have had reasonable success in a series of crime-busting projects, notably Operation Urban Strike, in which the police and patrol vehicles

have been augmented in greater Johannesburg, roadblocks have been set up and houses searched.

Police Commissioner George Prvaz, at the launch of this project, said the extra policemen drawn from other provinces would remain in Gauteng until crime showed a visible decline.

He said "It is time to meet lethal force with lethal force. You can't expect a policeman to fight an AK-47 with a pocket knife and we can't allow our policemen to be killed."

Yet it has become clear that the community is an essential component of the war against crime. Community activism has thus become the foundation of the partnership between the police and civil society that underpins most of the government's crime prevention programmes.

For instance, the Gauteng highway patrol, which was mit-

ated early this year by Business Against Crime and entails policemen patrolling in high-speed vehicles sponsored by BMW, has had impressive results.

The eruption into the limelight recently of People Against Gangsterism and Drugs (Pagad) has, however, demonstrated the benevolent and potentially sinister sides of community activism in fighting crime.

One of the causes of such forceful retaliation by the community has been identified as the absence of victim aid services, which has added to the sense of powerlessness of victims and contributed to public perceptions that perpetrators lie at the heart of crime prevention strategies in South Africa.

Graeme Simpson, director of the Centre for the Study of Violence and Reconciliation, has stressed that in the light of these

problems it is imperative that victim empowerment programmes are recognised for the critical value they add to crime prevention.

Among his suggestions are that the government set up victim aid services within all departments dealing with victimised communities and its state witness programme should be shaped to serve the needs of victims rather than merely offering protection to perpetrators who have chosen to turn state's witness.

With improved services for the victim, better co-operation between the government departments in their approach to crime and a body of legislation which not only empowers the judiciary but enables it to impose more effective punishments, the sentiment giving rise to the collective cry for the death penalty should be diminished if not extinguished.

in the law's view of who may marry whom, writes **Ann Eveleth**

# law will be transformed

(252) MTG 4-10/10/96

The commission questioned whether the practice of polygamy could be balanced with the Constitution's gender equality clause, but warned against an outright ban on polygamous marriages as this would be "extremely difficult to enforce. Moreover, there is some evidence that in a patriarchal world, where there is no economic, social or political equality between men and women, it is the institution of marriage itself, whether monogamous or polygamous which disadvantages women."

Nevertheless, the commission argued the principle of equality would "frequently be in conflict with the patriarchal principles pervading much of customary law"

Some potential conflicts included

- the customary provision requiring a woman to gain the support of her guardian for marriage,

- whether *lobola* should be allowed to influence the validity of the marriage

- the provision in the "official" version of customary law which deems wives of customary marriages as "minors",

- the lack of decision-making power of women on issues such as birth control, guardianship of children and the purchase or

alienation of family property,

- the lack of protection for family members from "inept or unreasonable conduct" by the head of the family;

- the wife's forfeiture of family property upon divorce,

- the lack of maintenance provisions within customary law

Nhlapo said he believed it was possible to remove the patriarchal aspects of customary law while keeping the institution intact

"What we are going to do is dignify traditional families based on a particular worldview of kinship, but also say, 'This is 1996 and if you had practised oppression in the past, then stop it'"

He said this would help to advance customary law, which was presently a mix of widely-varying "living law" or oral custom and codified or "official" customary law as entrenched in kwaZulu-Natal "Customary law has been neglected and has not kept pace with changing social circumstances. Removing the discrimination against it presents the chance to improve it and bring it up to date," he said

Nhlapo said the commission would begin "scouring the countryside" for views which would influence its final report. Legislation was expected to be tabled by mid-1997

## Religious leaders say Nelson should 'sanctify' relationship

**S**PEAKING of marriage, South African religious leaders say they would fully support President Nelson Mandela if he chose to make Graca Machel the next first lady of South Africa.

While most religious leaders who spoke to the *Mail & Guardian* this week said they didn't want to interfere with Mandela's "democratic rights", the general consensus was that "any adult relationship should be sanctified by wedding vows".

Former Anglican archbishop

Desmond Tutu has already made clear his hope that the leading couple would tie the knot. This week he was joined by several other religious leaders.

Methodist Church Bishop Stanley Magoba said he didn't "really think we can have a head of state in a relationship without marriage, but I don't want to pressure them".

Rhema Ministries Pastor Ray McCauley said he would "very much like to see [Mandela] remarry. He deserves some comfort and companionship in his golden years".

Orthodox Chief Rabbi Cyril Harris agreed, but said it was all up to the president: "If he's of a mind to, yes".

Nederduitse Gereformeerde Kerk spokesman Willie Botha said: "They are adult people, and it's for them to decide. If they are having an adult relationship I would say get married. It's not only a political issue, but also a personal one."

South African Hindu Maha Sabha secretary Rugbeer Kalideen also left it up to the president: "As one of the great statesman, he has a right to marry if he chooses to do so. There's nothing to stop him."

Moulana Ahmed Kathrada of the Natal Jamiat Ul-Ulema said it was "their life", but added that "if anybody is committing adultery it will be wrong whether it's the president or someone else".

Church of England Bishop Joe Bell agreed: "It's a personal decision, but we would condemn pre-marital sex," he said.



Graca Machel: Should the president marry his beloved?



A kiss is still a kiss Gay men at last weekend's Johannesburg Gay and Lesbian Pride Parade

PHOTO BRENT STIRTON

## Are legal gay weddings next?

**M**USLIMS and Hindus are about to find themselves in some highly unusual company as they bid for marital recognition under the new constitution as the gay and lesbian community begins to demand unrestricted marital recognition

The two religious groups — particularly Muslims — have been clamouring for legal recognition of their religious marriages for nearly two years now, but the battle for recognition of gay and lesbian partnerships is just beginning to gain momentum

The Law Commission's Professor Thandabantu Nhlapo said moves to recognise Muslim and Hindu marriages were also under investigation following the commission's decision to give a "top priority" rating to the reform of marriage and divorce law

"We haven't included it in the issue paper on customary marriage simply because it's simpler to research them separately, but we may still end up with one marriage Act," he said

Moulana Ahmed Kathrada of the Natal Jamiat Ul-Ulema said Muslim theologians had presented Bills to the Ministry of Home Affairs in 1994, but "we are still waiting for our first marriages to be recognised, never mind our polygamous marriages"

Waiting with them is a growing number of gay and lesbian couples who want the state to recognise their partnerships, and give them the right to marry, said Kevin Botha, legal adviser to the National Coalition for Gay and Lesbian Equality

"I get six or seven calls a day from

couples wanting to know whether they can get married," he said "The pressure is building in the community"

While Botha said the coalition was currently campaigning to end discrimination on more practical aspects of gay partnerships, such as workplace discrimination on pensions and other benefits, moves to demand same-sex marital recognition were not far off

"The current marriage Act isn't actually discriminatory, but the way common law is applied is and we believe this should also end," he said "Marriage should be dealt with as a block and all forms of marriage should be accepted in the new South Africa"

Madeleine Rose, editor of gay and lesbian magazine *Outright*, said the main problem was not the right to marry, but the practical problems created for same-sex couples

"If Bob and Jack are a couple, they buy a house together and Bob dies, then Bob's parents can throw Jack into the street if the house is in Bob's name," she said "We can't get bonds together, can't put our partners on our medical aid schemes, and can't provide for the immigration of our foreign partners. A heterosexual couple can"

Rose said she didn't believe "there is a single gay couple out there who wants to parody a heterosexual marriage, walking down the aisle with one partner wearing a dress and the other a suit, but what we do want is a recognition of partnership in South Africa"

The Law Commission's Nhlapo said he was "certain we will face growing pressure over gay marriages in the coming months", but the gay community is aware it is likely to face vocal opposition

"The religious right is going to have a field day, but we're not asking for a minister or a rabbi to condone a heterosexual parody," said Rose

Nevertheless, there are signs that the views of some religious leaders are beginning to bend. While most continue to object to homosexuality on religious grounds, many say they will not turn gays and lesbians away from their congregations and some have even begun to re-examine the issue entirely

Union of Orthodox Synagogues Chief Rabbi Cyril Harris said gay unions were "unacceptable because they are not productive. The purpose of a marriage is twofold: mutual contentment and companionship and productivity. Show me a gay couple that have produced a child and they'll be a real star"

Others such as the Nederduitse Gereformeerde Kerk and the Methodist Church said they would not turn gays or lesbians away, although they do not condone gay marriages

Rose and Botha said, however, that some churches had already begun to perform gay ceremonies. The coalition had successfully helped defend a priest from the United Congregational Church from censure last year after he performed a same-sex wedding ceremony

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M+G

4-10/10 196

Moves to grant legal recognition to customary marriages have opened the door to changes

# Marriage

MARRIAGE law will change significantly if proposals tabled by the Law Commission last week are accepted. Yet the integration of customary and common law has complex implications for both traditional communities and society at large.

The Law Commission's issue paper on the "Harmonisation of Common Law and Indigenous Law" cites a dozen potential areas of conflict between the constitutional rights of the new South Africa and the rules and practices of customary marriages. Project leader Professor Thandabantu Nhlapo, however, argues the current situation holds far greater contradictions.

"It was always an insult to my parents to be told they were just co-habiting because the old colonial-based legal system did not recognise their marriage. Our starting point is that non-recognition of customary marriages is totally unacceptable under the present Constitution."

The constitutional ban on cultural and religious discrimination implies an end to the days when only Christian and civil marriages gave legal legitimacy to a family unit, but the extension of recognition to other forms across South Africa's rich cultural tapestry poses as many questions as it answers.

Human rights lawyers thus week agreed the present situation is untenable, but argued the legalisation of polygamy posed potential conflicts between cultural freedoms and the right to gender equality.

Jenine Hicks, a representative of Durban's Community Law Centre who has worked extensively in rural Kwazulu-Natal, said the commission was "jumping the gun" by forwarding proposals before researching the views of rural women affected by polygamy and other aspects of customary marriage.

"It's outrageous to say only Christian or civil marriages are recognised, but rural women I've worked with say polygamy as a system has to go," she said. "Traditional men say it's essential to being a Zulu, but the women say it oppresses them."

Nhlapo agreed the commission would have to "walk a political tightrope" on the issue and that the consultation period may need to be extended to canvass sufficient views, but warned against allowing the polygamy debate to pose the main obstacle to the recognition of customary marriages.



Tradition versus liberation? Zulu King Goodwill Zwelithini's fifth wife, Nompumelelo Mekiya, at a traditional ceremony. Customary marriages are soon to receive state sanction

PHOTOGRAPH THEMINKOSI DWAYISA

# More bids for amnesty

(252)  
CT 1/10/96

**OWN CORRESPONDENT**

DURBAN Two high-profile amnesty applications will be heard by the Truth and Reconciliation Commission in KwaZulu-Natal before the end of the year.

In the first application, to be heard in Maritzburg later this month, convicted policeman Brian Mitchell will testify about his role in the notorious Trust Feed massacre near New Hanover, in which 11 people were murdered in 1988. Mitchell was sentenced to death on 11 counts but the sentence was later changed to 30 years' imprisonment.

In the other amnesty hearing self-confessed hit squad leader and Vlakplaas operative Mr Dirk Coetzee, Mr Almond Nofomela and a man called Tshikalanga will give evidence about the death of UDF activist and human rights lawyer Mr Griffiths Mxenge.

Coetzee is out on bail pending the Mxenge trial.

# Trust Feed convict applies for amnesty

(252)  
CAPE TOWN —

The truth commission is to hear an amnesty application from former policeman Brian Mitchell, who is serving a 30-year sentence for his part in the 1988 Trust Feed massacre, in Maritzburg next month, it was announced yesterday.

The commission said it had also set aside November 5 to 8 to hear amnesty applications from former operators Dirk Coetzee and Almond Nofomela in Durban.

This follows an earlier decision by the commission to ensure that their applications were heard before any possible criminal trial.

Mitchell, a former commander of New Hanover police station in Kwazulu-Natal, is due to appear before the commission's amnesty committee in Maritzburg on October 15 and 16.

## SA residence deadline extended

THE home affairs department said yesterday it had extended indefinitely the deadline for applications by aliens from neighbouring states for permanent SA residence.

The number of applications had doubled over the past two weeks — 84 815 had been received to date from citizens of SADC member states, the department said.

"It would appear that it has not been possible to accommodate all applications between July 1 and September 30, the period initially announced. In view of this, the operations for the

planning an operation to kill people whose sole fault was that they supported a legitimate organisation to which he was personally opposed".

Wilson, who is a member of the amnesty committee, told Sapa yesterday no decision had been taken on whether he should recuse himself

on the attitude of Mitchell's counsel, but I don't see any need to,"

Wilson said.  The truth commission and the SA National Defence Force have agreed on methods for the commission's investigative unit to gain access to military information.

Advocate Glenn Goosen and Maj-Gen Jan Kloppe had been appointed to oversee the process, the SANDF and truth commission said in a joint statement yesterday. — Sapa.

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2,5- to 4,1-million illegal aliens, many from SADC countries. — Sapa.

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Prof Wilfried Scharf of Cape Town University's criminology department, top right, and justice department adviser Enver Daniels, bottom right, address a Centre for the Study of Violence and Reconciliation audience yesterday in Braamfontein on the rise of vigilante groups in SA.

Pictures: ROBERT BOTHA

## Justice ministry plans skills revamp with Canadian help

Stephen Laufer

THE Canadian government would help SA's justice ministry set up a training programme for prosecutors and magistrates, Justice Minister Dullah Omar's adviser Enver Daniels said yesterday.

Daniels said there was an urgent need for a re-orientation of skills within the criminal justice system as morale was low among prosecutors and magistrates. Their skills had been learned under a repressive system and were unsuited to SA's needs.

The justice ministry was considering structures which would allow petty cases to be diverted away from the criminal justice system in an attempt to

allow magistrates courts to concentrate on more serious crime, he said.

A community court system which would integrate existing structures such as religious courts and street committees, was under discussion. It would be more effective than community policing forums which were not working in many areas because some communities believed the forums were run by former special branch officers.

Daniels said there was no final decision on how the state would ensure the rule of law prevailed and constitutional freedoms were upheld in community courts. Suggestions include intensive mutual surveillance by police and court members.

(252) (11/10/96)

# Truth Commission switching from victims to perpetrators

BY ROBERT BRAND

The Truth and Reconciliation Commission is poised to swoop on suspected human rights violators countrywide following a decision to swap the "velvet glove" approach for "a fist of steel", TRC chairman Archbishop Desmond Tutu has disclosed.

The commission's national investigations office has issued an ultimatum to retired police generals to make a detailed submission on apartheid crimes before Friday, while regional offices have been

*Star 2/10/96 (252)*  
instructed to prepare subpoenas for other policemen accused of crimes in testimony heard at public hearings across the country.

Announcing the new get-tough approach after a meeting of the TRC's human rights violations committee in Johannesburg yesterday, Tutu said the commission would scale down victim hearings to leave its hands free to take on the perpetrators.

"We have bent over backwards to accommodate the alleged perpetrators now we want to show the velvet glove

does have a fist of steel which could be used if necessary"

Expanding on the new strategy, TRC deputy chairman Dr Alex Boraine said the first move was the ultimatum to the seven retired generals, who include the immediate past commissioner of police, General Johan van der Merwe, and three other former commissioners.

The TRC was ready to serve subpoenas on them in August, but held back when the generals agreed to make a voluntary submission. That move is now wide-

ly seen as a delaying tactic.

Their written submission was handed to the commission two weeks ago but was "totally unsatisfactory", Boraine said.

"We told them they have two choices either they rewrite their submission with details of specific events they have knowledge of, or we will serve subpoenas on all of them," Boraine said.

"We are sorry it has come to this. We have tried our best to be co-operative. But if the opportunities which are given are spurned, or abused, we have no choice."

# 'Fist of steel' hangs over rights violators

CT 2/10/96 (252)

**OWN CORRESPONDENT**

JOHANNESBURG The Truth and Reconciliation Commission (TRC) is poised to swoop on suspected human rights violators country-wide following a decision to swap the "velvet glove" approach for "a fist of steel", TRC chairman Archbishop Desmond Tutu said

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The TRC was ready to serve subpoenas on them in August, but held back when the generals agreed to make a voluntary submission That move is now widely seen as a delaying tactic

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## Policeman's widow, 'killers' to look back

POLICEMAN Jetta Sethwala was killed by a mob near Upington in November 1985 Fourteen of the 26 people accused of his murder were sentenced to death under the common cause doctrine, in spite of assassinated Swapo lawyer Anton Lubowski's spirited defence

None were executed — benefiting first from the moratorium on the death penalty, they were eventually granted amnesty and freed

Today several of them, including Ms Evelyn de Bruyn and Mr Neville Witbooi, as well as Sethwala's widow, Mrs Betrus Seth-

wala, return to Upington to re-examine the circumstances of the murder, the trial, and subsequent events at a Truth and Reconciliation Commission hearing

Anthropologist Professor Martin West, will start proceedings with a lecture on common cause — Staff Writer





# Come clean or else, TRC warns generals

(252) ARG 2/10/96  
Johannesburg - The Truth and Reconciliation Commission is threatening to subpoena top apartheid-era police generals unless they come clean by Friday on at least 60 human rights violations attributed to police.

The generals promised last month to co-operate with the commission to avoid being forced to testify

But Alex Boraine, the commission's deputy chairman, told a news conference yesterday their written submission was incomplete and that the TRC wanted the generals, who include former police commissioner Johan van der Merwe, to rewrite it before Friday

"After giving very careful consideration to it (the report) we decided that it was totally unsatisfactory," Dr Boraine said

Archbishop Desmond Tutu, who heads the commission, told the conference that the TRC would in future take sterner action against alleged perpetrators of apartheid crimes who did not voluntarily appear before it

"We are saying this velvet glove does in fact have a fist of steel, which can be used when it seems necessary," Archbishop Tutu said

He said the commission had instructed its offices nationwide to start preparing subpoenas, but did not name any offenders

Archbishop Tutu said that since the Truth Commission had started its work in April, it had mostly heard harrowing tales of abuses from victims, and requests for amnesty had come from people already convicted and in prison

"But the one part of our work which we have not succeeded in dealing with, has been to provide people with information - who killed so-and-so, and if they did do it, who gave them the orders," he said, explaining the TRC's stricter approach

It has power to grant amnesty to perpetrators of abuses who fully confess to their deeds, but has yet to make any breakthroughs in exposing those with blood on their hands from apartheid's "dirty war" - Reuter

# Truth commission threat to subpoena ex-police generals

(252) PD 2/10/96

THE truth commission adopted a tough stance towards former police generals yesterday, warning it would subpoena them if they failed to provide detailed written representations on about 60 incidents of gross human rights violations by Friday.

Commission chairman Desmond Tutu said the body was entering a stage "where this velvet glove does in fact have a fist of steel which can be used" when necessary. All alleged perpetrators whose names the commission knew would from now on be subpoenaed and questioned.

The commission branded a previous submission by the police generals as "totally unsatisfactory". It wanted representations on specific events about which the generals had information, deputy chairman Alex Boraine said.

The commission had bent over backwards to co-operate with the generals. It now had to use all means at its disposal to uncover the truth.

Tutu said the commission had thus far failed to glean details of human rights violations because most amnesty applicants were convicted prisoners and could shed no new light on events.

He denied that Deputy President Thabo Mbeki had interfered with the commission by attempting to prevent it from issuing subpoenas to the generals last month. Mbeki had merely told Tutu police generals who believed they would be subpoenaed were willing to come forward voluntarily.

Tutu said it had been the commission's decision to allow the generals to come forward at their will. "At no point was there any pressure placed on the truth commission."

However, their representations fell short of the commission's expectations.

Boraine said the commission was unable to guarantee that the generals would be immune from prosecution in neighbouring countries — an issue they had indicated was a major concern. However, it was improbable that SA authorities would consider extradition requests because legislation that

Continued on Page 2

## Subpoena

(252)

Continued from Page 1

PD 2/10/96

provided for amnesty was sovereign.

He said the commission would provisionally hear submissions from military generals on October 21. The original hearing late last month was delayed after SANDF chief Gen Georg Meiring said more time was needed to incorporate submissions from generals who had recently given information.

The commission hoped it would receive the submission well in advance. It wanted to forward questions to the SANDF ahead of the hearing so it

would be prepared to answer queries.

In an apparent warning to the military generals, Boraine said the commission was not interested in "a soft analysis of overall war games".

The commission said it would scale down on hearings involving its human rights violations committee in order to concentrate on other aspects of its work — including its capacity to gather more statements and make findings.

Tutu said the commission's regions were getting ready to start issuing subpoenas. This would help streamline the process and give the national investigative unit a nationwide programme of section 29 hearings, at which subpoenaed people appeared.

## THE CHEQUERED HISTORY OF OUR TOP JUDGES

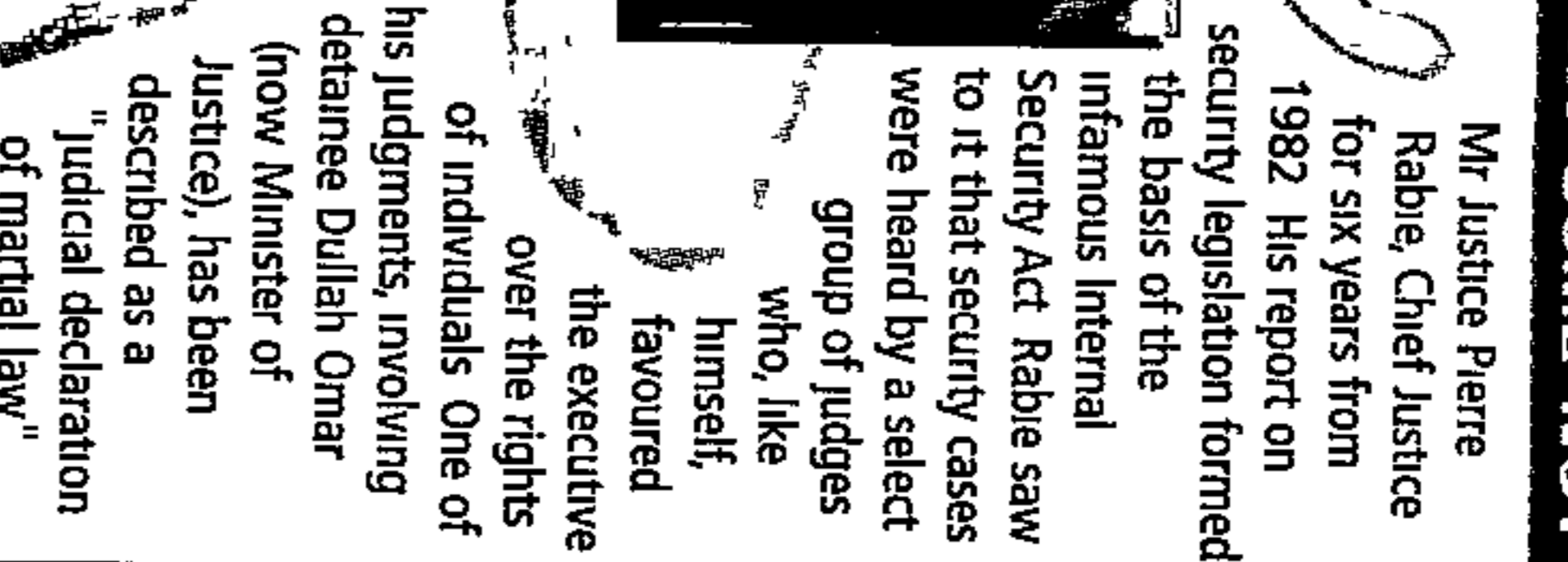
### SOME GREAT

Mr Justice Albert Centlivres, universally recognised as one of South Africa's greatest Chief Justices, ruled the Bench from 1950 to 1957. His courageous opposition to the removal of coloured voters from the common voters roll in 1952 won him the reputation of a rights-minded judge who tried to curb the incroaching power of the executive under his leadership, the Appellate Division insisted on quality before the law for all races.



### SOME NOT

Mr Justice Pierre Rabie, Chief Justice for six years from 1982. His report on security legislation formed the basis of the infamous Internal Security Act. Rabie saw to it that security cases were heard by a select group of judges who, like himself, favoured the executive over the rights of individuals. One of his judgments, involving detainee Dullah Omar (now Minister of Justice), has been described as a "judicial declaration of martial law".



### THE CHIEF JUSTICE AND POLITICS

Political interference in judicial appointments is nothing new—the widely respected Mr Justice OD Schreiner in 1959 the most senior judge on the Appellate Division after the Chief Justice, was expected to succeed Chief Justice Henry Fagan in 1959. However, his support of Mr Justice Centlivres during the NP's

attempts to remove coloureds from the voters roll had not endeared him to the government. He was passed over for promotion and Mr Justice LC Steyn, more acceptable to the government but third in line in seniority after Mr Justice Schreiner and Mr Justice Hoexter, was given the top job.



### 1996: A NEW ERA

Mr Justice Henne van Heerden (right) is the next most senior judge on the Appellate Division after Chief Justice Michael Corbett. If tradition were to be strictly followed, he would become the next Chief Justice. But times change and a more transparent process in the appointment of the Chief Justice could see Mr Justice Ismail Mahomed (left), deputy president of the Constitutional Court, elevated to that post.

GRAPHIC FRANCOIS SMIT



# All hail to which chief?

(252) Star 3/10/96

**W**hen the National Party came to power in 1948, it embarked on a vigorous affirmative action campaign to de-anglicise the judiciary. Then Justice Minister "Blacker" Swart had no qualms about warring considerations of seniority to appoint Afrikaans advocates to the Bench and Afrikaans judges to the Appellate Division over the heads of their more senior English contemporaries.

Thus P M Cillie went from junior at the Bar to QC to acting judge to judge in less than a month, Fritz Steyn, who had practised as an attorney before becoming an MP and finally an ambassador, was appointed Senior Counsel four years after last practising law, and made a judge two months later, and finally, in 1959, Mr Justice OD Schreiner was passed over in favour of a more junior Appellate Division judge, Mr Justice LC Steyn, for the coveted position of Chief Justice.

Swart's problem was that the judiciary in 1948 was the almost exclusive preserve of his former English masters; not only the Bench, but also the senior Bar, the traditional selection pool for Supreme Court judges. Had Swart followed precedent and chosen his judges solely on the basis of merit, it would have taken decades for the judiciary to be transformed. He elected to kick-start the

The Judicial Service Commission sits tomorrow to interview two fine candidates for the post of Chief Justice. Robert Brand recalls how the Nats manipulated the Bench in 1948

process by discarding criteria such as merit and seniority in many cases, and promoting Afrikaans lawyers over the heads of their seniors.

This is what Sunday Times editor Joel Mervin had to say in 1959 about Swart's transformation process: "It can be fairly said that about 80% of Mr Swart's judicial appointments have involved the promotion of less senior lawyers over the heads of their seniors. In short, Mr Swart has made the passing over of seniors the rule rather than the exception. He has destroyed a noble South African tradition."

Now, history is repeating itself. Agam, it seems likely that a more junior judge will get the top judicial post ahead of his acknowledged senior in the interests of transformation. And the debate around the selection process for a successor to Chief Justice Michael Corbett is not unlike that which raged during the 1950s — except that then, affirmative action was universally condemned by all except supporters of the National Party, while today it is seen as an essential mechanism of institutional transforma-

tion. What makes a good Chief Justice? According to Unisa law professor Gretchen Carpenter, the Chief Justice must be a very sound all-round lawyer, have good managerial and interpersonal skills, and be recognised as a fair-minded person of integrity. Many serving judges share those attributes.

But there is another important requirement: the Chief Justice must be acceptable to other judges, to the public, to everyone. "The Chief Justice is one of the most important people in the body politic; he is the top man in one of the three arms of government," says Carpenter. In that sense, the position of Chief Justice is of great symbolic importance, and it is no wonder that DF Malan wanted an Afrikaner in the hot seat or that Nelson Mandela wants somebody who would satisfy the aspirations of his own constituency. But the Chief Justice is more than a figurehead. Although he has no "magical powers" other than those of an ordinary appeal court judge, he plays a crucial role in shaping the judiciary as a whole, Carpenter says.

He has a say in the appointment of other judges which gives him no small measure of control over the transformation of the judiciary, one of the most pressing issues facing the Bench. He also manages the Appellate Division and assigns cases to particular judges. This is more than a purely administrative function. To illustrate this point, one need look no further than Chief Justice Pierre Rabie, who assigned almost all state of emergency-related cases to a select group of judges who, like himself, favoured the executive over the rights of individuals. Lastly, the Appellate Division is not only the court of last instance in the dispensation of justice; it also makes law by interpreting and developing our Roman-Dutch common law. The Chief Justice delivers those judgments, and in important cases would take it upon himself to write them.

The Chief Justice therefore has in his hands the power to transform the judiciary and the power to shape our common law — if he has the will to do it.

Interestingly, the Appellate Division has a much smaller constitutional role in our new democracy than it had under the old system, Carpenter says. What made a good Chief Justice in the past does not necessarily make a good Chief Justice now.

In constitutional matters under the previous regime the Chief Justice was called upon to strike a balance between the rights of individuals and the powers of the executive.

A rights-minded judge such as Chief Justice Centlivres steadfastly opposed attempts by the Government to remove coloureds from the common voters roll; not only because the procedure adopted by Parliament was unconstitutional, but also because the court refused to condone the derogation of existing rights of "non-Europeans".

This led to the infamous sleight of hand in 1955 by which Parliament enlarged the Appellate Division from six to 11, thus sidestepping Chief Justice Centlivres and ensuring itself of a majority in favour of its political actions. An executive-minded judge such as Chief Justice Rabie, on the other hand, allowed the State unprecedented powers in stifling opposition.

But the protection of individual rights is now in the hands of the Constitutional Court, which has to interpret the Constitution and guard against any excesses by the State.

# Welfare dept reassures anxious Jafta on closure of homes

Star 3/10/96 (300)

JODI BIEBER

BY MELANIE-ANN FERIS

The Department of Welfare has assured pensioners that if the Johannesburg Association for the Aged (Jafta) closed before the end of the year it would seek alternative accommodation for them.

Jafta has indicated that hundreds of frail and destitute old people could be on the street by January unless the association received a large cash injection.

Jafta chairman Bill Balsdon attributed the crisis to the freezing and reduction of state subsidies to old-age homes which effectively reduced the association's income by about 50%.

But Margot Davids, Gauteng director of social services, said yesterday there was no reason for the El Kero home for the aged in Hillbrow - one of the homes run by Jafta - to close down with the money it was still receiving regularly from the state.

Davids said El Kero was one of the few institutions that was receiving over R50 000 in subsidies every month and one of the few centres whose budget was cut by only 10%.

But other services such as rehabilitation centres have experienced cuts of up to 70%, she said.

The reduction in state aid to Jafta forms part of a R50-million cut in subsidies to old-age homes announced by the Government in May. This means that only people with a monthly income of R1 300 and less are now eligible for subsidies and can stay at state-funded old-age homes.

Balsdon said that without additional financial assistance all services provided by Jafta would come to a complete halt or be scaled down dramatically, leaving residents out on the streets.

It would also result in a loss of close to 200 jobs and the closure of two of the organisation's buildings, which together have state mortgages totalling almost R4-million.

But Davids said the Department of Health and Welfare contributed at least R191 000 a month in subsidies for services run by Jafta.

"This amount can be more if the home (El Kero) and the service centre are fully utilised and six more beds could be subsidised should the home be re-registered after they meet all the requirements," she added.

Balsdon, however, remains adamant that Jafta, which he says faces a shortfall of about R50 000 a month, will close down unless financial assistance is found.

■ The Soweto Home for the Aged

which accommodates about 100 pensioners is battling to maintain essential medical support services in the face of crippling govern-

ment subsidy cuts.

A spokesman for the home, Nomsa Ngcobo, said since the cutbacks kicked in around the

second half of this year the centre was struggling to provide medicines, hearing aids and even simple equipment such as

crutches.

The home has asked anybody able to offer assistance to please contact them on (011) 932-0050.



Safe for now ... this pensioner will not be put out on the street if the Johannesburg Association for the Aged (Jafta) folds before the end of the year. The Department of Welfare has said that it will find alternative accommodation if the association is forced to close. Jafta has been looking for a large cash injection after its income was effectively slashed by 50% by cuts in state subsidies to old-age homes.

## Pensioners tell of 'hardship nightmare' as chaos reigns

BY TROYE LUND

How to get one square meal a day without a cent and keep her diabetic husband's sugar level stable has been Evette Lodewick's daily nightmare for seven months. It will continue to be until the chaos at Gauteng pension offices is under control.

The 65-year-old woman, who sat yesterday morning in the query queue at Johannesburg's pension office for the sixth time since she applied for a pension in March this year, is one of about 10 000 people of Greater Johannesburg in the same predicament.

The Gauteng pension offices have not paid out anyone who

applied this year because of the shambles caused by the amalgamation of the apartheid-era welfare offices.

"They say I will get money soon. I don't even know how much I will get. Anything at all will do."

"We hear nothing. I just need to be guaranteed one decent meal a day," said Lodewick, who lives with her 78-year-old husband in Eldorado Park.

Employees at pension offices say Lodewick will not get her first cheque before March next year. The new computer system has not yet been installed, and staff have to be trained on them before the backlog is addressed.

Lodewick told the pensions clerk. "I never dreamt retirement would be this desperate. I always thought you get enough money to grow old on after working your whole life." She worked in a department store and received a lump sum of less than R9 000 when arthritis forced her to take early retirement in March last year.

A few months before her retirement, her husband stopped receiving his pension.

The former coloured affairs office claimed there was no money for him if his wife was working. Five months of writing letters ended in his pension money of R380 a month being re-

instated in October last year.

Their basic expenses - rent, water and electricity - amount to R320 a month, while they are also saddled with medical bills of R100 a month.

"Our chemist has been running an account for our medicine - how to pay this we will think about later. My few thousand from work has gone. All the world's wickedness God will see to later." The Lodewicks heard for the first time about food parcels for those waiting payment. But pension office employees said parcels went to the most needy, stressing there were many people more destitute than the Lodewicks.

# Too many murders, too few pathologists

'Numerous' miscarriages of justice in South Africa as forensic experts struggle to cope with a case load far beyond them

SAPA

South Africa has one of the highest murder rates in the world, but its radical shortage of qualified forensic pathologists has resulted in numerous miscarriages of justice.

"I have no qualms in saying that justice has been compromised in many instances (where medico-legal services have been required)," says Dr Gert Saayman, chairman of the SA Medico-legal Society.

There are about 80 000 post mortem examinations needed in South Africa each year, and only 15 qualified forensic pathologists in the country. This means doctors with little or no qualification in the field have to perform autopsies.

South African pathologists each perform up to 1 000 post mortems yearly, compared with the United States' ratio of approximately 250 post mortems to one forensic pathologist. Guidelines state that no person doing autopsies should do more than about 250 yearly if that is their only obligation, Saayman says.

Health Minister Nkosazana Zuma is to meet all nine provincial health MECs this month to discuss proposed changes to the medico-legal service. According to a national policy document on medico-legal services which Zuma and the MECs are to discuss, the system of medico-legal investigation into death in South Africa is plagued by inefficiency, incompetence and often results in the miscarriage of justice.

Starting by placing medico-legal services entirely under the jurisdiction of the Health Ministry, the proposed plan moves to bring South African medico-legal services in line with international standards of efficiency, competency and independence.

The proposed changes also aim to remove the perception that forensic pathologists and other doctors performing autopsies are in any way linked to the police, who are responsible for the transport and storage of corpses.

"The perceived allegiance of

doctors to the police has tarnished the reputation of legal medicine in South Africa to the extent that it will take years to mend, even if drastic steps to address the problem are taken," the document warns.

It says there is ample evidence of police abuse in the care of corpses, such as tampering, sale of body parts and forcing people to look at bodies. This is unlikely to occur if the service is administered by an agency with no "power" over citizens.

The doctors who drew up the document describe medico-legal death investigation as "a science in itself" which should be governed by uniform and accountable protocols and standards.

Saayman says police response to the proposals has been favourable.

## Health dept may not perceive value of the service

The doctors have proposed the drafting and eventual promulgation of a new Forensic Medical Service Post Mortem Act making provision for a chief forensic medical examiner in each province or region and assistant forensic medical examiners in cities and towns.

These officials would have support staff, adequate facilities and equipment - something few doctors who do post mortems now have. Even pathologists and doctors working in large city mortuaries have to endure conditions Saayman describes as "atrocious".

The proposals also make provision for better ancillary services: microbiology, chemistry, specialised forensic services and specialised pathology services.

An adequate training programme, monitoring of service standards, a research programme and central data bank and adequate remuneration are impera-

tives, the document says.

South Africa's "exceptionally high" violent death rate made it one of the best places for research in the field, and research could generate substantial revenue.

Saayman, a lecturer at the University of Pretoria's Department of Forensic Medicine, says students and doctors show interest in the field, but those who choose to specialise usually study another field.

"It's a pity. The work is interesting. Each case is a lucky packet. You get to answer your human curiosity as a 'medical detective' applying scientific knowledge."

The proposed system, if implemented, will probably be initiated in the Free State, says Dr Leon Wagner, a senior state pathologist and lecturer at the University of the Orange Free State's Department of Forensic Medicine.

The restructuring process is in an advanced state in the province and has the support of the provincial health department.

Three of the 15 forensic pathologists in South Africa live in Bloemfontein and internationally renowned forensic pathologist Dr Joseph Davis, of Florida's Dade County, visited the province last month.

Davis, whose Miami laboratory is probably the most advanced in the world, advised that "it might be useful" to form a model laboratory in the Free State, as had been done in the United States when forensic pathology got the boost it needed.

This would provide an objective for "everyone else" to achieve. He warned that there was a worldwide lack of awareness of the importance of medico-legal services' role in the judicial system.

This warning was echoed by the doctors who drew up the South African policy document: "Unfortunately, the real danger exists that the Department of Health may not fully perceive the value of the service, since the true end-line users of the service are indeed the departments of Safety and Security and Justice."

(252) Stav 3/10/96

# Chief Justice interviews to proceed despite controversy

Star 3/10/96 (252)

Cape Town - The only two nominees for the post of chief justice, Judges Ismail Mahomed and Henrie van Heerden, will be interviewed for the position by the Judicial Services Commission (JSC) in Cape Town tomorrow.

The selection of a candidate to succeed retiring Chief Justice Michael Corbett has been dogged by controversy, including claims that President Nelson Mandela has ridden roughshod over the appointment process.

The hearings, which will be open to the public, begin at 9 30am at 28 Wale Street in central Cape Town.

The JSC recommendation will go to the president, who, according to the constitution, must appoint the chief justice "in consultation with the Cabinet and after consultation with the JSC".

Judge Mahomed, a former human rights lawyer, became the country's first black senior counsel, but was passed over for the Supreme Court Bench on several occasions by the National Party government.

He wrote Namibia's constitution and became that country's chief justice before being appointed deputy president of the Constitutional Court.

Judge Van Heerden, South Africa's most senior judge after Corbett, has been described by academics and legal professionals as having an exceptional legal mind with an impressive track record on the Bench.

Most Appellate Division judges support his nomination.

A JSC spokesman said Judge Mahomed would be interviewed first tomorrow.

With two of its 17 members overseas, only 15 members of the JSC would be available for the interviews. They will be joined by presidential adviser Fink Haysom.

Haysom was one of four members of a special committee set up by the JSC and the president's office to oversee the selection process.

The committee invited the Appellate Division, the nine provincial judges-presidents, Mandela and several legal associations

to make nominations.

It was supposed to come up with a shortlist, but found that only Judges Van Heerden and Mahomed had been nominated.

When Mandela came out in favour of Judge Mahomed, he was accused of having prejudged the issue ahead of the JSC interviews and its recommendation.

The National Association of Democratic Lawyers then called on Judge Van Heerden to withdraw his candidacy.

A senior appeal judge, Mr Justice Joos Hefer, in turn called on Judge Mahomed to withdraw because of his inexperience, the fact that most judges favoured Judge Van Heerden, and Mandela's apparent intervention.

Judge Corbett, who chairs the JSC, said in a later statement that calls for either candidate to withdraw were unjustified and an interference with JSC procedures.

Under the pre-1994 government, the appointment of a chief justice was the sole prerogative of the country's president. - Sapa.

# Officers approach TRC

(252)

Five decided not to wait for generals and want to apply for amnesty on their own

BY DAISY JONES AND SAPA

Archbishop Desmond Tutu has confirmed that five former security officers, ranging in rank from captain to brigadier, have approached the Truth and Reconciliation Commission to discuss applying for amnesty.

The five men are among the 22 policemen and seven former police generals who sent a letter to the commission in June, saying they were contemplating applying for amnesty for apartheid-era human rights violations.

The generals made a submission to the TRC last month but it was described as "totally unsatisfactory".

The five unnamed policemen were reported to be "no longer prepared to wait for

the generals", and have decided to start amnesty proceedings on their own.

They are believed to have contacted the amnesty committee of the TRC directly last week.

Commission spokesman John Allen would not provide their names or details of their applications. "The commission has undertaken to keep this confidential."

Meanwhile, the seven former police generals are preparing a response to the TRC's threat to subpoena them if they fail to provide details of about 50 incidents of human rights abuses by tomorrow, former police commissioner Johan van der Merwe said yesterday.

He said a letter would be faxed to the commission's Cape Town offices today on behalf of himself and former

commissioners Mike Geldenhuys, Johan Coetzee and Hennie de Witt.

"We would not like to respond in the media before the commission has read our letter," he said.

TRC deputy chairman Alex Boraine said on Monday the commission was interested only in specific incidents of human rights abuses.

Van der Merwe said recently the generals could not provide the information the commission was looking for as long as the issue of legal aid for policemen wanting to testify before the commission remained unresolved.

Boraine responded that legal representation for former policemen was being considered "at the highest level" in government, but the commission could not make any promises.

JAN 3/10/96

# Cops by-pass generals in new amnesty move

CT 3/10/96  
(252)

ARCHBISHOP Desmond Tutu has confirmed that five former security officers have approached the Truth and Reconciliation Commission to discuss applying for amnesty

The five are among 22 policemen and seven former police generals who sent a letter to the commission in June, saying they were contemplating applying for amnesty for apartheid-era human rights violations

Last month the generals made a submission to the TRC, described by the commission as "totally unsatisfactory"

The five unnamed policemen are now reported to be "no longer prepared to wait for the generals" and have decided to start amnesty proceedings on their own

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Meanwhile, former police commissioner Mr Johan van der Merwe said yesterday the seven former generals were preparing a response to the TRC's threat to subpoena them if they failed to provide details of about 50 incidents of human rights abuses

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Van der Merwe said a letter would be faxed to the commission's Cape Town offices on behalf of himself and former police commissioners Mr Mike Geldenhuys, Mr Johan Coetzee and Mr Hennie de Witt today

"We would not like to respond in the media before the commission has had an opportunity to read our letter," he said.

The commission criticised their previous submission as failing to live up to expectations. Deputy commission chairman Dr Alex Boraine said the commission was only interested in specific incidents of human rights abuses

Van der Merwe recently said the generals could not provide the information the commission was looking for as long as the issue of legal aid for policemen wanting to testify before the commission remained unresolved

Boraine said the question was being considered "at the highest level", but that the commission itself could not make any promises — Sapa, Own Correspondent



# Tutu vows to get truth out of Vlok

*'Nowhere to hide'*

JOHN YELD, JOSEPH ARANES AND LINDSAY BARNES  
ON THE TRUTH COMMISSION

Truth Commission chairman Desmond Tutu has pledged that the commission will "extract the truth" from former law and order minister Adriaan Vlok and former high-ranking police officers, saying that if they thought they could hide, "they are being unrealistic".

Archbishop Tutu told the Cape Argus: "We will sit there and extract the truth"

And in a new move today, commission deputy chairman Alex Boraine announced that postponed submissions by the SA National Defence Force and the disbanded SA Defence Force would take place on October 21.

The submissions would be made in the same format as those by political parties and the commission would ask questions

only on points of clarification at the first hearing.

Commenting on the subpoenas to appear before the commission, due to be served today on Mr Vlok and police generals, Archbishop Tutu said it was "stretching credulity a little too far" for police to suggest the only information they had on many incidents of interest to the commission was in official records and reports

He said it was "a shame" that subpoenas had to be issued, as he had hoped the generals would have approached the commission voluntarily - particularly after the intervention of Deputy President Thabo Mbeki. "We had hoped we could have a non-confrontational relationship"

Asked whether he was concerned the generals might simply claim they could not remember - as they had threatened at

To page 3

P.T.O.

# Tutu vows to get the truth out of Vlok

From page 1

their meeting with the commission three weeks ago – Archbishop Tutu said the commission had people skilled in eliciting information

“We will sit there and extract the truth

There are also other sources of information available to us and anyone who thinks at this stage of the game they can hide, I think are being unrealistic

“I think it would be a shame if they (the generals) didn't use the opportunity to speak openly because we are not looking to prosecute but for the truth, so that the country can heal. We are not in a power game with them.”

Dr Boraine said the decision to issue the subpoenas followed a letter from former police commissioners Johan van der Merwe, Mike Geldenhuys, Johan Coetzee and Hennie de Witt stating that their knowledge of human rights violations was

based on “general information” as contained in police dockets, court records and media reports

But Dr Boraine said the decision to subpoena Mr Vlok was based on his name being mentioned a number of times during the commission's hearings. “A lot of allegations have been made and we want to get firm information from him and will ask him specific questions.”

Dr Boraine said the police officers and Mr Vlok had been given a chance to make a written submission to the TRC

“Three weeks ago we received their submission but found it unsatisfactory and told them to rewrite it. They instead sent the letter in which they stated they were willing to co-operate and asked us to subpoena them before they provided us with further details,” he said

Dr Boraine said the commissioners decided at the last meeting that it was time to issue the subpoenas

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16

# Allegations push police cadres to come clean

**Eddie Koch**

**A**T least six police brigadiers and colonels, named in the trial of Eugene de Kock, have broken ranks and approached the truth commission about the possibility of applying for amnesty as they are disillusioned with the way the generals are handling their submission to the organisation.

The truth body has also taken a top-level decision to scale down its public hearings and speed up findings that identify perpetrators of abuse. These developments lie behind a statement by its chairman,

(252)

M+C 4-10/10/96

Desmond Tutu, that the institution has now reached a turning point in its history.

Ordinary people have had their chance to tell their stories and the commission will now use its subpoena powers — its "steel fist" — to answer the burning questions that have been raised in the public hearings, Tutu said this week.

Sources inside the commission confirmed that the brigadier-and-colonel cadre of leadership from the police force had been jolted into approaching the commission by the string of allegations emerging from the De Kock trial.

The police generals have so far tried to hold their camp together by offering to make a general submission to the commission about the role of the police in some 50 unsolved political crimes committed in the apartheid era.

At least six of their colleagues, likely to be followed by more, are disillusioned by the inability of the generals to come up with a comprehensive submission and strategy that covers them.

They also fear that further trials being prepared by the Transvaal attorney general's office will increase the prospect of their being linked to

human rights abuse — after the December cut-off date for amnesty.

But while it appears that a united front in the ranks of senior police commanders is beginning to break down, there is little sign of a similar development in the military.

Military generals have been able to delay their submission to the truth commission without prompting panic among colleagues lower down the rung, as it appears that General Magnus Malan and his fellow accused in the KwaMakutha trial have a good chance of being let off when the Supreme Court makes its judgment next week.

The military generals are clearly waiting for the court's decision so that they can use a not-guilty verdict to maximum effect in their submission.

Such a ruling will also bolster a belief, currently circulating in some ranks of the security forces, that the state does not have the resources to pinpoint perpetrators of past abuse and prosecute them — especially as the Malan trial was investigated by a crack police unit and an experienced team in the AG's office.

The critical lesson in these developments is that the most powerful mechanism for forcing the candour out of the men who ran the death squads is an effective and well-resourced criminal justice system that can follow up the promise to punish those who don't come clean

# 'Police captain ordered shredding of documents'

(252) ARLT 4/10/96

JOHN YELD  
ON THE TRUTH COMMISSION

**Upington. – Police have been shredding large quantities of documents and records during the past four weeks, probably ahead of a visit by a Truth Commission investigator, the commission has been told**

The allegation was made by former municipal policeman Nicholas "Oupa" Links, who now works as a labourer at Upington police station

He said in bombshell testimony to the commission's human rights violations committee that the order to destroy the documents had been given by a Captain Raff, who was present at the hearing "He's working outside but I don't think it will be difficult to get him in here," said Mr Links

At the hearing, commission chairman Desmond Tutu announced he had had a letter this week from Safety and Security Minister Sydney Mufamadi, informing the commission that "many records" of the police service had been destroyed This was a "very serious matter" and the commission had asked for a full inventory to be made of missing documents and who had ordered their destruction

Mr Links said he had seen documents being shredded about four weeks ago "and I assume that it was as a result of the Truth and Reconciliation Commission investigator's pending visit to the police station"

He said a clerk in the archives section of the police station, a Ms Kok, had told him Captain Raff had ordered the shredding She had used a shredder in the section – there was another one upstairs in the security police section – and the remains had been pushed by bulldozers into trenches on an ash heap Asked how many documents had been shredded, Mr Links said "Many – there was a pile almost as big as a table."

At a press briefing afterwards, Archbishop Tutu said the commission would inform Mr Mufamadi about Mr Links's allegations

"I don't know there is a great deal more we can do But we have asked the minister to set up an investigative unit to look into the issue of missing or destroyed documents," he said

"When we first met with him (earlier this year), we said we wanted to initiate this search ourselves, but we have now told him that we do not have the resources to do this"

Commissioner Denzil Potgieter said it was part of the commission's brief to report on missing documents and it would have to consider putting Mr Links's allegation directly to Captain Raff

"We have other means of inquiry at our disposal – for example, Section 29 subpoenas – but we have a fairly good relationship with police in Upington so I'm sure we can do this on an informal basis," said Mr Potgieter

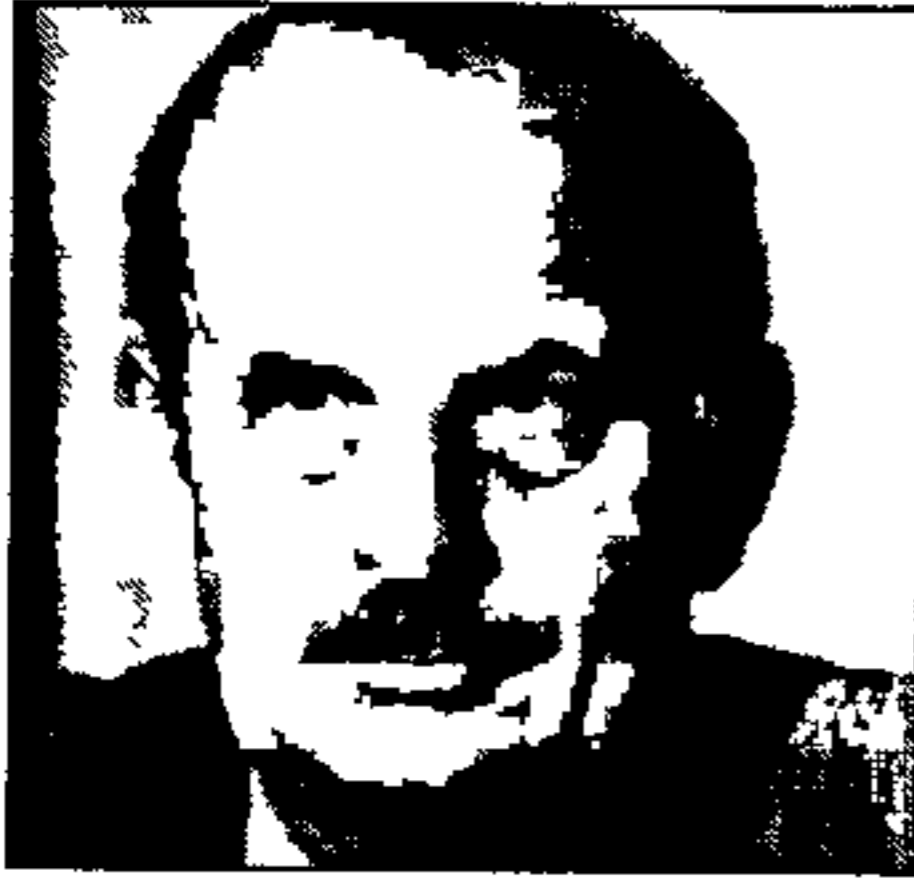


Vlok

# Vlok: 'I'm ready'

4/10/96 to co-operate fully' (252) Star

Former Law and Order Minister finds TRC decision to subpoena him 'strange'; generals willing 'to act as a catalyst'



Smit

BY DAISY JONES

The retired police generals and commissioners being subpoenaed today by the Truth and Reconciliation Commission have already warned that the only information they have about human rights abuses is from court records, police dockets and media reports

And former law and order minister Adriaan Vlok said yesterday he found the decision to subpoena him "strange". He is the first minister of the apartheid regime to be forced to testify to the commission.

"I have said repeatedly I am prepared to co-operate fully and accept full personal responsibility for decisions by the ministry. But thus far I have received no request from them to answer any questions," he said.

The high-ranking policemen will be obliged to answer questions from TRC investigators about the apartheid-era human rights violations.

The commission said yesterday that among those it is ordering to appear are retired police commissioners Johan van der Merwe, Johan Coetzee, Mike Geldenhuys and Hennie de Witt. Some of the other generals are Basie Smit, Krappies Engelbrecht, Bertus Steyn and Johan le Roux.

The TRC had issued an ultimatum on Tuesday which gave Van der Merwe and his colleagues until today to make a detailed written submission about

the apartheid-era crimes they knew about.

The generals' response was a letter faxed to the commission yesterday in which they said they were willing to assist the commission but could not give it the detailed information it required.

The generals said they were prepared to act as a "catalyst" to persuade other former members of the police to come forward with information. However, they could not undertake this task before the state guaranteed it would provide legal representation for former policemen.

At a media conference in Cape Town, however, TRC deputy chairman Dr Alex Boraine said individual policemen were capable of representing themselves and did not need the generals as intermediaries.

Last week's approach by five former security policemen to the commission's amnesty committee indicated that "they are not waiting for the generals, and the generals must take their turn like everyone else".

Boraine said the generals were not alone on the list of subpoenas. The commission's national and regional offices already have more extensive lists of subpoena candidates which they will act upon as and when deemed necessary.

Boraine said Vlok's name was added to the list because allegations had been made against him at a number of the commission's

► To Page 2



Coetzee



Van der Merwe



Vlok is ready to co-operate with Truth Commission

(252) From Page 1 Star 4/10/96 public hearings

Van der Merwe said the decision to subpoena was "not to the best advantage of the commission" because it could destroy whatever confidence policemen might have had in the commission.

Lower-ranking policemen, especially, had a severe lack of confidence in the TRC at the moment, he said. They were relying on individual policemen to provide them with details of the atrocities.

This could be done only through the offices of attorneys as it would be illegal for him and his colleagues to consult with anyone who confessed to a crime.

Vlok and the generals will be questioned by investigators in camera, but the commission may publicly release information gained in the inquiries.

TRC legislation provides for a jail term of up to two years for anyone who refuses to answer questions, or answers them falsely, in inquiries such as this.

BRIEFS

'Police shot my daughter'

UPINGTON: A mother told the Truth and Reconciliation Commission hearing here this week of how her pregnant daughter was shot dead days before the expected birth of her baby

Mrs Flora Isaaks told the commission her daughter, Beulin, and friends were shot after giving police directions, it was reported

Isaaks said one of the policemen later admitted that the shooting was a mistake. She said they had acted on the orders of a policeman known as the Red Major

Isaaks said they were found not guilty of murder when they appeared in court

'Venda leader was torturer'

THOHOYANDOU: Former Venda military leader Brig Gabriel Ramushwana was one of several Venda National Force members who manhandled and tortured detainees in 1978 and 1980, the TRC was told yesterday

Ms Shonisani Neswiswi said her brother, Mr Mbengeni Ravele, became "a useless person" after his private parts were allegedly burnt during police interrogation in December, 1980. She was told Ramushwana was one of those who had beaten her brother during questioning

Hearing for women only

DURBAN: A TRC hearing accommodating women only will be held here on October 25 to give women the opportunity to relay their personal experiences of human rights violations in the apartheid era

Sapa

SUBPOENA'S FOR POLICE GENERALS

Sheriff goes knocking on Vlok's door today

CT (252)

DEPUTY-SHERIFFS around the country will soon be delivering subpoenas to former police commissioners and former cabinet minister Mr Adnaan Vlok to answer questions about security force complicity in violence. **ROGER FRIEDMAN** reports.

FORMER Minister of Law and Order Mr Adnaan Vlok will be the first member of an apartheid-era cabinet to be subpoenaed to appear before the Truth and Reconciliation Commission

Vlok — who was shifted from the law and order portfolio to correctional services in July 1991 following revelations of secret government funding for Inkatha and allegations of security force complicity in violence — will be asked

by the commission to expand on various allegations made against him by convicted Vlakplaas killer Eugene de Kock, among others

"Former minister Vlok has been mentioned a number of times by Eugene de Kock and others. Allegations have been

made. We want confirmed information, not allegations. We will be asking him specific questions relating to specific allegations that have been made," commission deputy chairperson Dr Alex Boraine said yesterday.

The process of issuing subpoenas against Vlok and a number of former high-ranking police officers — including several former national commissioners — summoning them to appear at "investigative inquiries" begins today

The subpoenas will be issued in terms of Section 29 of the Promotion of National Unity and Recon-



MUST ANSWER: Adnaan Vlok

ciliation Act, which grants the commission the power to call upon any person to appear before it to give evidence or to answer questions relevant to the inquiry

Neither Boraine nor commission investigative unit head Mr Dumisa Ntsebeza would disclose details of the subject matter of inquiries. The Section 29 hearings would be held in camera in accordance with the law, although the commission could later release information at its discretion

Boraine said the decision to issue the subpoenas followed receipt of a letter yesterday from four former national police commissioners: General Johan van der Merwe, General Johan Coetzee, General Mike Geldenhuys and General Hennie De Witt

In the letter the generals asserted that their knowledge of gross violations of human rights was solely based on general information contained in police dockets, court records and media reports

"Any possible involvement on our part with regard to any alleged gross violations of human rights may be restricted to limited instances, and even in those instances proper legal advice will have to be obtained in order to determine whether any such instances actually constitute any gross human rights violations, as defined in the act," the generals wrote

They went on to outline legal problems they believed inhibited them from constructively engaging the commission, or expanding on an initial submission delivered to the commission a few weeks ago.

They concluded their letter stating they were "still prepared to do everything possible to furnish the commission with such details as may bring perspective to the various confusing issues and misconceptions. We will therefore appreciate it if the commission could subpoena us first"

Section 39 of the Act provided for penalties to be imposed on any person failing to respond to a subpoena, or failing or refusing to answer lawful questions satisfactorily to the best of their knowledge, Boraine said.

"They will be under oath, and anyone under oath has to be very careful that they answer fully and truthfully or they themselves will incur problems. We will test their replies, or lack thereof, against information we have and then take the necessary steps," he said

C S L

# Scrutinising the JSC's scrutineers

(252) ET 4/10/96

**WITH THE** Judicial Services Commission meeting in Cape Town today, an analysis of its first public hearings, in 1994, suggests that the performance of the JSC will be the subject of as much scrutiny as that of the two candidates for Chief Justice, writes **RICHARD CALLAND**.

**A**S THE Judicial Services Commission commences the selection procedure of the first post-apartheid Chief Justice, it has good cause to reflect both individually and collectively on its first high-profile experience of carrying out its constitutional responsibility.

The public interviewing of candidates for the Constitutional Court in October 1994 by the JSC was both historic and flawed.

Historic, because never before had a potential South African judge been subjected to such public scrutiny, flawed, because the performance of the JSC on that occasion was far from totally convincing.

Detailed analysis of those hearings reveals that

● There was a very wide disparity in the number of questions asked by the commissioners. For example, while the late Professor Etienne Murenik asked a total of 153 questions, ANC Senator I W Direko asked only three.

Over two-thirds of the questions came from four sources, or a quarter of the JSC (Chief Justice Michael Corbett, Justice Arthur Chaskalson, Murenik and George Bizos SC), and, including the contributions of advocates Gerald Gordon and Wim Tien-grove (43 and 50 questions respectively), over 595 of the

total of 733 questions (over 80%) came from just six of the 16 JSC members

● The content of the questions varied greatly as well. Over two-thirds of the questions dealing with matters of legal substance — that is, questions which explored issues of constitutional jurisprudence and principle — which created the most telling exchanges, came from only two sources (Chaskalson and Murenik, who asked just over half of them)

● The most dramatic exchanges derived from questions asked by one or other of the three senior counsel, advocates Tregrove, Gordon and Bizos

The intense cross-questioning, for example, of Albie Sachs by Tregrove and Gordon over his membership of an ANC internal commission of inquiry into human

... for the public to have complete

*confidence in the new head of SA's judiciary — and thereby confidence in the justice system — there must be public confidence in the integrity of the process of selection.*

rights' abuses in ANC camps, attracted the widest media coverage of the whole hearing

Given Tregrove and Gordon's professional expertise, it is perhaps not surprising that their questions were so accurately directed towards the various candidates' most vulnerable areas

● In contrast to this forensic vigour, and the jurisprudential insight of Murenik's questioning, the vast majority of the other questions were either vague or benign

There was, therefore, an apparent oligarchy of power and influence within the JSC

Because the JSC chose to hold its deliberations in private, it is not known whether this extended to the actual decision-making.

There may be nothing either wrong or unusual about a panel in which some people are good questioners and others are good listeners. But there is a danger that this could undermine the

conceptual bedrock of such a process — that it should be representative of the public interest and, therefore, should be representative of the public

If the power in the decision-making was as narrowly drawn and exerted as the analysis of the hearing would tend to suggest, then it was confined to a predominantly white group of male lawyers

The JSC membership remains largely unchanged. ANC Senator G M Mushwana has replaced Senator Ernest Mchunu (who has died since), but in any case will be overseas (as will NP Senator RJ Radue)

Judge A Howard is unavailable and will be replaced by Judge G Friedman. Professor John Milton of the University of Natal has replaced Murenik, who died tragically in July

Otherwise, 12 of the 16 members of the JSC remain from 1994, with the addition of the President's legal advisor, Professor Pink Hayson

More than one participant in the October 1994 process has subsequently indicated to the writer that they considered some in the commission to be poorly prepared for the task and suggested that some training be provided in order to strengthen the selection exercise

There has been no public indication that this has occurred

The guidelines used by the JSC in 1994 will again "form the basis for the hearing", it says

It was clear that the guidelines needed to be tightened up in at least one respect

In 1994, there were questions that were overly personal and inappropriate in that they veered far from the test of "fit and proper person" set out in the interim constitution

Radue asked Professor Carole Lewis an unfair and dis-

criminatory question about her family arrangements, Judge Howard asked Professor Kate O'Regan a not dissimilar question about her children and then later asked advocate Zac Yacoob SC about his visual impairment

The JSC's chairperson did not intervene to rule the questions out of order

Despite these observations, the more significant flaw in such a process of judicial selection is less the interviewing process itself, than the still half-packed acceptance of the principle of transparency and accountability.

The fact that these hearings are now open to public scrutiny is, of course, a most welcome step in the right direction.

The challenge now for the JSC is to now have the courage of conviction to take a bolder step and to hold the decision-making process in public as well, or if there are overwhelming reasons for not doing so, to at least publish full reasons for the decision

In a sense, holding the interviews in public — but limiting the transparency to that alone — is a frustrating flirtation: one can see and hear the evidence, but is left to speculate as to its consequence and effect.

Whatever course it takes, the JSC will itself be the subject of scrutiny today.

That is no bad thing

For the public to have complete confidence in the new head of South Africa's judiciary — and, thereby, confidence in the justice system as a whole — there must be public confidence in the integrity of the process of selection

Richard Calland is head of PIMS' *haka's Parliamentary Information and Monitoring Service*. He practised for seven years at the London Bar, specialising in public law

*More than one participant in the October 1994 process has indicated... that they considered some in the commission to be poorly prepared for the task and suggested that some training be provided...*

# Intervention was badly timed

ET 4/10/96

(252)

**GERALD GORDON QC** writes that he hopes today's hearings by the Judicial Services Commission for the Chief Justice post will not be clouded by President Mandela's premature intervention in the selection process.

**T**HE purport of my article "Will the JSC be a rubber stamp?" (Cape Times, September 23) has clearly been misunderstood by Willie Hofmeyr in his reply "President is just sticking to the constitution" (October 1).

I did not "expect the President to give up his constitutional responsibility of stating his own choice" for the Chief Justiceship. I questioned the timing and the inadvisability of stating this choice to the JSC *before* it had made its recommendation to him as the constitution requires it to do.

Hofmeyr writes that by doing this, "President Mandela has made an attempt to make the process more open than the constitution requires". Criticism of these "efforts to make our constitution more open should be balanced with praise".

Section 97 says "There shall be a Chief Justice of the Supreme Court of South Africa, who shall be appointed by the President in consultation with the cabinet and after consultation with the JSC."

Hofmeyr says that "in consultation with the cabinet means that the cabinet *must agree*". But the Concise Oxford Dictionary (in his photograph accompanying his article Willie is seen clasp- ing a copy) defines "consult with" as "have deliberations with, seek information or advice from".

There is no question, therefore, that the Cabinet must agree. Indeed, the President might even reject the views of his cabinet. For the section says "a Chief Justice shall be *appointed by the President*". It does not say "*by the cabinet*".

Hofmeyr goes on to write that "after consultation with the JSC" means that the President "must inform the JSC of his *proposed* decision and listen to its advice, but he does not have to follow it".

Here Hofmeyr is giving the phrase "consultation with" a different meaning. Now he says that it means the JSC must give the President its "advice".

Moreover there is nothing in the section indicating that the President "must

inform the JSC of his proposed decision". And surely Hofmeyr does not suggest that the nomination of Mahomed by the President was done to "inform" the JSC of his "proposed decision".

Indeed this interpretation of the section lends support to my submission that the JSC is in danger of becoming a rubber stamp.

Hofmeyr writes that Gordon "along with a number of other commentators, does not distinguish between the appointment of ordinary judges and the appointment of the Chief Justice", and that the constitution specifies completely different ways for the appointment of the Chief Justice and ordinary judges.

This point however has nothing to do with my above submissions on the meaning in the section (97) which provides for the appointment of the Chief Justice. And in any event, the ways of appointing a Chief Justice and ordinary judges are almost indistinguishable.

The point I have tried to make is that so much idealism, hard work, thought, and sacrifice (incidentally by people as respected as the President and Hofmeyr himself) went into the creation of the

*It would be a pity if the growth of the constitution should suffer by some ill-advised step taken in implementing it.*

new constitution, that it would be a pity if its growth should suffer by some ill-advised step taken in implementing it.

I am not alone in taking this line. There has been much criticism — and by constitutional lawyers of standing — of the President's action in nominating Mahomed before the JSC has sat.

Thus Professor Dennis Davis, a constitutional expert, wrote in the Sunday Times of September 22, supporting Mahomed but saying "it is most regrettable that President Mandela chose to intervene prematurely. His ill-advised letter to the JSC."

The trouble is that if a proper running of the process results in the democratic appointment of Mahomed, there will be hostile voices claiming it was due to Mandela's pre-emption.

As for myself, while in my previous article I refrained completely from discussing the merits of the two contestants, I may say now that in my respectful view the cause of justice in South Africa will be best served by the appointment, despite certain imperfections, of Mahomed.

And I for one will be sad that what would otherwise have been a clean appointment on merit, will be clouded by the President's premature nomination.



# D-D Day for new chief justice

(252) CT 4/10/96

**THE RUN-UP** to the interviews today of the two candidates for the top judicial post of chief justice has assumed distinctly political overtones. Senior Writer **ROGER FRIEDMAN** reports.

**T**HE knowledge that only 18 of the country's 176 judges are black could be uppermost in commissioners' minds when the Judicial Service Commission (JSC) convenes in the city today to interview the two candidates for the position of chief justice of South Africa.

In terms of seniority in the Appeal Court, Mr Justice Henne van Heerden is next in line for the post. Whereas Judge Van Heerden's nomination is said to have the support of the majority of judges, appointing Mr Justice Ismael Mahomed to the top job would be in line with the transformation policy of the Department of Justice.

Both candidates are respected in their profession or their legal acumen, but the run-up to today's interviews has assumed distinctly political overtones. Mahomed was only persuaded to agree to being nominated at the eleventh hour, backed by the lack of support of the National Association of Democratic Lawyers, some academics and justice department officials.

At that stage Van Heerden was the only candidate, backed by almost all the Appeal Court judges and many other provincial division judges.

A day after Mahomed's nomination was conveyed by the JSC — on the day nominations closed — President Nelson Mandela entered the fray, expressing support for Mahomed's nomination. The fact that Mandela has the final word on the JSC's recommendation for chief justice was used for some concern and debate in recent weeks.

The Appeal Court in Bloemfontein presently comprises 18 white male judges headed by the outgoing chief justice Mr Justice Michael Corbett. Judge Corbett is chairman of the JSC and will air today's proceedings.

The Free State, Eastern Cape and Northern Cape provincial divisions of the Supreme Court are similarly all-white.

In the past two years the JSC has appointed 41 white judges — 16 of them black, seven of them

## HOW REPRESENTATIVE IS THE JUDICIARY?

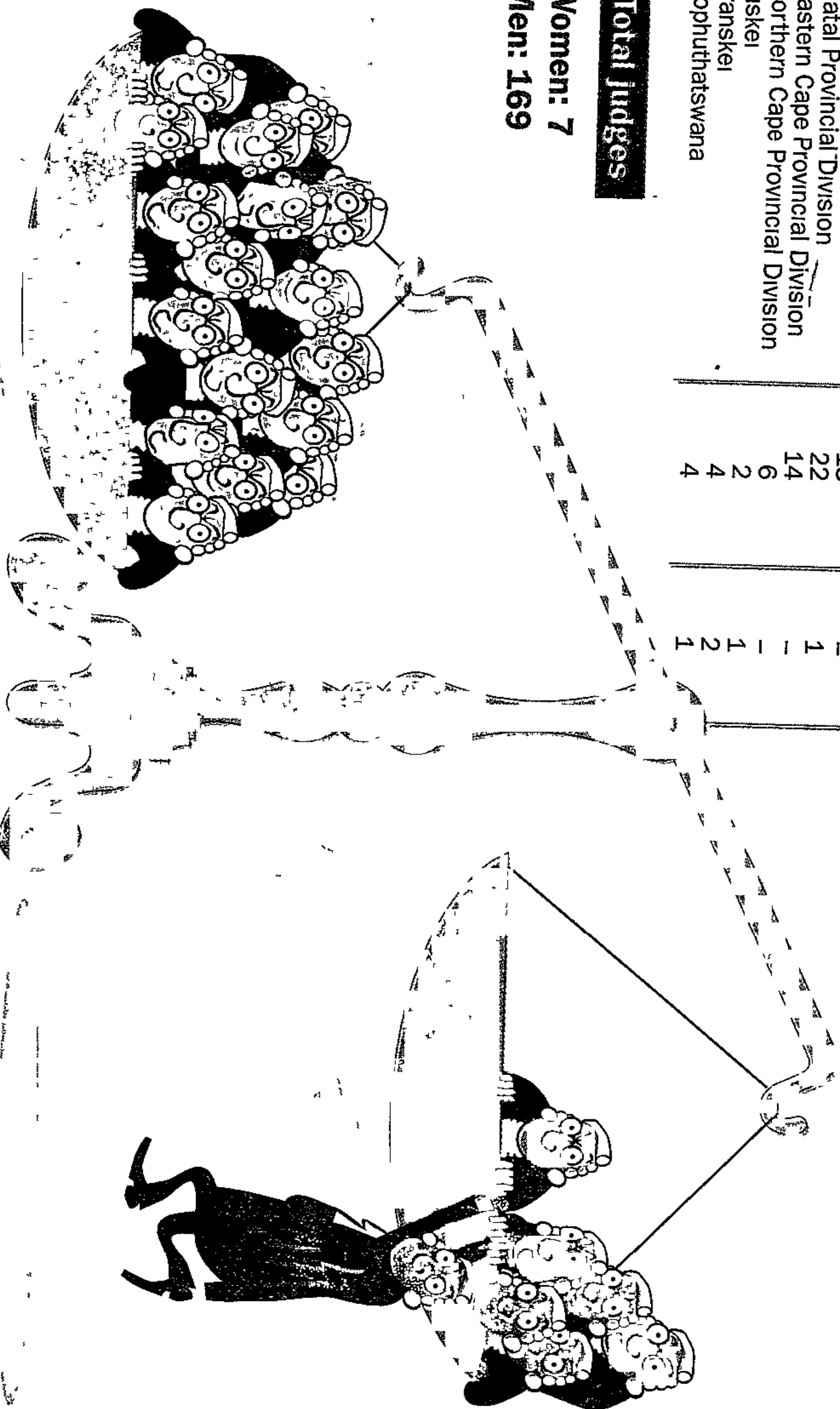
Judges at 30/9/96 (By division)	Total number of judges	Black judges
Constitutional Court	11	4
Appeal Court	18	3
Transvaal Provincial Division	56	4
Cape Provincial Division	26	3
Free State Provincial Division	13	1
Natal Provincial Division	22	1
Eastern Cape Provincial Division	14	1
Northern Cape Provincial Division	6	1
Ciskei	2	1
Transkei	4	2
Bophuthatswana	4	1

**Total Judges**

**Women: 7**

**Men: 169**

**Total number of judges: 176**  
**Total number of white judges: 160**  
**Total number of black judges: 16**



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CT

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One of the aims expressed in the mission statement of the Department of Justice is the establishment of a democratic process of transformation: a legitimate administration of justice which is efficient, accessible, accountable, just, user-friendly and representative of the South African community.

The department has made significant strides in pursuing this aim since 1994, notably in the appointment of magistrates and prosecutors.

In 1994 there were 1 001 white and 628 black prosecutors, a few months ago the numbers had changed to 878 and 760 respectively.

The department employed 1 144 white and 60 black magistrates in 1994. In June this year, these figures were

1 041 and 611 respectively.

Last year the department made a total of 832 appointments; its total staff complement is nearly 14 000 people, less than 19% of whom were white. Of the 14 000 employees, more than half are black and nearly half are women.

The department has not made such significant progress in transforming the offices of state advocates and state attorneys, while the judiciary — for various reasons — is proving even slower to change.

The Supreme Court Act of 1959 broadly prescribes that judges be drawn from the ranks of "fit and proper" persons. Until 1994 these persons were deemed to be confined to the ranks of senior counsel advocates, who were almost

exclusively white.

These days, fit and proper persons are deemed to include experienced advocates and attorneys, and academics; suitable, willing candidates, however, remain thin on the ground. Openings on the bench are relatively scarce.

The JSC consists of the chief justice as chairman, the president of the Constitutional Court, the minister of justice, one representative for the judges president, two representatives of the advocate's profession, two representatives of the attorney's profession, four senators, one representative of the law faculties, and four persons nominated by the president of the country.

● See Leader Page — Page 8

# Former minister Adriaan Vlok to be subpoenaed by truth

Stephen Lauder

CAPE TOWN — Former law and order minister Adriaan Vlok will today become the first apartheid-era cabinet minister to be subpoenaed by the truth commission, along with former SAP commissioners Johan van der Merwe, Mike Geldenhuis, Johan Coetzee and Henne de Wit.

Sheriffs would also deliver subpoenas demanding the appearance before the commission of former SAP lieutenant general Basie Smit and Johan

le Roux and majors general Krappies Engelbrecht and Bertus Steyn, many of them former security policemen, deputy chairman Alex Boraine said yesterday. The decision to force Vlok and the generals to assist the commission in its inquiries into gross human rights violations comes after weeks of opaque manoeuvres by the generals, apparently attempting to set the terms of their co-operation.

Meanwhile, the commission's investigations director, Glenn Goosen, said yesterday that at least 15 "high-rank-

ing long-serving officers of (former Vlakplaas commander Eugene) de Kock's rank and higher" had in the past four weeks either applied for amnesty or tested the waters prior to a formal application. Goosen said pressure was mounting on perpetrators to come forward, apparently as a result of De Kock's revelations in the Pretoria Supreme Court and the approaching cut-off date for amnesty applications.

De Kock — who is currently testifying in mitigation following convictions for murder, fraud, and illegal

weapons possession — was a police colonel. Those ranked above him are classed as general officers.

Boraine confirmed formal amnesty applications had been received "from at least five" police officers. Fearing for their lives, they had asked the commission not to release their names or other information which could identify them, such as ranks or functional positions.

The commission had agreed to honour the request until the applications had been processed.

Reuter reports that Boraine said

## Truth

Continued from Page 4/10/96

plaining why they would not co-operate voluntarily, the former SAP generals mention unspecified legal obstacles, saying they would "therefore appreciate it if the commission could subpoena us first". It is understood this is a reference to the generals' efforts to get the government to pay for their legal representation when they appear before the commission.

The generals apparently believe that if they are subpoenaed, they will automatically qualify for legal support under treasury regulations by becoming involved in a formal legal process.

The departments of justice and safety and security are understood to have given differing interpretations to a Cabinet decision to facilitate legal funding for security force members wishing to give evidence.

Justice is understood to have formulated restrictive guidelines as to categories of people able to receive assistance, while safety and security has ar-

gued for broader categories in order to give greater effect to the spirit of the truth commission legislation.

Also at issue is the extent of the legal cover to be provided. Many acts now thought to have been perpetrated by the police, such as the bombing of Khotsko House, do not qualify for amnesty under the legislation.

Safety and security secretary Azhar Cachalia said the issue was receiving attention from Safety and Security Minister Sydney Mufamadi, Justice Minister Dullah Omar and Deputy President Thabo Mbeki. He expected the matter to be resolved within days.

Sapa reports NP leader FW de Klerk said yesterday the commission's decision to subpoena Vlok could cause "serious problems".

De Klerk gave notice that his party intended meeting commission officials in a bid to ensure that issuing the subpoena to Vlok did not "conflict with the understanding that exists on procedures to be followed". It was the NP's understanding that the commission would study the party's submission and then contact the party if it had specific requests for further information.

BU 4/10/96

later in an interview the amnesty applications by the five were "the breakthrough we have been waiting for". The five had given information on cases which had baffled the police and courts for years. "They are prepared to give details of gross human rights violations and they are prepared to name names," Boraine said. Hearings on the applications by the five could be expected within the next few weeks.

In their letter to the commission ex-

Continued on Page 2

Commission

# I didn't defend apartheid, says candidate for top judicial post

*Judges take the stand in bid for position of chief justice*

WILLIAM-MERVIN GUMEDE  
STAFF REPORTER

Judge Hennie van Heerden told the Judicial Service Commission (JSC) the fact that he had defended the previous government at the International Court of Justice at The Hague did not mean he supported its apartheid policies

Judge Van Heerden was senior counsel for the South African legal team at The Hague on two occasions, where he argued for the extension of its control over South West Africa

Judge Van Heerden and deputy president of the Constitutional Court Judge Ismail Mahomed are the two contenders for the position of South Africa's chief justice, following the retirement of Judge Michael Corbett

Judge Van Heerden told the judicial commission he would have no problem serving under Judge Mahomed as deputy chief justice if his (Van Heerden's) bid failed

Judge Mahomed said he was prepared to relinquish his present post of Chief Justice of Namibia, if he was appointed Chief Justice of South Africa

He said he thought it would be possible to hold both posts, but that he would have to give up his post in Namibia if his position there interfered with his South African work

Judge Mahomed said his appointment would signal that the transformation of the judiciary was inevitable and make it much more acceptable to ordinary citizens

Mr Mahomed said he would be happy to work with the Appeal Court judges who opposed his appointment

"It is always better to have contrary views and I respect their views. In any case, it would be counter-productive from me to be hostile to opposition judges," Judge Mahomed said

Judge Mahomed said the biggest challenge facing the judiciary was to make the law the friend, rather than the enemy of the people. "People of colour had seen the law as an alienating, arbitrary set of rules to maintain white rule," he added



Pensive: Judge van Heerden before his interview

He warned that the government's efforts to combat crime would not succeed until ordinary people internalised these values and made justice the instrument with which they expressed their confidence

Judge Mahomed said he was unsure about the prospect of going to Bloemfontein, where the Appellate Division is based, because in his days as an advocate he had not been allowed to sleep overnight in the city or to eat in its restaurants

"My memories of Bloemfontein are not something I want to talk about with any enthusiasm." He said he still imagined seeing whites-only signs, even though they had long disappeared. "My wounds are deep and my trauma is still very, very deep," he added

He said he had to accept the judgment of



Next in line: Judge Mahomed and his secretary Yolande de Waal await his turn

those who considered him an interventionist judge. "Some people have the gift of arguing silently with themselves, but I do not. So I argue loudly with whoever opposes me."

Judge Mahomed, a former human rights lawyer, became the country's first black senior counsel, but was passed over for the Supreme Court bench on several occasions by the National Party government

He was involved in writing Namibia's constitution and became that country's chief justice before being appointed deputy president of South Africa's Constitutional Court

The judicial commission recommendation will go before the president, who according to the constitution must appoint the chief justice "in consultation with the Cabinet and after consultation with the JSC"

When President Mandela came out in favour of Judge Mahomed, he was accused of having prejudged the issue ahead of the JSC interviews and its recommendation

The National Democratic Lawyers of South Africa called on Judge Van Heerden, an Appeal Court judge, to withdraw his candidacy. Judge Van Heerden, has been described as conservative by academics and legal professionals

Appeal judge Joos Hefer also called for Judge Mahomed to withdraw, ostensibly because of the president's intervention

Outgoing Chief Justice Michael Corbett, who chairs the JSC, then intervened and said calls for either candidate to withdraw were wholly unjustified and an interference with the commission's procedures

ANDREW INGRAM

# Judges at the bar of history

ep 6/10/96

(262)

By CHIARA CARTER

**ISMAIL MAHOMED and Hennie van Heerden both have highly distinguished legal careers stretching back four decades.**

Both have been nominated to replace Michael Corbett in the country's top legal post - Chief Justice.

The very different roads each have travelled to get to the top of their profession were outlined when the two were interviewed by the Judicial Services Commission (JSC) in Cape Town this week.

□ Judge Mahomed, a self-confessed workaholic with an "interventionist" style on the bench, exuded bonhomie and passion as he was questioned by commission members.

Mahomed, the country's first black Supreme Court judge, is deputy president of the Constitutional Court. He was nominated for the Chief Justice post at the eleventh hour and is supported by the Black Lawyers' Association and National Association of Democratic Lawyers.

He described himself as a "reluctant candidate", saying his past two years at the Constitutional Court had been the "happiest of his life" and he was loath to go to Bloemfontein, a place "where they never wanted me".

From the outset of the interview, it was clear that to a large extent Mahomed's life and career have been shaped by a struggle against racism.

Mahomed, who grew up in Pretoria, attended the University of the Witwatersrand, where he was an outstanding student. The university had "academic non-segregation" - but this did not extend to social life.

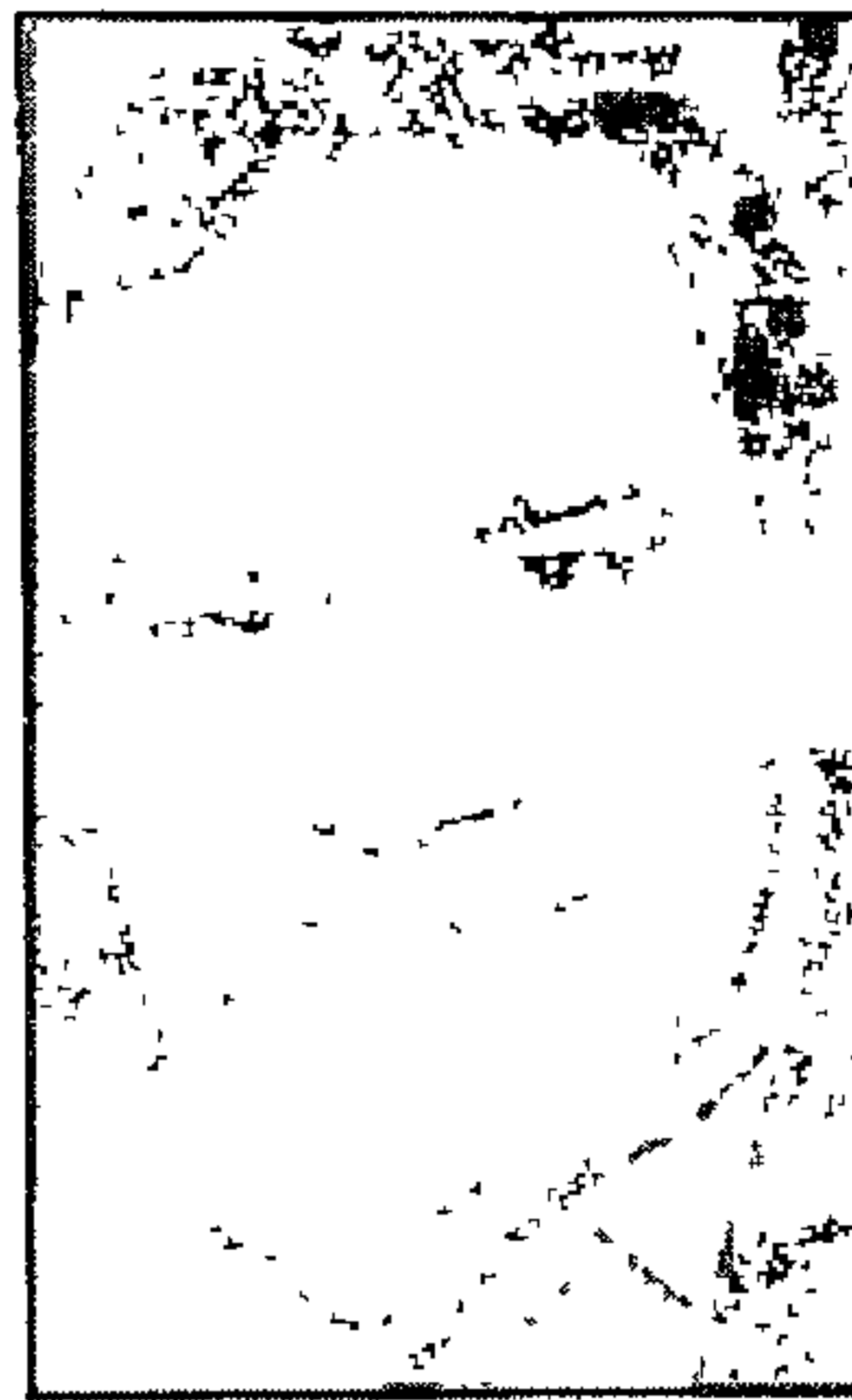
After graduating, apartheid laws meant he was effectively an "illegal squatter" at the Bar - unable to rent chambers and instead borrowing office space from colleagues.

He changed in a separate robing room and struggled to get briefs.

Ironically, when he appeared in Bloemfontein, he was forced to leave the Free State each night because of the province's ban on Indians.

In response to a question by George Bizos SC, Mahomed said even though 40 years had passed, he was still unable to speak about a racial incident which occurred while

## The road to the top has been very different for the two candidates for Chief Justice



Judge Ismail Mahomed

Bizos was preparing him for his first appearance in court.

Bizos then told the JSC that a colleague had seen fit to tell a joke with an Indian accent while Bizos was putting studs into Mahomed's collar, prior to appearing in court.

"I never felt equal, always felt excluded," Mahomed told the JSC.

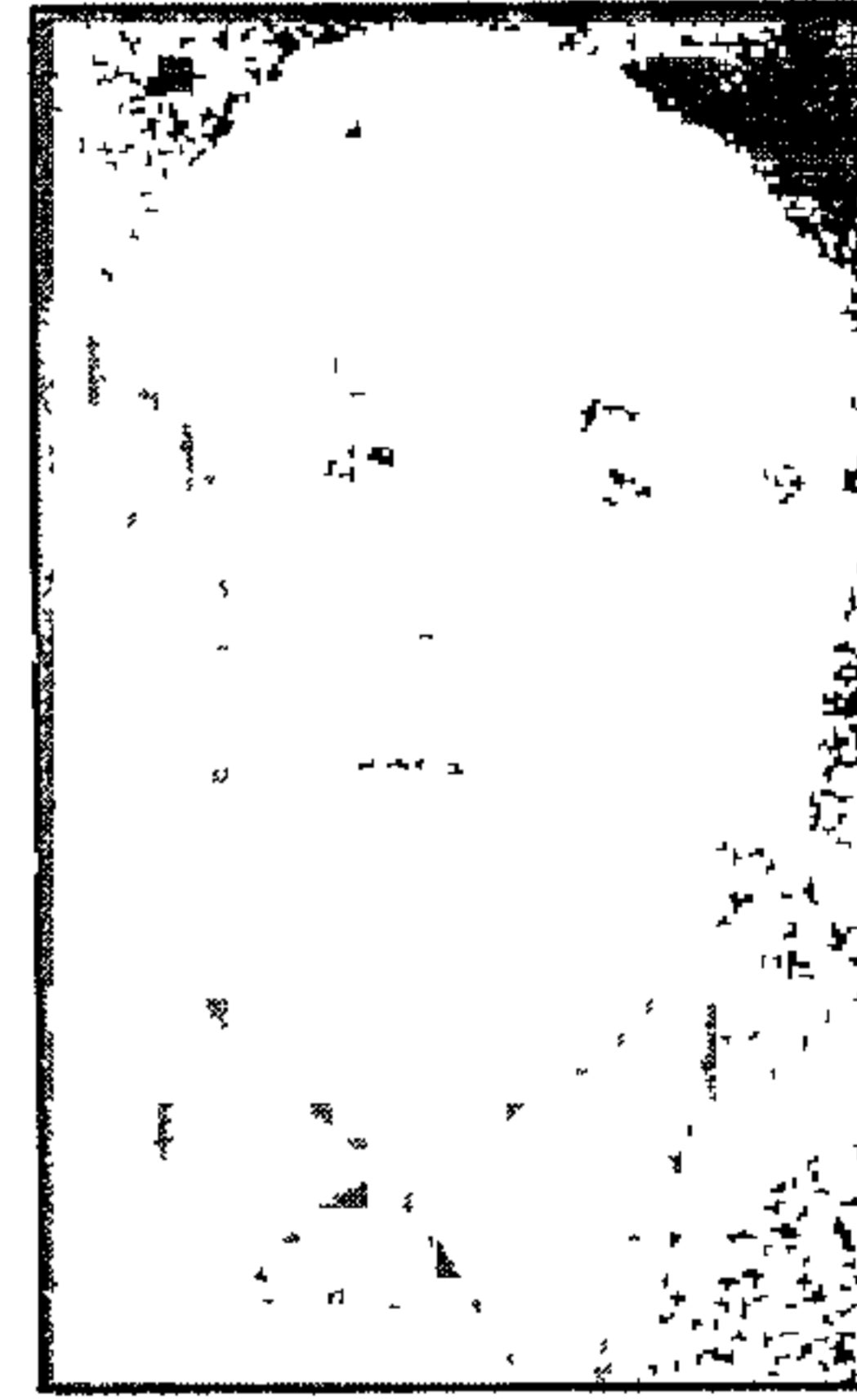
"My dignity was assaulted at every level."

Mahomed, one of the country's finest civil rights lawyers, said not only did apartheid force him to devote greater efforts to his work, but it gave him a "moral passion".

Mahomed was South Africa's first black senior counsel but only joined the South African bench in 1991. He is also Namibia's Chief Justice and said if he was given the South African post, he would like to keep both jobs.

Mahomed said his conscience would not have allowed him to enforce laws before this.

He spoke at length about the need for South Africans to see the legal system as legitimate - something not possible in the past where, too often,



Judge Hennie van Heerden

justice and the law appeared to be very different.

His experience in neighbouring states had given him insight into the role of the judiciary in a country undergoing transformation.

Mahomed said people needed to be view the court as empathetic to their experiences.

He cited the case of hanged ANC guerilla Solomon Mahlangu, saying he had seen a "young lad selling apples" who had become caught up in a "complex process". The judge in the case had seen a "terrorist".

Mahomed argued strongly that the constitution and human rights should not be an esoteric speciality but part and parcel of South Africans' consciousness.

The constitutional jurisdiction which the new constitution gave the Appellate Division would allow the development of common law in accordance with constitutional values.

The chief question mark raised by the JSC about Mahomed was over his duties in neighbouring states. Mahomed is Chief Justice of Namibia and a member of the Court of

Appeal in Swaziland. He recently resigned as Chief Justice in Lesotho. □ Hennie van Heerden, the judge next in line for the Chief Justice post, in terms of seniority and reputed to have the backing of all but one of the Appeal Court judges, cut a reserved and more traditional figure.

A graduate of the University of the Orange Free State, he studied abroad before joining the Orange Free State bar. His speciality was laws of competition and mercantile law.

Van Heerden was part of the legal team which represented the South African government at the International Court in the Hague where South Africa argued that there was no universally accepted doctrine of human rights of which South Africa was depriving the Namibian people.

Van Heerden told the JSC that this had not been his personal view but his client's. Lawyers frequently did not share their clients' views.

Van Heerden, appointed a judge in 1978, said there were relatively few instances where he had dealt with apartheid laws and wherever possible he had ruled in favour of the individual rather than the executive.

There had been little space for such rulings, however.

JSC member Wim Trengrove drew Van Heerden out on several liberal judgments and minority opinions which he had passed.

Van Heerden's leading role in drawing up an early draft Bill of Rights which excluded discrimination was discussed.

Like Mahomed, Van Heerden expressed concern that the judiciary needed to be seen as legitimate. He said the judiciary needed to be representative in terms of colour and gender but that this should not mean a decline in legal standards.

Van Heerden said if he was not appointed Chief Justice and was subsequently asked to stand for the post of assistant Chief Justice, he would accept such a nomination.

If Mahomed was appointed, he would welcome him and give him all the help possible.

□ The new Chief Justice will be appointed by President Nelson Mandela after he receives the JSC's recommendations.

# Fortunes held to ransom by crisis in court office

(252)

By CARMEL RICKARD

*ST 6/10/96*  
DISSATISFIED staff at the Supreme Court Master's office predict the imminent "total collapse" of their department — with a dramatic effect on the economy.

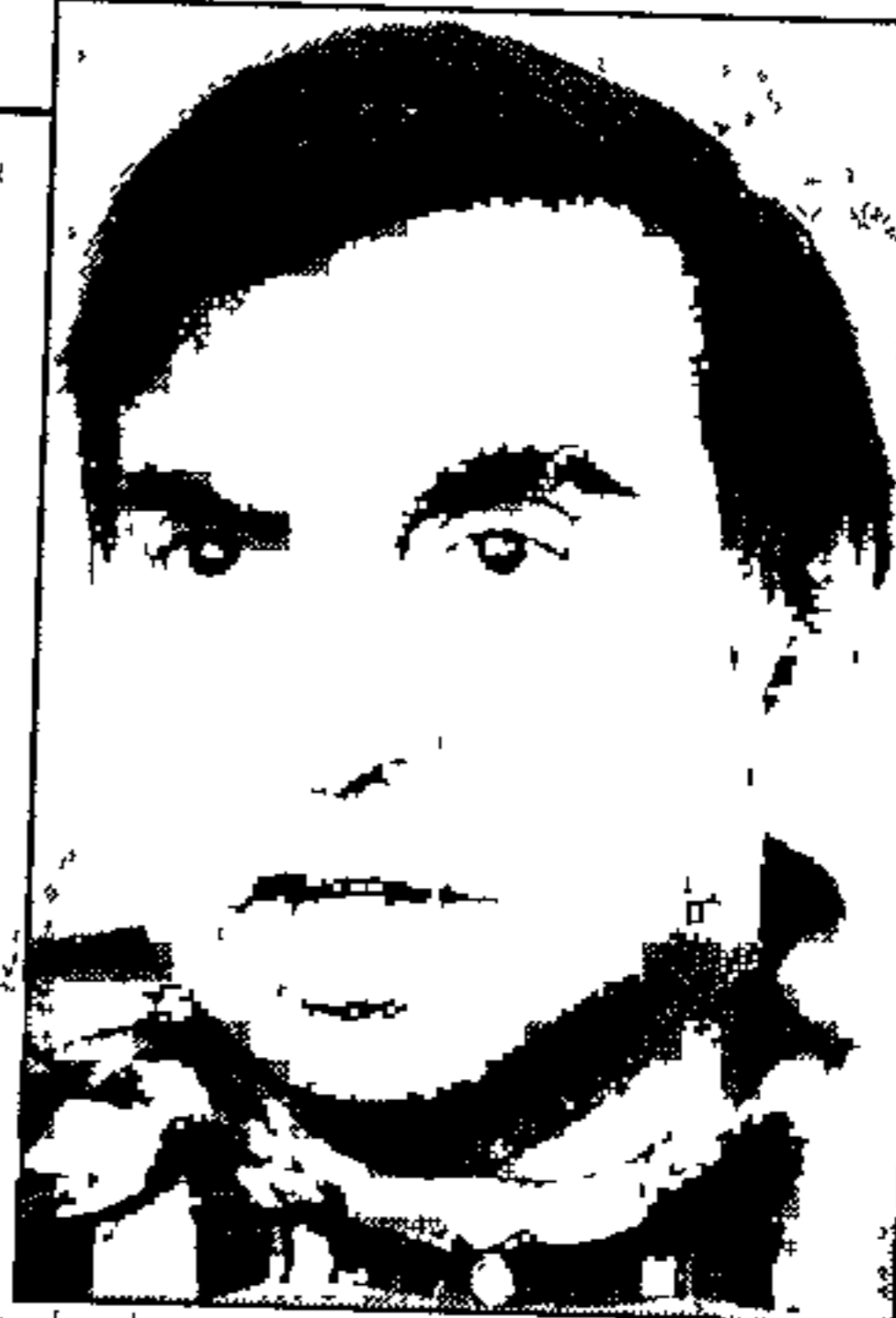
The Master's office deals with insolvent and deceased estates.

The office is obliged to make appointments, such as liquidators in insolvent estates, and to issue related documents quickly and efficiently to ensure the money involved is put back into the economy as soon as possible.

Officials of the newly formed organisation representing staff of the Supreme Court Master's and Registrar's office wrote to the Minister of Justice, Dullah Omar, this week, outlining their continuing dissatisfaction over working conditions and staff shortages.

In the letter, the chairman of the organisation, Thinus Rudolph, said that key grievances had been discussed at a meeting on August 8.

Staff had been promised that salary dis-



MONEY MATTERS ... Dullah Omar faces mayhem

crepancies and the filling of vacant posts would be given immediate attention.

At follow-up meetings with staff at the Department of Justice, they received similar promises, but nothing had materialised. Now resignations in the Master's office had reached "alarming proportions".

Rudolph said the problems in the Master's office would have little impact on the criminal justice system, but would have a "great influence" on the economy because of the vast amounts of money involved in the work of the office.

Rudolph said their grievances should be dealt with urgently. "The Master's office is facing total collapse, which will have a dramatic effect on the economy."

Officials said this week that staff shortages and other problems had now reached such a level that the Master's office was unable to do its work properly.

The issuing of documents and appointment of liquidators was being delayed, with the result that millions of rands were unnecessarily tied up and prevented from getting back into the economy.

# Mahomed persuaded to accept nomination

Wyndham Hartley

(252)

BD 7/10/96

CAPE TOWN — The man tipped to be SA's next chief justice, Ismael Mahomed, had to be persuaded by a group of eminent judges to accept nomination for the country's top judicial posting

Mahomed, whose nomination as a candidate for chief justice has been highly politicised in recent weeks following President Nelson Mandela's endorsement, told the Judicial Services Commission at the weekend that he had been persuaded his appointment would be a symbolic demonstration that the judiciary was changing

During public interviews by the commission, Mahomed said he was ambivalent about the job because the past two years spent as deputy president of the Constitutional Court had been the happiest of his life. He said he would accept the job because he had been persuaded the symbolism of his appointment would help restore the legitimacy of SA's courts.

Mahomed and senior appellate division judge Hennie van Heerden were interviewed by the commission and fielded questions from retiring chief justice Michael Corbett, Constitutional Court judge-president Arthur Chaskelson, Justice Minister Dullah Omar and other commission members. They are the only two candidates for the job

Van Heerden is the longest serving member of the appeal court in Bloemfontein while Mahomed accepted an appointment to the bench only after Mandela's release from Robben Island in 1990

In addition to Mandela's endorsement, Mahomed has the backing of a number of black lawyers' groups, while Van Heerden, apparently, has the support of most of the appellate division judges

The commission must make a recommendation to Mandela on who is the best candidate for the job. Corbett said that the commission had not set itself a time limit to come to the decision

Questioned during the hearing about the politics surrounding candidates for chief justice, Mahomed said he regretted the way in which things had transpired with different groupings backing "their man".

Mahomed said he felt "ambivalence" about going back to Bloemfontein, the seat of the appeal court, because as a young advocate he was not allowed to spend a night in that city or to eat in its restaurants

(252) CT 8/10/96

# Kriel scraps selection of casino team



**CHRIS BATEMAN**  
POLITICAL WRITER

THE issuing of casino licences in the Western Cape has been set back by at least five months as Premier Hennie Kriel has scrapped the selection process that would have led to the appointment of the powerful seven-member Gambling Board.

Kriel said yesterday a special audit to ensure that the appointment procedures were followed "unimpeachably and correctly" had found "shortcomings".

Although Kriel's statement did not give details, it is understood from well-placed sources that these shortcomings included the procedure followed by police in investigating the backgrounds of candidates. These were carried out as names were put forward instead of all 30 being investigated at the same time.

The Western Cape Gambling and Racing Bill, approved in May, allows for wide-ranging probes into shareholdings and interests held by any board member. The intention is to ensure board members will be above reproach in awarding licences and regulating the industry.

A spokesman for Kriel, Mr Frikkie Odendaal, said there was "nothing sinister" - the Premier wanted it to be 100% above-board with no possible comebacks.

Kriel said the audit findings had convinced him to suspend immediately the appointments process and to begin advertising, investigating and selecting "from scratch".

Advertising began in May. The province's Taxes and Levies chief, Mr Chris Lotter, received 30 applications, a shortlist of which went before the executive committee two weeks ago.

Kriel has the power to appoint a chairperson and deputy chairperson from the executive committee shortlist.

Pretona has allocated to the Western Cape five casinos, one of which is to be in the Cape Metropole.

Speculation has centred on one being on the West Coast, another in the Southern Cape and one each in the Overberg/Breede River and Central/Little Karoo regions.

Neither Kriel nor Mr Lotter was available for comment last night.



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# Security under review after court shooting

BD 8/10/96

(252)

Stephané Bothma

PRETORIA — Security at the Pretoria Magistrate's Court building was under urgent review yesterday following an incident in which an Eersterust gang member was gunned down in a court room by a rival — who then managed to use the lift from the fourth floor, walk past security guards and jump into a getaway car

A massive police hunt was still under way late yesterday to capture Abdul Mohamed who allegedly shot co-accused Lawrence Fisher eight times with a 9mm pistol during a tea break at court. Fisher, shot in his head, neck and body, died a few hours later. A bystander was slightly injured in his

leg and foot

Mohamed and Fisher were both members of the Bad Boys gang operating in a township north of Pretoria. They were on bail pending a charge of attempted murder and had to appear in court when the shooting took place.

Chief prosecutor Tom Dicker said urgent steps would be taken to beef up security at the court building. He had submitted a report to the justice department in this regard. He also expressed concern for the safety of his staff, magistrates and State witnesses.

"What if an accused is unhappy about a decision by a magistrate or evidence by a witness?" he asked.

Police spokesman Capt Dave Harrington said court security was han-

dled by the justice department and he could not comment on how Mohamed managed to bring in a firearm.

Sources said the rivalry between Mohamed and Fisher started when Mohamed supplied information to police which prevented Fisher from getting bail. Fisher was later granted bail on appeal by the Transvaal Supreme Court and took out a contract on Mohamed's life for betraying him.

Mohamed learnt about the contract and showed up at court armed and allegedly shot Fisher, who was in a court room on the fourth floor.

Mohamed was due to appear in court with Fisher, but arrived late. Police are also looking for four men who escaped with Mohamed in a white car.

# Court stenographers refuse to record cases

Deborah Fine

CRIMINAL and civil cases at the Rand Supreme Court were disrupted yesterday when more than 80% of the court's stenographers refused to record legal proceedings, to back their demand for higher salaries and better working conditions.

The stenographers have threatened to continue with the action until their demands are met.

Denying that they had embarked on a strike, the stenographers said they had spontaneously decided to engage in "protest action" yesterday morning as they were "sick and

tired of empty promises. Sem Data Yyf, the private company employing them. Data Yyf has a contract with the justice department to provide stenographic services at the court.

They said they had locked their stenographic machines and had refused to tape proceedings in a bid to force Data Yyf to acknowledge their demands for a minimum salary of R1 800 a month, a 13th cheque as well as pension and medical aid benefits. They claimed to earn between R1 200 and R1 400, with no set bonuses or other benefits.

Complaining that court cleaners earned more than they did, they al-

leged they had not received increases since 1993 and had been negotiating with Data Yyf's management for several months without success.

Most court cases were stood down due to the protest. Only a few judges chose to continue their cases by writing out proceedings by hand.

Data Yyf MD Marais Nel said after a long meeting with the stenographers yesterday morning, that they had agreed to return to work after he had explained to them that the company's ability to award increases was dependent on its contract with the justice department—more specifically, the contract's an-

annual escalation clause.

The annual increase was calculated according to the consumer price index and was insufficient at present to comply with the stenographers' demands.

He would try to arrange talks with the department and the state tender board later this week, as well as a meeting between himself, Transvaal Judge President CJ Eloff, Deputy Judge President H CJ Flemming and the Media Workers' Association of SA — to which most of the stenographers belong — to resolve the dispute.

He denied Data Yyf had refused

to address employees' demands and said it was "a lie" that they had not received increases for three years.

Despite his assurances, only half the stenographers returned to work yesterday. The rest said they would await the meetings' outcome as well as continue their action indefinitely, until they had written confirmation that their demands would be met.

A spokesman for the attorney-general's office said he would have to wait until today to see how many stenographers returned to work before his office could consider what measures to adopt to ensure the continuation of court proceedings.

# Study urges a city priority rethink

Robyn Chalmers

GOVERNMENT needed to rethink the way in which SA's large cities were governed if they were to become globally competitive, Centre for Development and Enterprise executive director Ann Bernstein said yesterday.

Launching the first in a series of six reports on SA's largest cities, she said the national economic growth strategy should have the role of cities as a priority.

"To neglect cities is to jeopardise national development. Only by becoming globally competitive can SA cities generate resources to cope with basic needs, reconstruction and racial reconciliation," she said.

The bulk of SA's GDP was generated in its cities and towns, and governments' macroeconomic programmes depended on a successful approach to the big cities.

At present, government is not geared to deal adequately with this challenge. We need to know that urban strategy is being given sufficient attention by Cabinet.

## Court stenographers return to work pending meeting

Deborah Fine

ALL Rand Supreme Court stenographers resumed their duties yesterday after refusing to record legal proceedings on Monday to back their demands for higher salaries and better working conditions.

They have agreed to remain in court and operate the machines which record proceedings pending the outcome of a meeting tomorrow afternoon. The meeting will be between the management of Data Yf — the private company which em-

plays them. Transvaal Judge President HCJ Fleming and representatives from the Media Workers' Association of SA, to which most of the stenographers belong.

Data Yf has a contract with the justice department to provide stenographic services. Most criminal and civil cases were stood down on Monday after the stenographers locked the machines and left the court rooms in support of their demands for a minimum salary of R1 800 a month, a

thirteenth cheque, pension and medical aid benefits. They claimed to be earning between R1 200 and R1 400 a month with no set bonuses or other benefits, and alleged Data Yf had refused to acknowledge their demands despite several months of negotiation.

The Witwatersrand attorney-general's office issued instructions during the protest that courts should not attempt to unlock the machines or make use of them as it was not the duty of court officials to intervene in labour disputes or the

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## Cape activist gets amnesty

CAPE TOWN — Former Eastern Cape activist Andile Samuel Solo had been granted amnesty, the truth commission's amnesty committee announced yesterday.

Solo is the third person to get amnesty from the commission. Solo, 33, of New Brighton, Port Elizabeth, said in his amnesty application that he was a unit commander of Azania, the military wing of the Azanian Peoples' Organisation, and a member of the Black Consciousness Movement of Azania (252).

He was sentenced in the Eastern Cape for five contraventions of the Explosives Act and the Arms and Ammunition Act.

When he appealed to the Eastern Cape division of the Supreme Court, his conviction and sentence were set aside because he had been refused a trial postponement to change his lawyers. However, he was recharged and was due back in court in May.

The new trial was postponed pending the outcome of his amnesty application.

Solo was granted amnesty in respect of two acts in 1993. He planted an explosive device at the Esigas plant in Port Elizabeth and attempted to explode a device at Terego Flats in Uitenhage — Sapa.

BD 9/10/96

## Pahad tells Zimbabwe SA is not delaying trade pact

Michael Hartnack

HARARE — Deputy Foreign Minister Aziz Pahad yesterday strove to reassure irate Zimbabweans that SA was not delaying the signing of an updated "most favoured nation" bilateral trade pact until it had concluded a preferential trade agreement with the European Union. BD 9/10/96

Responding to allegations made at the weekend by Confederation of Zimbabwean Industries president Jonee Blanchfield, Pahad said tariff barriers against Zimbabwean exports, especially textiles, could not continue.

"We cannot continue with the high protective regime," Pahad said at the outset of an inaugural joint commission meeting between the two countries. The session is to last two days.

"There is a genuine commitment to accelerate the process," he said, denying Blanchfield's charge that SA was using "delaying tactics" in seeking irrelevant points of information.

"Negotiations with the EU have not even started. We will never do any-

thing to finalise our negotiations with the EU without taking into consideration its implications for other countries in the region," he said.

"There is political will and genuine commitment to resolve this (updating the moribund 1964 trade pact) without further delay."

Blanchfield protested that although Commerce Minister Nathan Shamuyairira had announced a "breakthrough" and signing of the new pact by the end of August, another month had passed without progress due to further queries from SA.

Blanchfield's protest at a trade balance R3bn in SA's favour was echoed by Deputy Foreign Minister Nicholas Goche at the meeting.

The commission's agenda is understood to be largely a formality, containing neither the trade pact nor the other issue vexing relations — jailed SA agents. President Robert Mugabe has rejected repeated approaches from President Nelson Mandela for the release of the agents, all serving life sentences for acts of terrorism in 1987-88.

## New great trek faces red tape and rain

Tim Cohen

CAPE TOWN — The first 20 "new great trek" farmers would be settled in Mozambique by the end of the month, despite obstacles both current and on-

The first region where the farmers would settle would be Lichinga, about 4 000km from Pretoria and close to the eastern shores of Lake Malawi.

The "pioneer group" is expected to lead hundreds of other farmers in what

# Bill of Rights sacrosanct no more

New provisions for imposing states of emergency allow governments wide leeway and to suspend basic protection

By COLIN DOUGLAS

In their rush to finalise the constitution by the end of this week, negotiators have accepted a provision which makes it easy for future governments to impose states of emergency and, having done so, to suspend much of the Bill of Rights - including the right to free and fair elections.

This new provision is barely distinguishable from the one condemned as "arbitrary" and "invulnerable" by the Constitutional Court in its recent judgment on the certification of the constitution.

In its judgment, the court advised negotiators to rewrite the state of emergency provisions "more rationally and thoughtfully", but because the court has no technical grounds on which to strike down his section, it relied on negotiators' goodwill - a commodity which appears to be in short supply, in this area at least.

As the provision now stands, a simple majority of the National Assembly will be able to impose a state of emergency when "the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster, or other public emergency".

(The catch-all, "or other public emergency", will give future governments wide discretion.)  
If the government wishes to ex-

tend the state of emergency beyond 21 days, the National Assembly must resolve to do so by a 60% majority. A state of emergency can last indefinitely, provided 60% of the National Assembly agrees to renew it every three months.

But the most troubling feature of this provision is not how easy it will be to impose states of emergency, but what the government will be allowed to do once it has been imposed.

Parliament will have the power to suspend the majority of the rights guaranteed in the Bill of Rights. This power is conferred in a table which differentiates between those rights immune from curtailment in states of emergency and those which are not.

It was this table, in its original form, which the Constitutional Court condemned as "invulnerable and, in some instances at least, so inexplicable as to be arbitrary".

Court president Arthur Chaskalson and his colleagues said they could "think of no reason" why some of the curtailable rights should be treated as such.

One might have expected negotiators, faced with such trenchant criticism, to have thoroughly reconsidered the table. Instead, they have

made only minor amendments, with the result that the table contains several gaps and anomalies.

One anomaly is that during a state of emergency, the government will not be allowed to discriminate against people on the grounds of race, sex, religion or language - but it will be permitted to discriminate against them on the grounds of sexual orientation, disability, age, culture, belief and conscience.

This is a slight improvement on the original table, which made the right to equality non-curtable on

## Future govt will be able to interfere in elections

the grounds of race and sex only. But the new provision has absurd consequences.

For example, it makes hollow the newly celebrated right to equality on grounds of sexual

orientation. The government will be allowed to discriminate against homosexuals during states of emergency.

It is doubtful that Judge Chaskalson, or anyone else, will be able to think of a reason why the rights of homosexuals, or the disabled or the aged, should be allowed to be curtailed in a state of emergency.

Indeed, none of the negotiators has put forward a reason why the equality clause should not simply be

made non-curtable in its entirety, as it was in the 1993 interim constitution and in drafts of the new constitution as late as March this year.

The negotiators and their academic advisers based the new list of non-curtable equality rights on the 1966 International Covenant on Civil and Political Rights.

But they appear to have missed the rather obvious point that South Africa's equality clause contains rights not even contemplated in 1966.

Perhaps the most serious gap in the list of non-curtable rights is the right to freedom of conscience, religion, thought, belief and opinion.

The interim constitution and initial drafts made this right fully non-curtable during states of emergency. By contrast, the current provision affords this core right no protection whatsoever.

The International Covenant proposes that rights of free thought, conscience and religion be made non-curtable in states of emergency, as do most other relevant international agreements.

The curtailability of this right can only be described, in the Constitutional Court's words, as invulnerable. It will allow future governments

to persecute political dissenters during states of emergency, even if their dissent is limited to signing a petition or being a member of an unpopular organisation.

A second serious omission from the list of non-curtable rights is freedom to make political choices, form and participate in political parties, and vote in free, fair and regular elections.

Several international agreements propose that these rights should be non-curtable in states of emergency, including the

## Amendment required majority now 60%

1969 American Convention on Human Rights and the International Law Association's 1984 Paris document on Minimum Standards of Human Rights.

Norms in a State of Emergency. A state of emergency is the time when a ruling party may be most tempted to interfere with the rights of its political opponents, and it is precisely at this time that political rights are most in need of protection.

In terms of the current provision, future governments will be able, during a state of emergency, to harass their political opponents and even interfere in elections.

Only one clause will temper Parliament's power, in a state of emer-

gency, to curtail the bulk of the Bill of Rights. The clause states that the curtailment must be "strictly required by the emergency".

But it may be difficult for a court to defend someone's rights using this clause, because Parliament will have largely unfettered discretion in defining what the emergency is and which people or groups are responsible for the threat which the emergency poses to the nation's life.

And the inquiry as to whether a particular measure is strictly required by the emergency is a question not of law but of hypothesis, which courts, whose jobs is to apply the law, may find difficult to answer.

The origins of the state of emergency provisions are interesting. In April this year, as the result of an ANC proposal, the draft of the new constitution was changed to reduce the majority required in the National Assembly to renew a state of emergency from two-thirds to 60%.

This change would were it not for the fact in the current National Assembly can muster a 60% two-thirds.

At the same time the list of rights curtable in a state of emergency was abruptly shortened.

Colin Douglas, affairs manager, Institute of Race

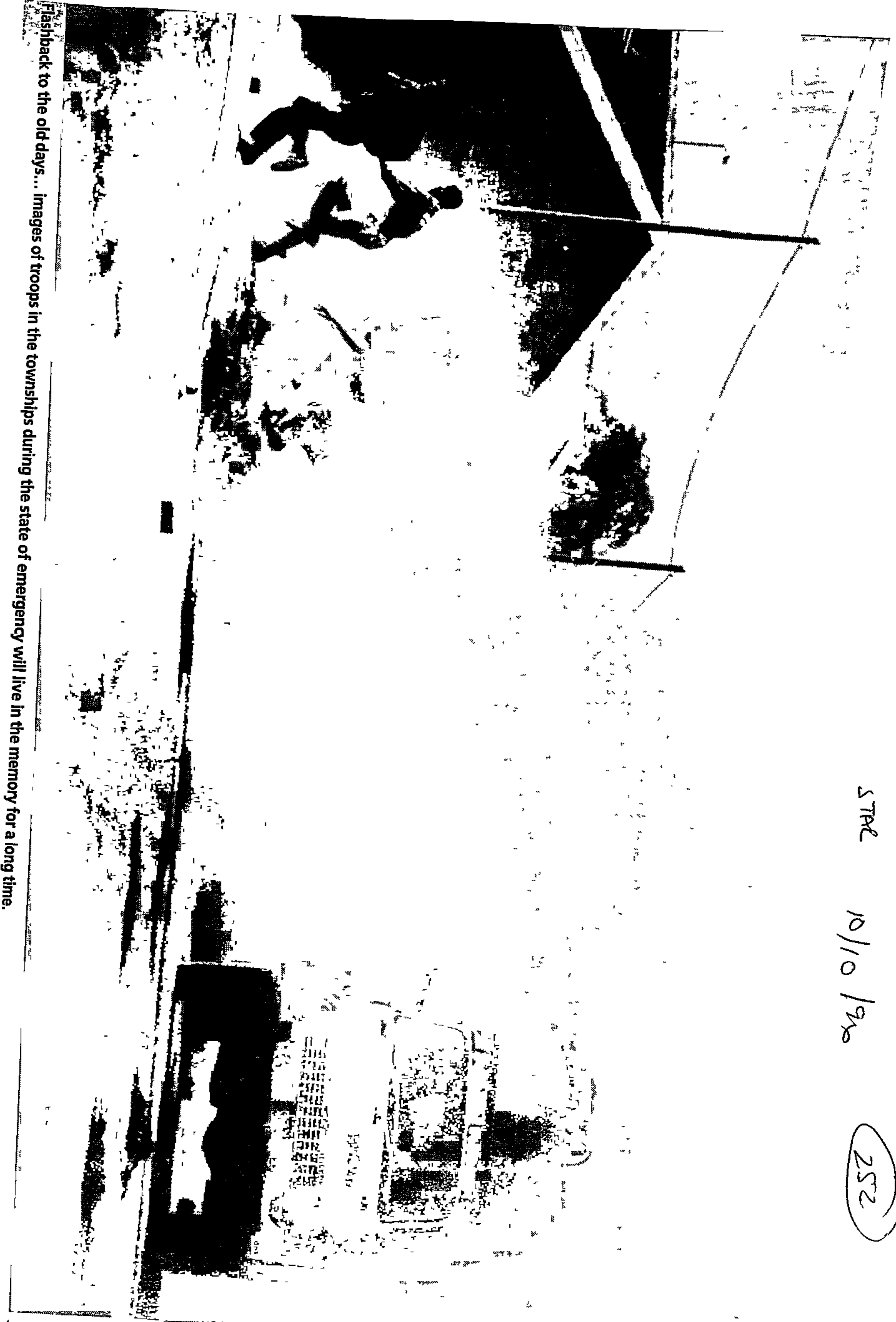
at the ANC National Assembly, but not

as this change, which were non-state of emergency threatened is the parliamentary of the South African Relations

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Flashback to the old days... images of troops in the townships during the state of emergency will live in the memory for a long time.

# Human rights dilemma

**A**T A HEADS OF MISSIONS Conference a year ago, Foreign Affairs Minister Mr Alfred Nzo said a commitment to human rights was one of the underlying principles guiding South Africa's foreign relations

Since then the Government has come under attack for what is seen as a lack of commitment to international human rights. And our relations with Nigeria and Indonesia are examples of where we can be seriously criticised

There are those who believe that a human rights-oriented foreign policy is an unattainable objective. Not only can it harm South Africa's trade and other relations with transgressors, but it is also believed that it is an idealistic approach to follow, considering this country's position and status in terms of available resources

But a commitment to human rights as a principle or objective of foreign policy is no longer considered unrealistic

Starting with the end of World War 2 and creation of the United Nations, human rights slowly found its way into the foreign policy principles of most states, even though they often only pay lip service to this commitment

## Long struggle

There are also an increasing number of NGOs who campaign internationally for the protection, respect and extension of human rights

Because of the long struggle against apartheid, South Africa is today considered as a prime example of a society where respect for human rights has won the day

This country is an inspiration to and an example for many and there is also an expectation that South Africa will lead the way, or at least play a role in the promotion of human rights

However, a commitment to international human rights is more easily voiced than implemented and its implications should be thought through carefully

There are three inherent problems to this approach. Firstly, sovereignty is a basic ground-rule of international relations. The state or government of a country is the highest authority in that territory and may use force to assert its will on its population

And a general rule is that states are not allowed to interfere in the domestic policies of other countries as this would be a denial of the target state's sovereignty

This rule has made it possible for many governments to hide or deny human rights abuses and to refuse to change their policies

They claim, like South Africa did during the apartheid era, that their internal policies are not of concern to others

In international law, the acceptance of the

(252) *Samuel 10/10/96*  
Commitment is easier than implementation argues **Maxi van Aardt** on SA's approach to opposing the abuses of people's rights at home and internationally...

**'A commitment to human rights as a principle is no longer considered unrealistic'**

sovereignty of the state means that the rights of citizens are usually subordinate

In democracies, where peoples' rights are respected and guaranteed by a bill of rights in the constitution, this does not create a problem. But in authoritarian states, human rights abuses are not checked by a constitution and international rules favour the state rather than the individual

Yet, intervention in the internal affairs of a state is prohibited. This rule, aimed at protecting states against external aggression, is often invoked by governments who abuse human rights

Despite the rule of non-intervention there are certain measures, like diplomatic or economic sanctions, that can be used to put pressure on transgressor states

The second problem has to do with the definition of human rights. International action against human rights abuses is often restricted to a rather narrow definition of human rights as basic civil and political rights like the right to life or freedom of association

When applying sanctions against governments which abuse these rights of citizens, it often happens that the other rights of citizens are violated in the process

If one accepts that the right to health is a basic human right, then economic sanctions which result in people being deprived of medical care and medication result in an abuse of people's rights

## Suffering

This is the problem with UN sanctions against Iraq. Prohibiting it to sell its oil internationally has led to a lack of food and basic medicines in that country, creating suffering for a large section of the population

States which claim to make human rights a cornerstone of their foreign policy should therefore think carefully about how they define it and to what extent they might contribute to an abuse of human rights in their

attempts to punish abusers

A third problem has to do with the instruments and resources available to implement such a policy

Most Western states that are serious about promoting human rights are able to use aid as an instrument – whether granting or withdrawing it (or threatening to withdraw it)

But a developing country like South Africa cannot do that as we do not have the resources to be a donor nation

It therefore has to rely on other means

In the case of Indonesia, it has been suggested that South Africa should sever its trade links with that country. The question is what would be the outcome of such action?

Our trade with Indonesia is too small to hurt that country and breaking off diplomatic links would mean that we have no way of exerting influence or pressure on that government

If we severed trade and diplomatic ties, we would "feel good" and occupy the moral high ground. And we may lessen the threat that cheap imports holds for our labour market

## Unrealistic principle

But we would not have achieved much as even the influence that our human rights record might have had on that government would be lost, since there would be no more contact

However, I do not mean that human rights are an unrealistic principle on which to base one's foreign policy. On the contrary, it is of crucial importance to our commitment to improving the human condition

But in order to be effective, we have to work out a policy that acknowledges our strengths and weaknesses

Some of the options for a developing country like South Africa include

- Multilateralism – building coalitions of like-minded states which can collectively exert pressure on transgressor states,

- Support of international organisations involved in the promotion of human rights,

- Public condemnation of abusers, and

- Taking firm and practical steps to build regional consensus on how human rights can be promoted in Southern Africa and further afield

It is easy to claim that we want to promote human rights, but to implement such a policy is a long and difficult process

*Maxi Van Aardt is a lecturer in international relations at the Rand Afrikaans University*





# Human rights record

Southern Africa is a freer and better place to live in, writes Mercedes Sayagues

A culture of human rights is emerging in southern Africa and relatively few people are randomly killed or disappear (except in KwaZulu Natal), according to Amnesty International's report for 1995 recently released

In Malawi and Mozambique, the end of a brutal dictatorship and a civil war respectively brought respect for human rights. South Africa registers marked improvement, but is still marred by violence in KwaZulu Natal. Namibia is gloriously absent, from the report, meaning that no human rights abuses were reported in 1995.

Most of the violations reported in southern Africa concerned ill treatment of prisoners and people in custody, violations of press freedom, and harsh police reaction faced with student unrest. Most abuses were committed by zealous police and governments bent on preserving power and quelling dissent.

Press freedom was the main issue in Zambia and Zimbabwe, with several journalists briefly arrested and held as prisoners

of conscience. In both countries, criminal defamation charges were levelled in connection with stories that reported negatively on Presidents Chuluba and Mugabe.

Amnesty International has argued that criminal charges such as defamation are used to harass government critics and has called for an end to this practice.

Zimbabwe was noted for excessive use of force by police against university students and the harassment of opposition leader Ndararungu Sithole, charged with an alleged attempt to kill President Mugabe.

Press freedom was challenged in Tanzania, with six journalists arrested as prisoners of conscience. Authorities there have used criminal charges to harass journalists; about a dozen face charges. In the runup to the elections in Zanzibar, allegations of harassment of opposition parties were made. Courts continue to impose sentences of caning - 10 strokes for two youths convicted of attempting to steal a car.

In a breach of international and regional treaties, Tanzania closed its border to

refugees fleeing Burundi in March. At least one group of 300 refugees was forcibly returned. There were reports of robbery, rape and killings of refugees by Tanzanian soldiers. Amnesty International has called for impartial investigations into these allegations.

In Swaziland, prisoners of conscience, including trade unionists, political opponents of the government and journalists were detained for short periods. Torture by police was alleged. All party political activity continued to be banned and the right of freedom of expression and assembly restricted.

In the other kingdom of southern Africa, Lesotho, police acted with a heavy hand. Government critics have been detained and held incommunicado and without charge or trial for several months. There were allegations of ill-treatment; one prisoner died in police custody. About 20 people were injured when police opened fire on a peaceful crowd of factory workers.

In Malawi, human rights were boosted when former president Kamuzu Banda and five others were brought to trial for the ex-

clusion of four government officials in 1983. All were acquitted. However, the prosecution said it would appeal against the verdict.

Mozambique rated well for marked improvements in human rights. However, suspected opponents were detained, often illegally, by police or soldiers; some were beaten in detention.

Prisoners rioted in several jails protesting against overcrowding, delays in being brought to court and harsh living conditions. There were reports of illegal arrests of Renamo supporters, while Renamo resisted efforts to bring all its territory under government control.

South Africa also rated a marked improvement in human rights after apartheid's demise, but its record was marred by violence in KwaZulu Natal that claimed at least 800 lives. Torture (electric shock, suffocation) and ill-treatment of prisoners were reported, mostly in KwaZulu Natal.

Police statistics reported that 195 prison-

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ers died in their custody in the first nine months of the year, mostly at the time of arrest or on the way to hospital, and mostly in Gauteng and KwaZulu Natal.

Investigations into past human rights violations produced evidence of the implication of apartheid's security forces in political killings, as seen in the highly publicised trials of security officer Colonel Eugene de Kock and former minister of defence General Magnus Malan.

Angola continued to be a violent place, in spite of the Lusaka Peace Agreement of November 1994. Hundreds were killed, especially in the diamond-rich Lunda provinces. Many others were killed by landmines and bandits. Freedom of circulation of people and goods, although stipulated in the Lusaka Protocol, is not respected.

More arrests of government opponents were reported, as well as allegations of torture, ill-treatment of detainees and extrajudicial executions by government troops. Unita stands accused of deliberate and arbitrary killing of soldiers and civilians, and gross human rights abuses in the areas it controls - Star Foreign Service/AIA

improving

# 'Truth body' to hear kids' tales of rape and terror

Rehana Rossouw

**E**VERY morning, the mother of a seven-year-old girl watched her daughter leave their Khayelitsha shack to walk to school. Most mornings, the child left home with an empty stomach.

For the past few months the child hadn't reached school. Instead, she had been going to a house nearby where she was sexually exploited. In return, she was given a plate of food. The child was first enticed into the house by a female resident who spoke convincingly about school being a waste of time. Eventually the child did not need convincing.

After lunch each day, the woman took her to the bedroom and sexually stimulated her in preparation for her male partner to rape her. The child did not scream anymore.

At the school the child was supposed to attend, the children weren't much safer from abuse. Four nine-year-old boys recently took a seven-year-old girl to a secluded area in the grounds and attempted to rape her.

While she kicked and screamed, they removed her underwear and their own. One boy attempted to penetrate her anus and another her vagina.

Fortunately, a teacher heard the screams and intervened to stop the gang rape. When the children were asked why they tried to rape the girl,

they said everyone else was doing it. This child and others in "desperate" need of help will tell their stories at a special truth commission in Parliament on November 2.

The children will testify to a panel of invited guests including Minister of Justice Dullah Omar, Minister of Welfare Geraldine Fraser-Moleketi, Minister of Safety and Security Sydney Mufamadi, the attorney general of the Cape, the chief magistrate of Cape Town and the head of the Child Protection Unit, Anneke Pienaar. President Nelson Mandela has been invited to open the event.

They will hear how the government has promised to help abused children, but has done nothing.

Among the other stories collected for the children's "truth commission" is one of an eight-year-old boy who was sent by a social worker for counselling. His mother has physically abused him on several occasions. The most recent incident happened 18 months ago when he asked for food and she slashed him with a panga. In August the boy had an operation on the arm fracture caused by the panga attack. His mother had never taken him for medical treatment.

Her only source of income is a government maintenance grant. His mother had been sexually abused by her father and friends. She regards her son as a male who may do the same to

her one day. Unless she receives counselling, her son's prospects are dim.

"All these children need help urgently, desperately. Where do we get help? There is nothing available and the welfare budget has been cut again," said Bernadette van Vuuren, project co-ordinator of the non-governmental organisation (NGO) Resources Aimed at the Prevention of Child Abuse and Neglect (Rapcan).

**W**e are no longer able to look to the government for intervention on behalf of the children. We resent being put in a position where we have to face children in such circumstances while we have been disempowered to help them.

"We educate adults about child abuse, about protecting children. We create an awareness of the law. And then we have to say to them that all the services they are entitled to, that are guaranteed by the Constitution, don't exist!"

Van Vuuren said NGOs dealing with children had met with government officials at a number of forums where many promises, public statements and commitments to children had been made. She believed these were just "empty promises".

"And so on November 2, International Children's Day, the children will have an opportunity to speak. Let's see if the ministers we invite have the

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**Cry for help: The government must listen to the state of emergency facing children** PHOTO RUTH-MORAU

courage to listen," said Van Vuuren. Rapcan, in conjunction with several other NGOs working in the field of children's rights, organised the Children's Truth Commission.

By this week, only Omar and Pienaar had confirmed that they will attend. They will be joined by the head of United Nations Children's Fund in South Africa, Ian McLeod,

and a representative of the Save the Children Fund.

The testimonies of the victims of sexual abuse will be delivered by social workers assisting them to recover from their ordeals.

"We want to give the children an opportunity to testify directly to Parliament about the everyday crisis thousands of children experience in our country," said Van Vuuren.

"It will be an opportunity for children to ask questions and get some answers from the ministers and bring the attention and voices of perhaps the most important members of civil society to Parliament."

The NGOs will document the event and present a report to Mandela and the United Nations. It will highlight clauses in the Constitution which impact negatively on children and sections of the UN's convention on the rights of children which are being violated in South Africa.

"South Africa is a country envied by the world for its Constitution based on human rights, it is a country which has ratified the UN convention. On paper, the picture is wonderful," said Van Vuuren.

"However, on the ground, it is a very different and tragic situation. Studied closely, we are a country that is violating the rights of our children. At the moment, there is little or no child protection of any form."

# Extradition promised if Palme's killer found

Wyndham Hartley

CAPE TOWN — If a top-level Swedish investigation could prove a South African was involved in the murder of former Swedish premier Olaf Palme, SA would co-operate in extraditing that person to face charges in Sweden, Justice Minister Dullah Omar said yesterday.

Omar was speaking at a news conference to welcome a high-powered Swedish investigation team which arrived in the country yesterday to follow up claims by former Vlakplaas commander Eugene de Kock of a SA connection in the assassination of Palme.

Omar said that even if the truth commission had granted amnesty to an SA national found to be involved in the murder, he would assist in having that person extradited.

Omar said it was not possible to grant amnesty for crimes committed in other countries.

The Swedish investigation team is headed by chief prosecutor Jan Danielsson and superintendent Hans Oluebro. Danielsson said he had been offered all the help needed by Omar

and Safety and Security Minister Sydney Mufamadi. He said the team could be in SA for some time in an attempt to get to the bottom of De Kock's claims.

He denied that the possibility of an SA connection had ever been excluded by Sweden. He said it was the aim of the investigation team to establish whether such a connection existed or not. Interviews with former security force officers and old-order politicians could form a part of the team's work.

Omar said arrangements so far had been made on the basis of the friendship between the two states.

He hoped evidence would be given to the Swedes voluntarily, but would not hesitate to force SA citizens to give evidence to the investigators.

Mufamadi and Omar, in response to questions, said that there had been no progress on the SA side as court procedures had run their course before the attorney-general in Pretoria could resume questioning De Kock.

The ministers pointed out cross-examination of De Kock had been completed only on Wednesday. This was why no further questioning had yet taken place.

## Commission will address sexual abuse

Farouk Chothia

DURBAN — The truth commission would hold its first hearing for women only in Durban on October 25 to give women an opportunity to speak about the violation of their personal rights during the apartheid era, commission KwaZulu-Natal spokesman Mdu Lambede said yesterday.

He said most of the people who had appeared before the commission had been women. However, they had not testified about human rights violations — such as sexual abuse. The commission had decided to arrange a "small and intimate" hearing at which women could relate their suffering to women commissioners, Lambede said.

About 30% of the commission's

KwaZulu-Natal investigative unit were made up of women, who would take statements from victims, he said. The commission will hold separate sittings in Durban and Maritzburg over the next two weeks where other, high-profile cases will be dealt with.

These will include President Nelson Mandela's biographer Fatima Meer, who will recall an attempt to assassinate her husband, ANC KwaZulu-Natal MP Ismail Meer, and the 1978 assassination of Natal University political scientist Rick Turner.

The amnesty application of police Capt Brian Mitchell, convicted on 11 counts of murder and eight counts of attempted murder in connection with the 1988 Trust Feeds massacre, will be heard in Maritzburg next week.

# Magnus Malan may now face TRC hearing

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ARL 12/10/96

## *'Better chance of finding truth'*

**CLIVE SAWYER**  
POLITICAL CORRESPONDENT

**General Magnus Malan and other officers and Inkatha members acquitted of charges of involvement in the 1987 KwaMakutha massacre may yet face subpoenas by the Truth and Reconciliation Commission.**

The acquittal was further proof that the Truth Commission, rather than the courts, had a better chance of uncovering the truth about past human rights abuses, commission chairman Archbishop Desmond Tutu said yesterday.

The state had failed to secure a guilty verdict in spite of spending an estimated R7-million on a lengthy trial, Archbishop Tutu and his deputy Alex Boraine said in a joint statement.

"The court has weighed up the evidence, the accused have been found not guilty, and we certainly would not quarrel with its decision. But the outcome of the proceedings demonstrates our conviction that the commission offers a better prospect of establishing the truth about our past than criminal trials."

He said it was unlikely that many convictions would be secured if the state persisted in trying to prosecute the perpetrators of human rights abuses committed in the past 30 years. But it would be unwise for perpetrators waiting in the wings to think that the outcome of the trial offered them any reassurance, he added.

"The Motherwell and De Kock cases give the lie to the suggestion that because people were acquitted in this case, all perpetrators can breathe a sigh of relief."

"Developments around the commission in the next few weeks are likely to indicate

that it is important for perpetrators to come to the commission before they face the alternative of being prosecuted in a court of law," the statement said.

Archbishop Tutu said the commission had not yet decided if it would conduct its own investigation into the issues raised in the Malan trial.

"But as with any other investigation, if we were to go ahead we would not hesitate to invite or subpoena those involved in this trial, including those who have been acquitted," he said.

Earlier, at the opening of an exhibition on the apartheid conflict in Paarl, Archbishop Tutu said being acquitted by a court of law said "very little about moral guilt."

"The court acquits because the evidence is not sufficient to prove beyond a reasonable doubt. But you know as you walk free out of the court that people know that you did this. You still have to face your God."

Those who did not come forward to confess to their crimes were merely postponing the inevitable, he said.

"Many thought that their evil deeds of darkness would never see the light of day."

But there were others carrying a heavy burden of guilt who were letting "all kinds of cats out of all sorts of bags", he added.

The acquittal of General Malan and 15 others has dashed African National Congress hopes that this would be the first court judgment of a link between the former National Party government and apartheid-era violence.

The ANC has accused the prosecution of failing to prepare a watertight case, and has questioned why this was so. A triumphant F W de Klerk, of whose cabinet General Malan was a member, responded by saying the case should never have taken place.

In his judgment, Mr Justice Jan Hugo harshly criticised the work of the special investigating unit into the massacre. He said there was no evidence to prove that training provided in Caprivi was intended for any unlawful purpose or for hit squad killings.

He also declined to give indemnity from prosecution to three key state witnesses, saying they had not answered all the questions put to them during the trial frankly and honestly.

The witnesses, military intelligence operatives Johan Opperman, Andre Cloete and Caprivi trainee Alex Khumalo, declined to address the court on their legal right to indemnity.

The Criminal Procedure Act allows indemnity from prosecution to be given to accomplice witnesses, even if they incriminate themselves, provided they are honest witnesses.

General Malan told reporters outside the court that the truth had prevailed, and thanked President Nelson Mandela for the opportunity to defend himself in court.

Freedom Front leader Constand Viljoen, a former defence force chief, said justice had been done, and questioned whether the trial had been the result of a political and propaganda agenda.

General Viljoen said his information was that Natal attorney-general Tim McNally had expressed doubts to colleagues before the trial that his prosecution would succeed.

Mr McNally said he did not intend appealing against the acquittal or prosecuting the three accomplice witnesses.

Mr Mandela called on all to respect

# You still have to face your God, says Tutu after Magnus Malan acquittal

From page 1

Judge Hugo's decision and said the Government would carry on investigating apartheid-era atrocities.

"We will continue to investigate who was responsible and who, in regard to alleged third force activities, was responsible for directing these activities."

He said he had to take the lead in expressing confidence in the judiciary, because without confidence in the courts, society would degenerate into private vengeance and extra-legal activities.

Mr McNally, who before the trial was criticised by the ANC for failing to institute prosecutions of those allegedly involved in violence in KwaZulu Natal, again came under fire from the party.

"The people of our country who fought against apartheid and made many sacrifices expect that there should be proper investigations into the activities of hit

squads, including those members of the former NP government who may be implicated in such activities," the ANC said.

The ANC also questioned why Mr McNally had decided to prosecute General Malan and others without ensuring there was adequate evidence to put before the court. "Many questions have been asked as to the manner in which the prosecution was conducted." But the ANC said it accepted the court's decision.

The ANC is expected to issue a fuller statement this weekend after studying the judgment. It will also respond to attempts by Mr De Klerk to turn the tables on the ANC by calling for prosecution of some of its top figures.

Mr De Klerk said the initial reaction by the ANC, in which the party was quoted as saying the judgment had far-reaching implications, should be condemned. "This subtle threat reveals an unwillingness to accept the independence of the judiciary."

# Mahomed should not become top judge, say Griquas

(252)  
JOSEPH ARANES  
STAFF REPORTER

ARG 12/10/96

The Griqua National Conference of South Africa has called on President Mandela not to appoint Mr Justice Ismail Mahomed as the country's chief justice because they believe he has been instrumental in violating the rights of Namibia's indigenous people.

Mr Mandela was due to hold talks with Judge Mahomed, present Chief Justice of Namibia, yesterday

Griqua National Conference chairman Cecil Le Fleur said Judge Mahomed's input in the drafting of the Namibian constitution made him responsible for entrenching the violation of rights of the indigenous Rehoboth Baster nation

"As a major intellectual contributor to South Africa's constitution, he has also been instrumental in entrenching illegally the denial of the sovereign rights of the Griqua and other indigenous Khoisan nations in this country"

He said Mr Justice Mahomed's current positions as deputy president of South Africa's Constitutional Court and Chief Justice of Namibia showed there was a clash of interests that was not good for South Africa

# Top apartheid cops to tell all

(252) ST 13/10/96

By CYRIL MADALA

● Kwandebe cabinet minister Piet Ntuli, ● Eighteen people in two incidents in Mamelodi near Pretoria, and ● Jeffrey Shiba and Harold Setola.

● Their application is also expected to throw some light on bombings, weapons smuggling and the supply of booby-trapped hand grenades to anti-apartheid activists

Among the five is the highest ranking officer to apply for amnesty, Brigadier Jack Cronje, who was the commander of the Vlakplaas base from 1983 to 1985.

- Dr Fabian Ribeiro,
- The Pecco Three,

1985, Captain Wouter Mentz, based there from 1989 to 1992, Captain Jacques Hechter, and Warrant Officer Paul van Vuuren

The commission's chairman, Archbishop Desmond Tutu, said yesterday the application represented a "real breakthrough"

"Rightly, people have been critical, saying we have seen the tears, heard the harrowing stories, why have we not heard anything much from the perpetrators. We think we will be beginning to do the sort of things we have been promising — to give some answers to those who have been appearing before the commission"

His deputy, Dr Alex Boraine, said the commission had long been waiting for a breakthrough from police

"I don't think this is the last word. This is the start of a river which will become a flood"

Tutu said the outcome of the Magnus Malan trial in Durban on Friday had shown that Nuremberg-type court cases were not the answer

"Acquittal in a criminal court says very little about moral guilt or innocence. Those people who have been calling for Nuremberg-type trials are now able to see that a trial does not guarantee the truth and a conviction"

The decision of the commission to expedite processing the application is expected to prompt other policemen to apply before the December cut-off date

● See Page 2

# Policemen to shed light on unsolved murders

By MARLENE BURGER

THE five former security policemen whose amnesty applications will be filed with the truth commission tomorrow were among several facing imminent arrest by the investigators of the Transvaal Attorney General, Dr Jan D'Oliveira.

The five were among 22 former security policemen who approached the commission in June through a letter endorsed by seven retired police generals to test the amnesty waters.

The "incidents" which the men indicated they "might" be able to supply information about include some of the most sensational unsolved murders of the apartheid era. These include

- The May 1985 disappearance of the so-called Pebco Three — Sipho Hashe, Qaqawuli Godolozzi and Champion Galela — abducted from

## PIET NTULI

THE Kwandebele minister of interior affairs died in a car bomb on July 29 1986

The Parsons commission of 1992 was told that Ntuli had twice ordered Mbokotho to destroy shops. It also heard that police had rescued 20 youths abducted by Mbokotho. Their captors had forced them to walk over hot coals and had held

their heads under water.

## PEBCO THREE

Port Elizabeth Black Civic Organisation leaders Sipho Hashe, Qaqawuli Godolozzi and Champion Galela disappeared on May 8 1985 after travelling to H F Verwoerd Airport in Port Elizabeth to meet a bogus "British diplo-

mat" It has been alleged they were led to a farmhouse near Cradock where they were beaten to death.

## DR FABIAN RIBEIRO

Dr Fabian Ribeiro, 53, and his wife, Florence Vemba, 53, were shot dead in Mamelodi, Pretoria, by two masked men on December 1

## THE VICTIMS

1986. Their son Christopher was injured by a bullet during the attack.

Ribeiro was known for giving free medical assistance to political fugitives. Christopher has said his father was never affiliated to any political organisation.

## JEFFREY SIBIYA

A resident of Buyafuthi Hostel in Katlehong, East Rand, Sibuya was killed by mem-

bers of the defence force in April 1994

Witnesses denied he had been shooting at soldiers, as had been alleged.

Group 41 commanding officer Colonel Chris du Toit said Sibuya died during an anti-crime operation. He said the operation had started following reports that weapons were being brought into the hostels.

Brigadier Jack Cronje, served as commanding officer of Unit C10, based at Vlakplaas, from 1983 to 1985, when he handed the reins to Eugene de Kock

Mamasela alleges Cronje was a key figure in the 1989 cover up of hit-squad activities at the Harms commission Mamasela claims he has

Congress of South African Students (Cosas) members in Duduza who had been supplied with booby-trapped hand grenades by former Vlakplaas operative Joe Mamasela, and

The murders of ANC members Jeffrey Sibuya, Harold Sefola, Andrew Makupe and Jackson Maake. The most senior of the five,

the Port Elizabeth airport, ● The 1986 murders of Mamelodi activist Dr Fabian Ribeiro and his wife, Florence, gunned down at their home,

● The 1986 murder of Kwandebele cabinet minister Piet Ntuli, who died in a car bomb, ● The 1985 deaths of eight

cheques proving that Cronje paid him to lie at the commission De Kock told the Transvaal Supreme Court that the first covert operation in which he took part, on Cronje's orders, was the execution of Zweilbanzi Nyanda in Swaziland. Cronje was in charge of Unit C10 at the time of the Pebco Three disap-

pearances Mamasela, who claims he was "there when they died", implicated Colonel Roelf Venter in the murders. The three were allegedly taken to an abandoned police station outside Cradock, severely assaulted and killed.

Venter has been implicated by De Kock in the supply of booby-trapped hand grenades to an East Rand cell of Cosas.

Captain Wouter Mentz, now a member of the police's endangered species protection unit, served at Vlakplaas under De Kock from 1989 to 1992.

Two years ago, Mentz was charged with the 1991 murder of an alleged gunrunner near Komatipoort. The case was postponed indefinitely.

Little is known about Captain Jacques Hechter and Warrant Officer Paul van Vuuren, but both are believed to have been the Northern Transvaal security policemen.

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# Legal code of conduct in the dock

(292)  
ST 13/10/96

By CARMEL RICKARD

A JOHANNESBURG advocate will square up to his profession this week, arguing for the right to take work direct from the public rather than on referral from an attorney.

The general council of the Bar, the body representing most practising advocates, has asked the Transvaal Supreme Court to strike Attie van der Spuy, SC from the roll of advocates for appearing for a client without an attorney being involved.

This goes against a long standing principle in the code of ethics of the council and its member Bars.

Van der Spuy is a member of the Independent Association of Advocates of South Africa, a break-away body which has drafted its own code of conduct which permits members to take work directly from the public.

Van der Spuy claims the referral system is not in the public interest since it involves paying two legal professionals.

But members of the Bar argue there is nothing to stop a lawyer charging fees at the same rate as advocates in addition to their own attorney's fees.

Commentators add that advocates who take work directly from the public do not have the backing of the attorneys' fidelity fund and their clients are therefore not protected.

Legal commentators say the case is important because it will finally decide whether advocacy is a referral profession in South Africa. If the court rules it is not, it will fundamentally change the way the profession operates and could spell the end of the Bar as a separate profession.

Since Van der Spuy has claimed the issue affects advocates' constitutional rights, it is likely to end up in the Constitutional Court, whatever the ruling.

# Five named for Appeal Court

(252) 

*Newsman 14/10/96*

PRESIDENT Nelson Mandela yesterday announced the names of the judges who will serve in the Labour Appeal Court and the Labour Court. The Labour Appeal Court judges include Judge E Cameron, Judge J H Caradine and Judge CR Nicholson. Prof D Basson and advocate E R-vellas were appointed Labour Court judges.

Labour Minister Tito Mboweni said in a statement the appointments followed an extensive process of advertising and interviews by the National Economic Development and Labour Council and the Judicial Services Commission. The president had therefore appointed these judges on the advice of Nedlac and after consultations with the Judge President of the

Labour Court, Mboweni said. The president had appointed only two members of the Labour Court after considering the fact that all of the members of the Labour Court were white and no suitable black person was recommended as yet, Mboweni added. Also, recent amendments to the Labour Relations Act would allow for fresh nominations to the above court on a basis which may facilitate, among others, the appointment of a more representative Bench in the Labour Court.

The appointments will take effect from October 11 for a 10-year period and the judges will take office from November 11, also for a 10-year period. Members of the Essential Services Commission will be announced today.

- Sapa



Horrifying picture of a body lying on the ground after they were caught in crossfire during an armed robbery at a Dube, Soweto, office on Saturday. More than R46 000 was stolen from the safe. (Inset) Sarah Mhale, Maphanga's common-law wife was yesterday still shocked by the news. See story on page 2.

PIC. MBUZENI ZULU

# Killer cop in bid for amnesty

*Sowetan 14/10/96*

*(262)*

**By Waqheil Mlsbach and Siphon Khumalo**

**F**ORMER New Hanover policeman Captain Brian Mitchell, who was sentenced to death 11 times for ordering a massacre in Trust Feeds in KwaZulu-Natal, will make a bid for amnesty in Maritzburg tomorrow.

Mitchell and five of his colleagues ordered an attack at Trust Feeds near Maritzburg in December 1988 in which 11 people were killed.

Mitchell's move comes after a decision by five former Vlakplaas policemen to apply for amnesty in Cape Town today. The five, who have confessed to more than 40 murders, are due to face the Truth and Reconciliation Committee in Johannesburg next Monday.

Mitchell and his colleagues were all sentenced to hang 11 times but the sentences were later commuted to 30 years in jail. Those who were killed included children, who were shot while attending a vigil.

**Granted amnesty**

The policemen who were convicted with Mitchell were granted amnesty early in the 1990s after the unbanning of political organisation in the country. The hearing, at Maritzburg Town Hall, will last for two days.

The former Vlakplaas policemen who are applying for amnesty in Cape Town today are Brigadier Jack Cronje, commander of the Vlakplaas base from 1983 to 1985, Colonel Roelf Venter, a former Vlakplaas operative under De Kock in 1984, Captain Wouter Mentz, also at Vlakplaas from 1989

to 1992, Captain Jacques Hecher and Warrant Officer Paul van Vuuren.

Police spokesman Mr Maxwell Mulaudzi told *Sowetan* that any legal advice the five men might require during the TRC hearings could be provided by the Safety and Security Ministry's internal legal section.

The five form part of a group of 22 policemen who had written to the TRC earlier this year, in a letter endorsed by seven retired police generals.

**Assassination**

The men are linked to 40 deaths, including those of anti-apartheid activists Dr Fabian Ribeiro, the Pebo Three, KwaNdebele cabinet minister Mr Piet Ntuli, 18 people in Mamelodi and ANC members Jeffrey Sibuya and Harold Sefola.

The amnesty application is also expected to reveal details of other human rights abuses, including bombings, weapons smuggling and the attempted assassination of anti-apartheid activists with grenades.

The application comes in the wake of the TRC's issuing of a number of subpoenas to former army and police generals and other officers who were allegedly involved in human rights abuses.

In another development, TRC spokeswoman Ms Christelle Terreblanche yesterday confirmed that former police generals Krappies Engelbrecht and Basie Smit would give their testimony to the TRC on October 24 and October 25 in Cape Town.

The two were issued with subpoenas last week. Terreblanche said that the hearings would be held in camera, according to the stipulations of the Act.

## New judges for labour courts announced

(252)

Star 14/10/96

Cape Town - President Mandela yesterday announced the names of the judges who will serve in the Labour Appeal Court and the Labour Court.

The Labour Appeal Court judges include Judge E Cameron, Judge JH Conradie and Judge CR Nicholson. Professor D Basson and advocate E Revellas were appointed

Labour Court judges. Labour Minister Tito Mboweni said, the appointments followed an extensive process of advertising and interviews by the National Economic Development and Labour Council and the Judicial Services Commission.

The president had appointed the judges on the advice of Nedlac and after

consultation with the judge, president of the Labour Court, Mboweni said

Recent amendments to the Labour Relations Act would allow for fresh nominations to the court on a basis which may facilitate, among others, the appointment of a more representative bench in the Labour Court - Sapa

FOCUS ON HUMAN RIGHTS

# Police recruits, Matie students in audience

WHEN the Truth and Reconciliation Commission's first hearing in the Winelands opens today, it will be notch up four other firsts, among them the only church submission and conscript's story to date. **ROGER FRIEDMAN** reports.

**P**OLICE recruits attending the police college in Paarl are to sit in on Truth and Reconciliation Commission (TRC) hearings this week to give them a feeling for human rights and violations of these, according to a TRC spokesperson

The three-day hearing in Paarl is also to be attended by students at Stellenbosch University, the first university to observe proceedings

The Stellenbosch ring of the Dutch Reformed Church is to be the first church group in the country to make a formal submission to the commission

In another first for the hearing, which begins today, the commission is to be told its first conscript's story when a mother testifies about her son, a national serviceman who died on the Angolan border

The commission has aggressively pursued the involvement of the Afrikaans-speaking community for its first hearing in the Winelands, a community that has largely shunned the TRC, which it regards as a witch-hunt and pro-ANC

Opening the commission's first exhibition — at the Oude Pastorie, Paarl, on Friday — TRC chairman Archbishop Desmond Tutu expressed "delight" at the NGK's volunteering its submission and urged Afrikaners to stop feeling sorry for themselves

"I appeal to Afrikaners, let us hold hands. Let us work together as we look the beast in the eye. The beast is the awful past that we have all experienced — let us not pretend it did not happen," Tutu said

The country needed Afrikaners "with all your unique peculiarities" It was a pity that Afrikaans newspapers Die Burger and Rapport had refused to become part of the new South Africa, Tutu said

"They are nostalgic for a past that will not return. They are not doing their people a service by pandering to a useless nostalgia"

● Five policemen, among them former Vlakplaas operatives, have

(252) CT 14/10/96  
applied for amnesty in connection with more than 40 deaths — and have confessed to involvement in two of the best-known unsolved murders, Sapa reports.

They claim they were involved in, or have knowledge about, the assassination of activist Dr Fabian Ribeiro and the Pebco Three who disappeared in 1985

The most senior of the five is former Vlakplaas commander Brigadier Jack Cronje, the highest-ranking policeman to have applied for amnesty

The others are Colonel Roelf Venter, at one time attached to Vlakplaas, Captain Wouter Mentz, Captain Jacques Hechter and Warrant Officer Paul van Vuuren

● Brian Mitchell, the policeman convicted of the murders of 11 people at the Trust Feed village near New Hanover, KwaZulu-Natal, is to appear before the Truth Commission's amnesty panel in Maritzburg tomorrow. He is serving a 30-year sentence

The commission moves to Durban next week to examine events surrounding the death of Natal University lecturer Dr Rick Turner — Sapa



# TRC told of police link to gangs, says Borraine

JOSEPH ARAMES  
STAFF REPORTER

ARL 14/10/96

Evidence of police complicity with gangsters has surfaced at a number of Truth and Reconciliation Commission hearings, says commission deputy-chairman Alex Borraine.

He said the latest allegation by "former" Cape Flats gangsters that they were used by the previous regime was nothing new.

The gangsters, who say they have opted for peace and have formed a new organisa-

tion, Community Outreach Forum (Core), have indicated they are prepared to tell the Truth Commission how the state used them as pawns during the struggle.

Dr Borraine said the commission would welcome the information, but the gangsters had to approach the commission to arrange a meeting to discuss the matter.

"As the TRC moved around the country, even in the small towns, we heard evidence and allegations from community members and gang leaders of how gangsters and the police had worked together to destroy

communities. What happened in the West-ern Cape clearly is not an exception and we would welcome information from any source. They have to make the first move and then we could arrange either a private or open hearing to get their side of the story," said Dr Borraine.

In spite of the gangsters' promises, at the weekend hundreds of People Against Gangsterism and Drugs (Pagad) protesters took to the streets of Kensington and the Strand to deliver ultimatums to the homes of alleged drug dealers.

# Task team to probe attacks

JOSEPH ARAMES  
STAFF REPORTER

A special police task team has been set up to investigate a spate of attacks on the houses of alleged gangsters and drug dealers - the most recent today.

In the past few weeks, several houses were shot at, a hand grenade was thrown at a house and early today the home of alleged Strandfontein drug dealer Conrad Arendse was petrol-bombed.

All the attacks were preceded by march-

es by members of People Against Gangsterism and Drugs (Pagad), who issued ultimatums to the alleged drug dealers to stop their illegal activities or face the wrath of the community.

Police spokesman John Sterrenberg said: "All the cases where criminal charges have been laid are the focus of the team's investigation."

In today's attack a petrol bomb was tossed through a window of Mr Arendse's Ketch Road home, causing extensive damage to the kitchen. No-one was injured.

ON PAGES

# Ex-police chief faces subpoena

JOHN YELD

ON THE TRUTH COMMISSION

ARG 14/10/96  
Five former security policemen who are applying to the Truth Commission for amnesty for their involvement in more than 40 murders plan to subpoena former police commissioner Johan van der Merwe to testify about the background to their deeds.

Commission deputy chairman Alex Boraine said today this was "a very interesting development" and the logical conclusion was that General Van der Merwe would also have to apply for amnesty.

The policemen are a former Vlakplaas commander, Brigadier Jack Cronje, Colonel Roelf Venter, who was also based at Vlakplaas in 1984 and 1985, Captain Wouter Mentz, who worked at Vlakplaas from 1989 to 1992, Captain Jacques Hechter, a former explosives expert now a businessman living in Pretoria, and Warrant-Officer Paul van Vuuren, who is now farming in the Warmbaths area.

Their amnesty hearing will be in Johannesburg next Monday - the day the Truth Commission hears separate submissions in Cape Town from the former SA Defence Force and the SA National Defence Force.

Legal representatives of the former security policemen are flying to Cape Town today to hand the commission the last of the five amnesty application forms.

The five are expected to reveal details of murders including that of Pretoria doctor Fabian Ribeiro, and the fate of Eastern Cape activists known as the Pebco Three.

# Arbitration to assist courts

Deborah Fine

252  
14/10/96  
FORMALISED arbitration and other methods of alternative dispute resolution could play an important role in relieving SA's overburdened and under-resourced courts, Justice Minister Dullah Omar said on Friday.

Speaking at the official launch of the Arbitration Foundation of Southern Africa he said even the most advanced countries with the most sophisticated judicial systems had a need at every level of society for speedier, less cumbersome and often "less abrasive" means of resolving disputes.

The foundation was formed in June as a venture between the legal, accounting and organised business professions to provide and administer resolution services in southern Africa.

Founding members include every Society of Advocates affiliated to the General Council of the Bar of SA, 26 attorneys' firms, eight accounting firms, the SA Chamber of Business, the SA Corporate Lawyers Association and the SA Association of Arbitrators.

Dispelling criticisms previously levelled at the foundation, Omar said business and other interest groups had the right to seek alternative and legitimate mechanisms through which disputes could be resolved effectively and in the most "economically possible" way.

The criticisms had included concerns that the foundation was elitist, designed to provide justice for only the rich and was racist in that it had been motivated by an opposition to transformation and the appointment of black supreme court judges.

Omar said arbitration and other forms of alternative dispute resolution should not be seen as inherently antagonistic to, or a substitute for, the judicial system, but rather as complementary means of solving problems.

It was clear that alternative dispute resolution could play an important role in broadening access to justice at all levels, including the commercial, labour, family law, juvenile law and customary and indigenous law fields.

The foundation has offered cheaper forms of arbitration to ensure alternative dispute resolution was more accessible to the smaller business person and a broad base of SA citizens.

Foundation CE Frances Turton said after the launch that Omar's statement was "certainly the most positive and encouraging indication ... and we hope to fulfil his expectations".

Others at the launch included Transvaal judge president CF Eloff, deputy judge president HCJ Fleming, Gauteng safety and security MEC Jesse Duarte, and former Chamber of Commerce and Industry president Mervyn King.



Five seek amnesty  
over 40 deaths

# Truth will ease pain; wounds will never heal

Mar 15/10/94

(252)

Police 'planned to'  
shoot John Robbie

BY BONGWINE MLANGENI

The Truth and Reconciliation Commission has received the amnesty applications of five former Security Branch officers, it was confirmed yesterday.

The most senior of the five officers is former Vlakplaas commander Brigadier Jack Cromie. The other applicants are Colonel Roelf Verter, Captain Wouter Mentz, Captain Jacques Hedter and Warrant Officer Paul van Vuuren.

The applications relate to incidents involving about 40 deaths.

The men were involved in - or had knowledge of - the fate of the "Pebco Three", the assassination of Dr Fabian Ribeiro, the killing of KwaNdebele cabinet minister Piet Ntuli and the deaths of Jeffrey Sibuyana and Harold Sefola. - Staff Reporter

A streak of hope shines on Chris Ribeiro's face - he believes he will soon know the truth behind the gruesome killing of his parents, Dr Fabian and Florence Ribeiro.

Getting answers 10 years after he walked into his parents' Melod, Pretoria, house and found them sprawled in a pool of blood would give Chris slight relief.

But the wounds caused by the perpetrators will never heal, he says.

It was through the weekend press that the four Ribeiro siblings found out that five high-ranking former policemen were willing to tell the Truth and Reconciliation Commission about their alleged involvement in the couple's mur-

der in exchange for amnesty. Chris (34) believes granting the policemen amnesty "will be a further insult to our dignity".

"The amnesty clause is a mechanism to appease whites, the right wing and perpetrators of gruesome crimes," he says.

Although the family would appreciate to hear the truth, the resurgence of their parents' case has brought back a sad memory.

December 1 has had a different meaning to them. "What was a bright and sunny day in 1986 turned into a dark and dreadful experience when I found my parents sprawled on the floor in a pool of blood.

My mother gave her last breath on my hands," he recalls. Feelings of gross anger, hatred

and bitterness are clear in his voice.

Since then the lives of the siblings have changed forever. From enjoying a life full of maternal and emotional support, the Ribeiros had to learn to eat from hand to mouth and live on donations.

Life became a vacuum without their "protector", Dr Ribeiro, they say, and the compassion and warm laughter of their mother can never be replaced.

"I will never be able to forgive the people who assassinated my parents," says Chris.

Meanwhile they remain torn about the significance of the TRC. Unlike Chris, Barbara (38), who is a doctor, is not interested in testifying before the TRC. "Hearing the truth will not

heal the pain. We were a closely knit family but the death of our parents tore the fabric of the family. That damage will not be reconciled by the TRC."

She believes the commission is a "stage for perpetrators to clean their conscience".

She adds "No justice will occur".

Chris agrees, but feels that appearing before the TRC and hearing the alleged perpetrators' story will be an achievement. "My parents' death will be formally recorded as one of those atrocious human rights violation. We will also get a chance to highlight our pain."

The only satisfactory penalty for the murderers, according to both, is the death penalty.

A Security Branch plan in 1990 to stage a firefight in Soweto in which Radio 702 talkshow host John Robbie would be shot allegedly received ministerial approval.

In a booklet called *Confessions of an Apartheid Killer*, Paul Erasmus, who worked for the secret-police communications unit Stratcom, says Robbie was "a particular problem, with his anti-government stance".

A plan was made, and approved, that a firefight would be staged in which Robbie would be shot - not seriously, but so that the police would be seen to have saved his life.

Erasmus is currently in hiding, following a string of claims he has made about dirty-tricks operations. - Staff Reporter

# Truth won't ease Ribeiro family's pain

(252) CT 13/10/96

## OWN CORRESPONDENT

HOPE lights Mr Chris Ribeiro's face — he believes he will soon know the truth behind the murders of his parents, Dr Fabian and Florence Ribeiro

The answers — 10 years after he walked into his parents' Mamelodi, Pretoria, home and found them sprawled in a pool of blood — could bring him a little ease, but the wounds will never heal, he says

It was through the weekend press that the four Ribeiro siblings learnt that five high-ranking former policemen were willing, in exchange for amnesty, to tell the Truth and Reconciliation Commission (TRC) about their alleged

involvement in the couple's murder. Ribeiro, 24 at the time of the killings, believes granting the former policemen amnesty would "be a further insult to our dignity"

"The amnesty clause is a mechanism to appease whites, the right wing and perpetrators of gruesome crimes," he says

"What was a bright and sunny day in 1986 turned into a dark and dreadful experience when I found my parents sprawled on the floor. My mother gave her last breath in my hands"

The Ribeiro siblings, all of whom were at university, had to learn to live

from hand to mouth. Life became a vacuum without their father, their "protector", they say. Their mother's compassion and warm laughter can never be replaced

"I will never be able to forgive the people who assassinated my parents," says Chris

His sister, Barbara, 38, a medical doctor, is not interested in testifying. "Hearing the truth will not heal the pain. We were closely-knit and the deaths of our parents tore the

fabric of the family. That damage will not be reconciled by the TRC"

For Chris, the TRC offers his family a chance to highlight their pain



# TRC veers crazily between its two poles of obligation

ET 15/10/96 (252)

**THE Truth and Reconciliation Commission faces a hapless task because of the contradictory nature of its brief, argues Contributing Editor ANTHONY HOLIDAY.**

**A**S A crisis of confidence corrodes to the very core of the criminal justice system in this country, it is becoming increasingly clear that the Truth and Reconciliation Commission (TRC) is part of the problem, not a feature of the solution — if, indeed, there is a solution.

In the wake of the public outrage over the acquittal of Magnus Malan and his colleagues and revulsion at the revelations of Eugene de Kock, the Commission's deputy chairperson, Alex Boraine, may talk exultantly of "breakthroughs" in the body's attempt to uncover the facts about apartheid-era atrocities. And its chairperson, Desmond Tutu, may even imply that the Malan trial debacle illustrates the superiority of the TRC's approach. But, in their private moments, both men know the task they face is hopeless.



**DESMOND TUTU.** Credibility in the balance among some victims

Certainly, these two worthies have no reason to rejoice at the outcome of the Malan trial. For the general, who has stored in his memory the fine-grained detail of military intelligence operations during the era of clandestinity, is now free to cock a snook at the TRC as he has done all along, but with greater impunity.

The TRC can subpoena him, but he now has no need of the indemnities it is empowered to offer in exchange for full and frank disclosure and is thus under no compulsion to sing as the canary, De Kock, has fulsomely sung.

But the real source of the TRC's impotence lies in the contradictory nature of its brief, the elephantine cumbersomeness of its invest-

igatory procedures, the well meaning amateurism of some of its officials and (above all) its lack of intellectual clarity about what it is supposed to be doing, and how, in the short span of its remaining lifetime.

This emerged forcibly for me at a recent seminar, held at the TRC's Cape Town headquarters. It was part of a series of such seminars, instituted to give "intellectual content" to the TRC's work — although not a single senior commissioner found time to attend it.

Instead, the panel of speakers faced a half-filled room of academics, NGO workers and a few TRC staffers — people of the sort one meets at "workshops" of a politically correct sort, at lefty-fringe theatrical performances and in the corridors of our "historically disadvantaged" universities.

The impossibility of the TRC producing anything like a complete picture of the murders, tortures and other travesties of human rights and dignity, committed between March 1960 and December 1993, became plain when Wilhelm Verwoerd of the organisation's research department outlined for the seminar's benefit the lengthy and complex set of procedures envisaged to enable the commissioners to arrive at findings on a balance-of-probabilities basis concerning tens of thousands of alleged violations that happened during the period in question.

As Verwoerd explained, section 4(e) of the Promotion of National Unity and Reconciliation Act requires that before the TRC can declare anyone to be either a perpetrator or a victim of a human-rights abuse, it must be able to base its finding on "factual and objective information and evidence."

In pursuit of this ideal of objectivity, the TRC must embark on an elaborate process of statement-taking, statement registration, data processing, verification and corroboration, which could occupy it until the start of the 21st century if it worked on a case-by-case basis.

Not only must the TRC statement recorders establish whether each alleged human-rights violation really took place in the period under review, emanated from past conflicts, was politically motivated and counts as a "gross human-rights violation", but each separate incident mentioned in a given statement must be corroborated by checking the statement

against print-outs from data processors and against other statements that have emerged from the same geographical area.

However, with all this work to do, the TRC does not yet appear to know what it means by a "gross human-rights violation" for, as Verwoerd conceded, it is still in the process of formulating a working definition of what the Act calls "severe ill-treatment". Even this procedural floundering seems to me to be less serious than the TRC's evident failure to marry its truth-finding to its reconciliatory function.

To be sure, this was never going to be an easy task.

The Act that brought it into being describes the Commission's mandate to seek out the truth and report it in terms that are unmistakably juridical and forensic.

While it need not reach findings that pass the test applied by our criminal courts of being "beyond reasonable doubt" — that is, findings based on a set of facts that point in only one direction — it must achieve findings that, as in civil hearings, hold on a "balance of probabilities".

Reconciliation, on the other hand, is a far murkier matter.

How a public, quasi-judicial body was supposed to achieve this has never been clear to me, unless the legislators genuinely believed that granting murderers and torturers amnesty in exchange for a full confession (which, legally speaking, need include no lota of penitence) would somehow do the trick.

In the event, since it commenced its hearings, the TRC has veered crazily between these two poles of its obligation.

At times it has resembled a tasteless group-therapy session with its "crying rooms", official comforters and the revivalistic antics of its chairman. More recently, it has tried to talk tough about "taking off the gloves" in its determination to get at the facts and balance the probabilities.

I take it that Verwoerd was talking in this latter vein when he told the TRC seminar that the decision to allow a group of top-ranking former police officers, including the erstwhile head of the Security Police, Johan Coetzee, to testify in camera was motivated by a desire to prevent the men

from colluding to corroborate each other's evidence — a revelation that clearly disturbed another seminar participant, political philosopher André Du Toit, who had nailed his colours to the TRC ship's reconciliatory mast.

Be that as it may, this appearance of directionlessness is good news for those who have an interest in evading the TRC's probe into pro-apartheid gangsterism and very bad news indeed for such credibility as Archbishop Tutu and his cohorts still enjoy among the victims of political gangsterism.

That, in its turn, sounds a dire warning for the entire South African system of justice, the credibility of which is already in an unenviable state.

For the TRC, despite its parentage in a series of compromise deals between politicians, is undeniably attached to the Department of Justice and is the creation of our elected legislators.

Should it fail in its task of merely identifying the perpetrators of political crimes and telling the populace what they did, in the way that the courts appear to be falling in their task of making criminals pay for their crimes, then it will be only a matter of time before some

people consider taking the law into their own hands, as has happened already in the struggle against gangsters and drug dealers.

It must be remembered that South Africa has only lately emerged from a period when the vast majority of our population successfully took the law into their own hands against the discredited legal edifice of a racist system.

Should they do so again, the resulting vortex of lawlessness could prove to be unending.

□ Dr Anthony Holiday teaches philosophy at the University of the Western Cape's School of Government.



**ALEX BORAINÉ.** Exultant talk of "breakthroughs" by Commission



**EUGENE DE KOCK.** Although confined, he has sung like a canary

# Amnesty International opens first SA office

**CYNTHIA VONGAI**

AMNESTY International, in a major step since its unbanning in 1990, opened offices in the city yesterday, its first in the country

(252)

CT 15/10/96

The organisation's South African secretary, Mr Stephen Langtry, said Amnesty had been fighting human rights abuses in South Africa since the 1960s, although it was banned by the for-

mer government "We are happy to finally have a base from which to co-ordinate our work"

Amnesty's work in SA has included a submission to the Constitutional Assembly on the aboli-

tion of the death penalty. It has also concentrated on women's rights and is campaigning for an International Criminal Court to deal with cases of genocide, war crimes and other crimes against humanity

# Our masters deceived us, says amnesty man

JOHN YELD

ON THE TRUTH COMMISSION

ARG 15/10/96 (252)

Maritzburg - President Mandela had been portrayed to policemen serving the apartheid government as "a monster, a communist and a violent man", amnesty applicant Brian Mitchell said at his hearing.

"One can see now the deception and the disinformation that was fed to us

"Robert McBride was put under the same comb until I met him in Westville prison in 1992. Having exchanged ideas and views with him, my perception changed. Likewise with Mr Mandela," Mitchell said here today.

"I am just sorry that the changes that have taken place with the elections did not take place 10 years ago."

In his amnesty application, Mitchell, who is serving his sentence in Maritzburg prison, testified that he had been a supporter of the Inkatha Freedom Party and the National Party.

He said he joined the police on December 31 1975, and had just completed his training when he was "loaded into the back of Bedford trucks and carted off to the Soweto riots" in June 1976.

"As a young white South African, I was for the first time confronted with an uprising that left me shivering in my boots.

"During this uprising I experienced the solidarity of the black masses like never before and the brutality of the law enforcers to put down the uprising. The hostility of the blacks towards us was real

and constant." He also served in South West Africa (now Namibia) against Swapo forces.

"Being faced with contact situations and losing a very good friend in a contact as well as detonating a landmine were part and parcel of my experience."

On returning from border duty, he was transferred to riot control work in Natal.

"While doing a roadblock in Chester-ville, a sergeant with his men stopped off there for a while. He was on patrol duty. He remarked that he felt like shooting a 'kafir'. They eventually drove off into the township.

"About a quarter-of-an-hour later he reported that he had shot somebody who had stoned them. The victim denied this and said he was just standing in the yard in front of his house.

"He was loaded on to the spare wheel on the bonnet of the vehicle and driven to a point where an ambulance collected him."

Mitchell said it had not been a pleasant experience trying to stop unrest.

"Up until today when I see visuals of unrest on television I get a feeling of fear that grips my heart and I feel my flesh crawl."

During police training courses they had repeatedly been shown visuals of unrest, including victims with hands and heads cut off and those who had been necklaced.

"The sad bit about this is that it makes a man hard. We were never taught how to deal with our fears, our hatred, our frustration or fatigue - the killings, the burnings and stone-throwings, the petrol bombs."

## Probe of amnesty applicants forges ahead

Stephen Lauffer

CRIMINAL investigations against five police officers whose applications for amnesty were due to be heard next week, and 17 others who had signed an exploratory letter to the truth commission in June, were proceeding, Transvaal attorney-general Jan D'Oliveira said yesterday.

His staff was working on the matter and he would look at prosecutions of

Brig Jack Cronje, Col Roelf Venter, Capt Wouter Mentz, Capt Jacques Hechter and W/O Paul van Vuuren.

He had "not even considered the amnesty side of the cases, that is their (the policemen's) business". His concern was criminal justice and he had not been asked by the commission to suspend his investigations.

Prosecuting authorities may be

Continued on Page 2

## Amnesty

Continued from Page 1

asked to suspend their activities pending the outcome of an amnesty application if charges have been laid or a trial is under way. Formal charges have not yet been levelled against the five officers applying for amnesty or the 17 signatories to the letter.

The five policemen — some were stationed at the Vlakplaas security police base and some at the SAP's Northern Transvaal security police headquarters — will appear before the

truth commission's amnesty committee in Johannesburg next Monday. They are expected to provide information on the death of 40 opponents of apartheid, including the Pebco Three, Mamelodi doctor Fabian Ribeiro and his wife, and two groups of Mamelodi youth activists.

Investigations against the 17 signatories to the June letter would continue as normal, D'Oliveira said.

A separate source refused to confirm that the five, who have applied for amnesty, were assisting prosecuting authorities in their investigation of the 17. Asked about their ranks, he said they ranged "from top to bottom".

# Police captain tells of student's death

(252) BD 15/10/96

PAARL — A police captain told the truth commission yesterday how a white colleague told him "tonight, I shoot dead a Hottentot" only minutes before gunning down law student Adri Faas.

Capt Peter John Clayton told the commission's Paarl, Boland hearings that Lt-Col William Oosthuizen had been armed with a non-police issue shotgun.

Clayton said he had been on duty at the Paarl East police station on the day Faas was killed.

He had been standing outside the station with several colleagues when Oosthuizen pulled up in a Ford Cortina.

"He said 'Vanaand skiet ek 'n Hottentot (Tonight, I shoot a Hottentot).' A few minutes later .. I heard him over the radio with an in-

struction for someone to call a van to pick up Adri's body"

Oosthuizen later alleged he had shot Faas as he bent down to pick up a stone. However, a post mortem showed that the student had been shot in the back.

Clayton said when he arrived at the scene of the shooting he was disturbed by what he saw. The stone that Faas allegedly tried to pick up was lying close to his hand and was no larger than a dove's egg.

Faas' father, Alexander, testified that his son's friends told him they had been standing

around a fire moments before the shooting and had not been involved in the rioting which had erupted in the township earlier that night. Faas' father said the last time he saw Adri alive, his son had been walking his girlfriend home.

The commission also heard allegations that a PAC-linked group in Paarl had colluded with police in attacks on United Democratic Front supporters.

The group was described by witnesses as the PAC, Azanian People's Organisation and the Azanian Youth Union — Sapa

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(257) 20 15/10/96  
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# 'Police killed

# informers cop'

## *Trust Feed amnesty bid at TRC*

ARG 15/10/96

(252)

**JOHN YELD**  
ON THE TRUTH COMMISSION

**Pietermaritzburg – Convicted killer and former policeman Brian Mitchell says a special constable was shot dead by members of the police murder and robbery unit because he had been about to inform on them.**

In an amnesty application to the Truth and Reconciliation Commission, Mitchell also says that the special constables were "clearly an auxiliary or third force" used by the apartheid government against the United Democratic Front and the African National Congress. In KwaZulu Natal this had taken the form of "offensive assistance" for the Inkatha Freedom Party.

These were among the points in Mitchell's 36-page application to the amnesty committee at the start of a two-day hearing here. The 39-year-old former station commander of New Hanover police station, who held the rank of captain, is asking for amnesty for his role in the massacre of 11 men, women and children attending a funeral vigil at Trust Feed in the Natal Midlands in December 1988.

He is the first member of the security forces to be heard by the amnesty committee. Mitchell was convicted of 11 counts of murder and two of attempted murder for ordering special constables under his command to attack supposed United Democratic Front (UDF) supporters at Trust Feed.

However, the attackers targeted the wrong house and most of those who died were Inkatha Freedom Party supporters. They were among 19 people in the house at the time, gathered for a candlelit wake for an old man who had died of natural causes.

Mitchell was sentenced to death 11 times for the massacre but this was later commuted to 30 years in jail.

Evidence at his trial was that the murders were planned as part of a deliberate strategy to weaken the influence of the UDF in the area and to bolster the image of local IFP leader Jerome Gabela, who was regarded by the police to be weak.

The court heard the attack was planned by Mitchell, his superior officer, Maritzburg riot squad head Deon Terblanche, Mr Gabela, KwaZulu MP and alleged Maritzburg "warlord" David Ntombela and others.

In his application, Mitchell said he had been told by riot squad officer Jacobus van den Heever – co-accused at his trial and acquitted – that Major Terblanche had later been murdered by a special constable.

"He told me that the special constable was taken out because he had a green pocket book with a record of all the activities committed by members of the riot unit and was going to reveal this information."

Mitchell said Captain Van den Heever had told him another offensive unit of special constables had been operating in the Maritzburg area but had not given details.

"He also made mention that what (former police) minister (Adriaan) Vlok had told them at a meeting had far-reaching implications. He said he would use his information if the pressure was put on him regarding this case."

Mitchell repeated evidence at his trial that police had helped destroy evidence after the Trust Feed massacre.

Mitchell did not testify personally at today's hearing.

The start was delayed by nearly an hour because of the late arrival of some of the relatives of the massacre victims.

Before Mitchell was called, a member of the amnesty committee, Judge Bernard Ngoepe, said he was "deeply troubled" that not all the families of victims and other interested people had been properly informed about the amnesty hearing, as set out in the commission's founding act.

After a postponement during which the families present were consulted, about 25 of them indicated they wanted to be legally represented at the hearing. Committee chairman Judge Hassen Mall then postponed the hearing until 9.30 am tomorrow. "This might cause a lot of inconvenience to others. Unfortunately, that inconvenience cannot be avoided," Judge Mall said.

Etienne du Toit, an advocate representing Mitchell, said there was no objection to the postponement.

See page 5



**Amnesty appeal: former police captain Brian Mitchell at the Truth and Reconciliation Commission hearing in Maritzburg today**

four of the police as it was clear there was collaboration between the vigilante group called the Pan Africanist Congress (PAC) and the police," she said

Mrs Sishuba said that in 1985 she had tried to help Ntemi Phike, who was bleeding to death after being attacked by PAC members while two policemen "just stood there and waited for him to die"

A week before Mr Phike's death, 16 women had marched to the police station to demand police act swiftly to quell the growing conflict between the United Democratic Front (UDF) and the PAC

"There were sporadic actions after the murder of a man called Rasta in the township by PAC members but these incidents were not taken seriously by the police," said Mrs Sishuba

She said collaboration between the police and the PAC groups became evident "beyond any reasonable doubt" when the police started to hand over UDF comrades to them after they had been detained

Lizzy Phike, the mother of Ntemi Phike, gave evidence about her detention and interrogation by police. At the time she had been actively involved in the "struggle". She had been told of her son's death while being held in Pollsmoor prison under the state of emergency in 1985

"The police, together with Azapo youth, were killing UDF youths. My cousin's sister, Lizzi Gutshi, visited me and told me they were being harassed by the police. I told her they must take my son to my brother who stayed in Guguletu"

But he had been murdered on December 26 1985 after returning from Guguletu. At her son's funeral, which she attended after Dullah Omar and other UDF members demanded that she be released, Mrs Phike said she had pleaded with UDF comrades not to avenge her son's death

Patric Qumza said he escaped certain death by "playing dead" after being hacked and stabbed by Azapo members

"Azapo were supported by the police when they fought us. On December 26 1986, I was attacked with pangas and knobkerries by Azapo members"

Mr Qumza said he fooled his attackers by remaining motionless



ROY WIGLEY

**Next PM's wife?** Truth Commission deputy chairman Alex Boraine greets Cherie Booth, wife of British Labour Party leader Tony Blair, during her courtesy visit to the commission yesterday. Ms Booth, a lawyer, is visiting South Africa with her husband



LEON MÜLLER

**Grieving brother:** Richard Carolissen testifies to the Truth Commission in Paarl that policemen bragged after shooting dead his brother Ronald in Cloeteville in 1976. On the left is Ronald's girlfriend Sandra Messias. Behind them is commission briefer Viola Lengner

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ALCF

15/10/92

# Officer 'boasted after killing'

## Youth gunned down in street, Paarl probe told

(252) RR 6/15/10/196



ASHLEY SMITH  
STAFF REPORTER

A Paarl East father had to be comforted several times when he testified to the Truth Commission about the death of his 18-year-old son at the hands of a policeman in 1985.

On the first day of hearings in Paarl yesterday, Alexander Faas said police lieutenant William Oosthuizen boasted that he had shot his son, first year law student Adri Faas. "Oosthuizen took his finger, pressed it to his chest and said that he killed my child," said a tearful Mr Faas.

"Captain Daniels, a very pompous man, who was a coloured detective at the police station, told me that he could not believe I could have afforded to keep a child at university," he added.

Adri Faas was gunned down with Lieutenant Oosthuizen's shotgun, loaded with buckshot. Mr Faas said his son was shot after walking his girlfriend home to Amstelhof.

He said "There was unrest in the area that day, so Adri and his two friends who were walking with him decided go to the corner of Klein Drakenstein and Lloyd streets. The reason they went there was because of the unrest happening in Klein Drakenstein Street."

Mr Faas said his son had been shot from behind as he tried to escape the shots fired from a moving car.

A coroner's report read out to the commission said Adri was shot four times - one shot had penetrated the back of his brain, another muscle tissue in his left shoulder and he also had two wounds in his right



LEON MULLER  
Grieving father: Alexander Faas recounts the horror of his son's killing in testimony to the Truth Commission in Paarl, while his daughter Louise looks on

arm. It was alleged by Lieutenant Oosthuizen during an inquiry after the killing that Adri had been shot while trying to pick up a stone.

An inquest found nobody could be held responsible for Adri's death.

However, Mr Faas was adamant that if his son was picking up a stone, he would not have been shot in the back of the head.

Police captain Peter Clayton, a warrant officer in Paarl East at the time of the shooting, testified at the commission that Adri had passed the police station about

The morning after the beating he was taken to Paarl East Hospital, where the doctor who was supposed to treat him said "I can't see you now the benefits of joining the UDF. Why did you join the UDF?"

Mr Malunda said he was taken to the Paarl Magistrate's Court the following day and charged with the attempted murder of Phobeko Nkuzo, a well-known police promoter in Mbekweni.

"I spent four months in the police cells with Paarl and I was released only in September. I then looked for a lawyer to sue or claim for me staying in jail," he said.

Mr Malunda said his lawyer, of the firm Chennels Albertyn in Stellenbosch, went to court to claim R90 000 from the police men who had assaulted him.

"The police never showed up in court. Instead they paid R10 000 to my lawyer and that was the end of the case," he added.

In other evidence a Paarl mother said her son, Vivien Mathee, an African National Congress activist and law graduate, was killed by members of the Vlak-plas police unit in Lesotho.

Maria Carolissen said her son left home in 1981 because he had been harassed by

had shouted at him to "off from here".

He said he was unaware of the inquest on Adri Faas as no one had contacted him to give evidence or to help in the investigation.

"I am now talking about this because the sight of Adri lying there bothered me. I also can't forget the words of that policeman when he drove away from where Adri was killed," said Captain Clayton.

Commission chairman Desmond Tutu praised Captain Clayton for coming forward to testify.

police about his involvement in the anti-apartheid struggle.

He had been gunned down at a house in Maseru on December 19 1985 by Vlakplaaas policemen who had smeared their faces black with boot polish, she said.

Nobantu Frans told the commission about the mental turmoil caused by not knowing the whereabouts of her son Douglas after he disappeared from home in Mbekweni in 1985.

Mrs Frans got news of her son when two men came to tell her he had died in an ambush by soldiers in Lusaka.

Captain courageous Desmond Tutu praised police captain Peter Clayton for coming forward to testify

# 'Police just waited for him to die'

ASHLEY SMITH  
STAFF REPORTER

Paarl - A former United Democratic Front activist told the Truth Commission here how police wrapped a two-metre live snake around his neck after ordering him to strip and beating him.

Sikowukowu Malunda was describing events at Wellington police station in 1986. He said a police informer called Ranti hit severely assaulted him after he and his friend, Ben Kunene, were arrested in

# They wrapped a live snake round my neck, ex-UDF activist says

ASHLEY SMITH  
STAFF REPORTER

Paarl - A former United Democratic Front activist told the Truth Commission here how police wrapped a two-metre live snake around his neck after ordering him to strip and beating him.

Sikowukowu Malunda was describing events at Wellington police station in 1986. He said a police informer called Ranti hit severely assaulted him after he and his friend, Ben Kunene, were arrested in

Mbekweni on June 24 that year. "They were beating me with a stick many times on the head until I bled."

He said he had repeatedly been questioned about the necklacing of police informers in Mbekweni, but denied knowing anything about it.

"They brought a cardboard box and then took out the snake, thick and about 2m long. They tied the snake around my neck and demanded the truth."

Mr Malunda said that he was bitten by a police dog when police realised the snake was harmless.

# Hearing may query Trust Feed 'cover up'

ct 16/10/96 (252)

## OWN CORRESPONDENT

**MARITZBURG:** The amnesty application by ex-policeman Brian Mitchell is likely to raise questions at the Truth and Reconciliation Commission in Maritzburg on why no independent probe — into a police cover-up of the Trust Feed massacre and other activities, called for by a Supreme Court judge in 1992 — was ever held

Mitchell was sentenced to death 11 times on April 30, 1992, for his role in the massacre of men, women and children at a wake at Trust Feed, New Hanover. The victims were Inkatha supporters killed when the "wrong" house was targeted.

Mitchell has failed in two applications for indemnity, but his sentences were commuted to 30 years' imprisonment in 1994.

Four ex-special constables, sentenced to 15 years' imprisonment each, were freed under the Further Indemnity Act.

Trial judge Mr Justice A B M Wilson in 1992 called for an inquiry into an alleged police cover-up of the Trust Feed massacre, whether similar operations had been conducted by the Riot Unit, its former commander, Major Deon Terblanche, or other officers, and the role of the police counter-revolutionary Joint Management System.

Mitchell's affidavit, which forms part of an 850-page submission to the amnesty committee, focuses on his involvement in the SAPS Joint Management System, which he describes as a counter-revolutionary strategy employed to combat the threat of the UDF and ANC in the 1980s.

This allegedly included the training and use of special constables as a "third force" to lend "offensive assistance" to Inkatha.

He saw one of his prime duties as being to counter the UDF and ANC in the New Hanover area.

"This included favouring the IFP and groups not perceived to be state enemies."

Mitchell will also testify on the role played in Trust Feed by Major Terblanche (who was subsequently murdered), and who allegedly provided special constables to render "military and offensive assistance" to Inkatha whose leadership in the area was weak.

Mitchell alleges in his affidavit he was informed that a special constable, later held for Major Terblanche's murder, was "taken out" by the Murder and Robbery Unit because he had a pocket book with a record of all the activities committed by members of the riot unit and was going to reveal this information.

Mitchell states that after the Trust Feed massacre he explained what happened to a Brigadier Marx and Brigadier Van der Westhuizen, who visited him at New Hanover with a Captain (Joseph) van Zyl.

They consulted privately and Van Zyl told him "not to worry".

"I accepted the incident would be covered up, as it also was," he says.

Mitchell expresses deep regret for his actions and says as a Christian, and with hindsight, he now realises the country "should have travelled the road then that it is travelling now".

Ironically Mr Justice Wilson — who sentenced Mitchell to death — is a member of the amnesty committee who will now decide his fate.

The hearing yesterday got off to a slow start and was adjourned until today.

DISSENTING VOICES WERE SUPPRESSED OR IGNORED

# We did not speak out — dominées

**THE IDEOLOGY** of nationalism and the lack of exposure to suffering were reasons that prominent clerics gave the Truth Commission yesterday for the Dutch Reformed Church's failure to speak out against injustice, writes **PETER DENNEHY**.

**D**EPLIY religious members of the Dutch Reformed Church's Stellenbosch Ring (presbytery) did not speak out enough against racist attitudes among members of their own congregations, three prominent church leaders confessed yesterday.

Dr Hannes Koorhof, pastor of the Stellenbosch congregation and chairman of the local presbytery, said this at a Paarl hearing of the Truth and Reconciliation Commission.

He added that the church had not spoken out enough against injustice and violations of human rights in South Africa, such as when forced removals under the Group Areas Act were carried out

in their town.

There had been various reasons for this, he said. Among them were the ideology of nationalism, the lack of exposure to people's suffering, the isolation of the Dutch Reformed Church in South Africa from the church elsewhere in the world, and too much faith in political leaders simply because they were church members.

"Often, though, there lurked behind all such factors a large measure of selfishness and an unwillingness to listen sincerely to God's Word and to fellow believers' testimony — these are realities which we do not deny," he said.

He and two colleagues, Dominee Frederick Marais, chaplain at Stellenbosch University, and Pro-

fessor Bethel Muller, head of the theological faculty, looked through the church's records for the past 40 years to find where the presbytery had failed.

In the presbytery's own ranks "there were those who actively developed and championed the ideological framework from which violations (of human rights) and actions were held to derive their justification," he said.

Resolutions the presbytery had adopted, amounted to stands "that functioned within the same ideological framework"

Even when the results of apartheid were criticised, the system itself was not. There were voices within the church that condemned apartheid, but these had been suppressed and ignored.

"Others suffered defamation or found themselves being given bad

names. Some were even subjected to personal injustices."

Marais said that for those who were relatively young, it was easy to say they had not had any part in perpetuating apartheid. "We do not want to admit our part in it. But it is liberating as well as painful to look at our history and see what

went wrong, because then we can look to the future with hope," he said.

"When you have hurt someone, in a way you remain a prisoner of that person's pain. Healing can only come with forgiveness. It is a wonderfully freeing process."

Marais committed himself to digging deeper to find the whole truth. He has found that there is not only guilt, but hurt as well, in the minds of the oppressors.

Archbishop Desmond Tutu, who chaired the session, was

pleased with this submission from the "white Dutch Reformed Church."

He volunteered the information that his church, the Anglican church, had a lot to confess too. Its first black bishop was appointed only in 1960.

Yet the Anglicans had tried. He remembered a fraught moment in the life of the church in 1992, when those who knew they had something to confess were asked to stand up, and nearly everyone present, black and white, got up.

Tutu said he had noticed that there were often no half-measures for Afrikaners who were "converted" to a different belief.

"I know now that it is going to be all right. If your church says you are taking something up, your community will take it up too. May God amount you so that you can go forward as wounded healers, the best type, because they know from inside."



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**'REFORMED' TRIO:** Prominent Dutch Reformed Church clerics (from left) Dominee Frederck Marais, Professor Bethel Muller and Dr Hannes Koornhof, are congratulated by Archbishop Tutu after their confession at the Paarl TRC hearing

PICTURE, ALAN TAYLOR

# Trust Feed massacre 'part of govt strategy'

Star 16/10/96 (252)

Convicted former captain hands in documents and amnesty committee gives relatives of victims time to get legal help

By **ROBERT BRAND**  
Pietermaritzburg

**T**hird Force activities such as the Trust Feed massacre in KwaZulu Natal were part of a deliberate government strategy to foster "black-on-black" violence, former police captain Brian Mitchell said in documents submitted to the Truth and Reconciliation Commission yesterday.

The attacks, on United Democratic Front/ANC activists, were carried out by special constables acting in collusion with IFP leaders and the police, Mitchell said in an affidavit attached to his amnesty application.

Among the IFP leaders involved in the planning of the

Trust Feed massacre of 1988, in which 11 people were killed, was "warlord" David Ntombela, now an IFP member of the provincial legislature, Mitchell said.

Mitchell, who has admitted ordering the Trust Feed attack, was sentenced to death in 1992 for the massacre. The sentence was later commuted to 30 years' in jail. He is now applying for amnesty.

Amnesty committee chairman Mr Justice Hassen Mall ordered an adjournment until today to give relatives of Mitchell's victims a chance to obtain representation.

In his affidavit Mitchell said he had been appointed station commander at the New Hanover police station, north-west of Pietermaritzburg, in 1988.

The area was a battleground between the IFP and the UDF, and the IFP appeared to be losing.

"It was my job to see the UDF/ANC countered," he said.

After consultation with the head of the Pietermaritzburg riot unit, Captain Deon Terblanche, it was decided to station six special constables at Trust Feed to "protect" the local IFP leader, Jerome Gabela. The attack was launched after a meeting between himself, Gabela, Terblanche, Ntombela and other IFP office-bearers, Mitchell said.

His amnesty application concerns only the Trust Feed massacre, but he has promised to assist in investigations into other incidents in KwaZulu Natal of which he has knowledge.



GRANT ERSKINE

# Amnesty hearing to continue despite charges being brought

MAN 16/11/96 (252)

The amnesty hearing of former security policemen scheduled for Monday would go ahead despite the intention of Transvaal Attorney-General Jan D'Olivera to bring charges against two of the applicants, the Truth and Reconciliation Commission decided yesterday.

D'Olivera indicated in discussions with the commission yesterday that it was his intention to prosecute two of the applicants and use two others as state witnesses.

The applicants are former Vlakplaas commander Brigadier Jack Cronje, Colonel Roelf Venter, Captain Wouter Mentz, Captain Jacques Hechter and Warrant Officer Paul van Vuuren. Their application was served on the commission on Monday.

The five would subpoena former police commissioner General Johan van der Merwe, their spokesman Willem Britz said.

He said Van der Merwe had given full co-operation and would sketch the command structures they operated under and the role of the police in the struggle against anti-apartheid activists.

Van der Merwe said all the incidents on which the group wished to give evidence were included in a document already handed to the commission.

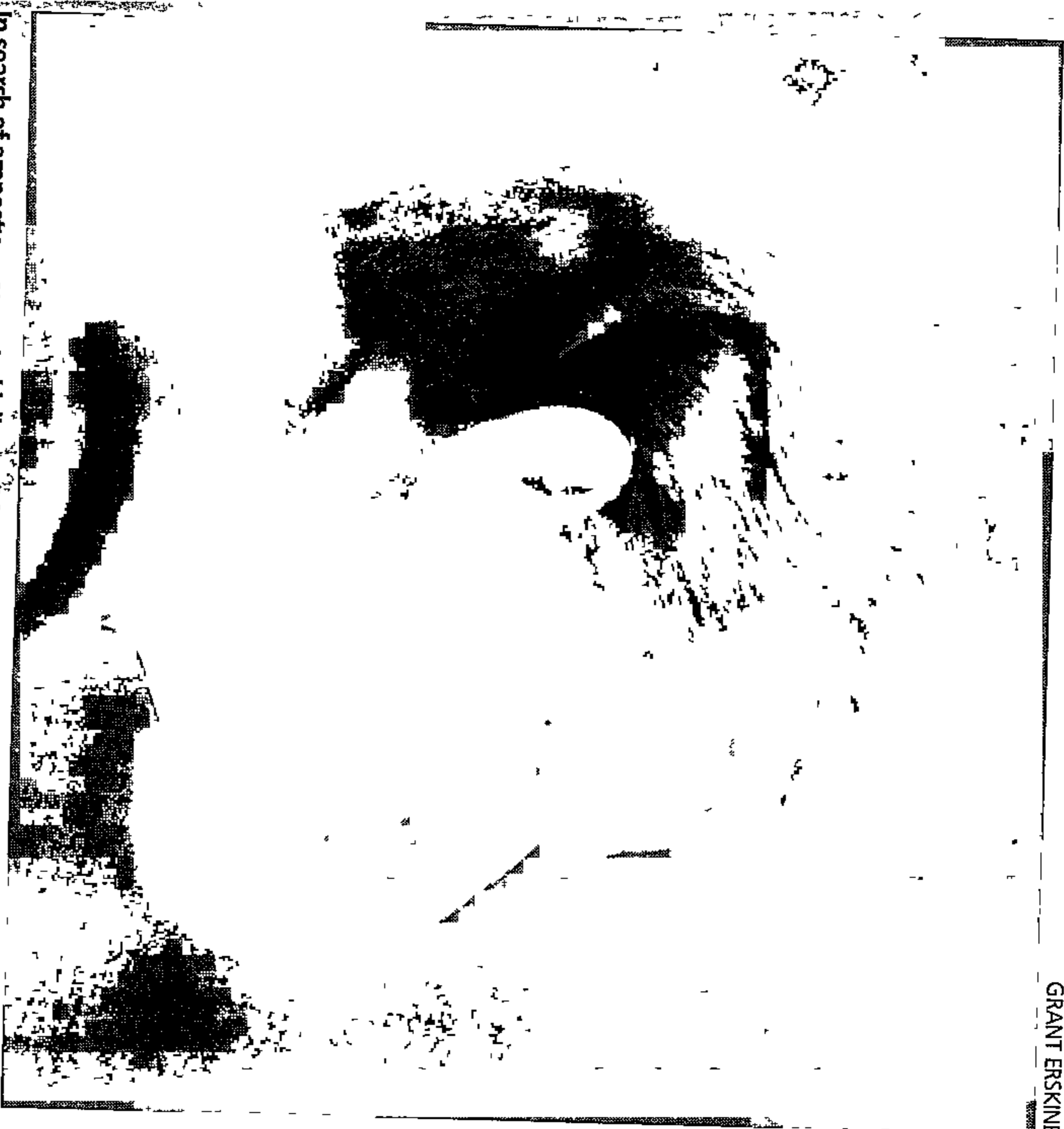
Part of the evidence would involve the murders of Dr Fabian Ribero and his wife Florence, the Pecco Three, Piet Ntshu, Jeffrey Sibya and Harold Sofola.

Commission spokesman John Allen said it was clear the court hearing would have to be postponed, probably until January.

National Party spokesman on justice Sheila Camerer said the clash between the amnesty application and D'Olivera's wish to prosecute was "the moment of truth" for the commission.

The judgment in the Magnus Malan murder trial showed it was not the commission's role to second-guess courts' judgments.

Camerer added that the commission was not bound by laws of evidence or other criminal law principles or procedure, and for it to imply that it could do a better job than the courts in bringing criminals to book was to further undermine SA's beleaguered criminal justice system - Sapa



In search of amnesty .. convicted killer and former police officer Brian Mitchell at the hearing.

# Apartheid generals were running SA, says convicted killer Mitchell

## 'Troopies were deceived into serving country'

*ARG 16/10/96  
(252)*  
**Amnesty hearing told of secret power struggle**

ASHLEY SMITH  
STAFF REPORTER

Paarl - The apartheid propaganda machine deceived thousands of national servicemen - some of whom died - into defending their country against communists and a "little group of blacks called the African National Congress", the Truth Commission heard today.

In a statement, Matthew McGregor wrote that his 19-year-old brother was sent to Namibia to stop 40 000 Cuban soldiers from invading South Africa.

"My brother Wallace is dead today and I can think of no good reason why. He was just a child. What did he know about politics?"

Mr McGregor blames the National Party for the death of his brother in Oshakati on March 9, 1987. Wallace's mother, Ann-marie McGregor, said "In my struggle with my grief I would like to know where exactly he died, how it happened and who was there when it happened."

She said he was brought home wrapped in a thick sealed plastic bag. "The instruction was that the plastic bag should not be opened and therefore I was not allowed to have a last glimpse of my own child," she said.

Convicted double murderer Philemon Maxam asked the family of his victims for forgiveness. He is serving 25 years for the murder of the mother of Dr Ivan Sieberts and the murder of a labourer on a farm in 1986.

JOHN YELD

ON THE TRUTH COMMISSION

Maritzburg - SA Defence Force generals were running South Africa by 1987 and 1988, but they were also engaged in an "internal power struggle" with the SA Police for control of the previous government's shadowy Joint Management System, says convicted killer Brian Mitchell.

The Joint Management System was designed as the then government's counter-revolutionary strategy. "Known as the total strategy against the total onslaught", to contain the liberation forces of the African National Congress and the United Democratic Front, Mitchell has told the Truth Commission.

He is applying for amnesty for his role in the murder of 11 people and attempted murder

of two more at Trust Feed in the Natal Midlands in December 1988.

Mitchell's death sentence after his trial for murder was later commuted to 30 years in jail.

In an affidavit attached to his amnesty application, the former police captain said he had served as secretary to the Joint Management System, which had been responsible for national security.

The system was run jointly by the SADF and the SAP, but the police hierarchy had told officers to ensure they kept chairmanship positions they managed to win within the system, Mitchell said. "I could never understand this internal power struggle. It was always evident at meetings on security issues between the SAP and SADF."

He had regarded the situation in his Natal division during 1987 and 1988 as "a virtual

civil war" between Inkatha and the United Democratic Front.

During this period many people had been killed, and houses attacked and burned down.

"There were also attacks on police. They were killed, chased out of their homes with their families and their homes were set alight. Natal became a battlefield."

In the period before the Trust Feed massacre, all the security forces' attempts to prevent violence had failed.

"I watched as the brass from Pretoria, the brigadiers at divisional headquarters in Pietermaritzburg and the officers seconded to Pietermaritzburg would pile all the responsibility for preventing the violence upon the shoulders of (Maritzburg riot unit head) Captain Terblanche and his unit."

"The strategy of attaching roughly 16 000 special constables as an auxiliary force to roughly 48 000 existing police

force members was arrived at to resolve the problem.

"These special constables were to be used against the UDF forces and the ANC forces. This was particularly to be the case in black areas where the UDF/ANC made substantial gains over the years, and to prevent further gains."

"The special constables were clearly an auxiliary or third force, similar to such a force used initially with success in Rhodesia."

The amnesty hearing was told the special constables involved in the Trust Feed massacre wore civilian clothes and drove to the scene in an unmarked vehicle after dark, in line with a police training manual for clandestine operations against "revolutionary forces" in black townships.

Mitchell's advocate, Etienne du Toit, told the committee his client would testify that the police's attitude at the time had

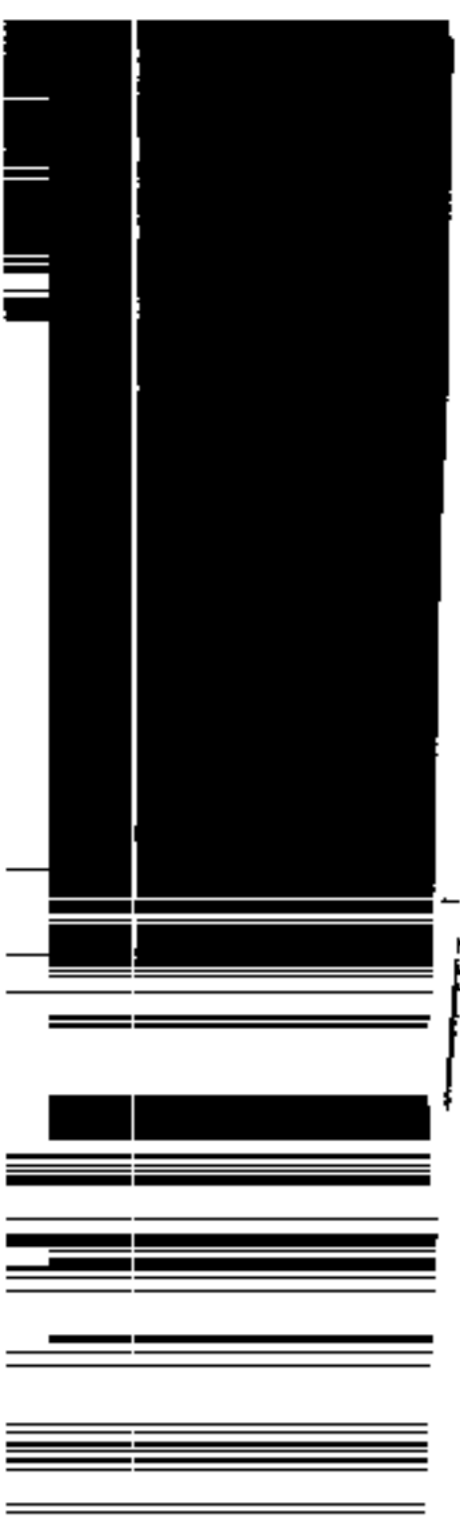
been that "not an inch of ground was to be lost" to the UDF/ANC alliance, and that "every inch that had been lost was to be regained".

It was quite clear that Mitchell had been acting under the instructions of superior officer Captain (later Mayor) Deon Terblanche of the Maritzburg riot unit.

The police's riot control unit had been used as a "sweeper" in the area beforehand to prepare for the Trust Feed attack by removing weapons from the UDF. The attack was to have been carried out by the Inkatha Freedom Party and the Inkatha Youth Brigade, assisted by the special constables.

Mr Du Toit said he would be contacting the Truth Commission within days to provide information Mitchell had of human rights violations not relating to the massacre.

Mitchell said police had been "brutal" in quelling unrest



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# Anglican Church must also confess - Tutu

ASHLEY SMITH  
STAFF REPORTER

**Paarl - Truth Commission chairman Desmond Tutu has called on the Anglican Church to follow the example of the Ned Geref Kerk congregation in Stellenbosch by confessing that it failed to be a witness of truth, justice, reconciliation and love during the apartheid era.**

The former Anglican Archbishop of Cape Town said "The Anglican Church has a lot to confess. They must also explain why the first black bishop was

appointed only in the 1960s"

Archbishop Tutu made the remarks yesterday after the commission heard a confession by Hannes Koornhof of the NGK in Stellenbosch admitting that members of his congregation had "actively developed and championed" apartheid

The confession was the first by a church to the commission

Dr Koornhof said "We have in mind here particularly the past 40 years during which the official policy of apartheid radically impaired the human dignity of people all around us and resulted in gross violations of human rights"

X

# 'Third force' used to boost IFP's position, claims Mitchell

(252) 16 16/10/96

**Farouk Chothia**  
**KwaZulu-Natal MP David Ntombela** had been involved in the 1988 Trust Feed massacre of 11 people.  
**Feeds massacre of 11 people**  
 Ntombela had instructed local IFP leader Jerome Gabela to launch the attack, and said that armed special constables would provide "official assistance", Mitchell said.  
 He said the SADF was effectively running SA in 1988, and there was a power struggle between it and the police for control of the counter-re-

volutionary joint management committees. He had served on the local committee and was given instructions to ensure the committee did not fall into the hands of the SADF.  
 Mitchell said about 16 000 police special constables were a "third force" and had been used to counter "black solidarity".  
 "The violence was kept within the confines of Inkatha and UDF/ANC. The security forces sided with In-

katha, and thus kept the focus away from whites," Mitchell said.  
 He said the attack in Trust Feed was part of a strategy to "push up" the violence rate in any given area.  
 The effect was to weaken opposition so that the area was left in the hands of pro-government and pro-Inkatha people.  
 Mitchell was given the death sentence, which was later commuted to life, for ordering the massacre. He is

the first apartheid era policeman to appear before the truth commission's amnesty committee.  
 Judge Andrew Wilson, who imposed the life sentence on Mitchell, would hear his amnesty application.  
 The committee was forced to adjourn to today after it emerged that relatives of victims had not been properly notified of their right to oppose Mitchell's bid for freedom.

Relatives said they wanted to obtain legal representation to argue against the granting of amnesty.  
 Mitchell said the constitution advocated "ubuntu" (humanity) rather than vengeance. He had been a victim of propaganda, and former Umkhonto weSizwe cadre Robert McBride was among those portrayed as a violent "monster".  
 Sapa reports Mitchell pleaded for forgiveness for his actions. "As a

Christian I have come to understand the value of forgiveness and that it does not come cheaply. I nevertheless request that I be forgiven and given a second chance in life."  
 Mitchell said he saw himself engaged in a political struggle against members or supporters of political organisations or liberation movements and saw his conduct as countering the actions of those organisations and movements.

**EXCLUSIVE** COMMISSION VOTES 15—1 IN FAVOUR

# Ismail Mahomed to be SA's new Chief Justice

CF 17/10/96 (252)

**THE OFFICIAL announcement next week of the new Chief Justice is expected to re-open debate on the extent to which the President's public endorsement of Mr Justice Mahomed influenced the decision HENRY LUDSKI, writes.**

**T**HE verdict is out on who will take over the reins of Chief Justice of South Africa — Mr Justice Ismail Mahomed. The Cape Times has reliably learnt that the Judicial Service Commission (JSC) voted 15-1 in favour of Judge Mahomed becoming the first post-apartheid Chief Justice when Mr Justice Michael Corbett retires this year.

It is understood that Mr Justice Corbett, who as Chief Justice serves as chairperson of the JSC, was the dissenting voice. He supported the only other candidate, his deputy, Mr Justice Henle van Heerden, the man who would have been next in line for the job.

A source in the President's office said the Tynhuyts had been given to understand that the JSC had made a decision on the basis of consensus.

Both judges are respected in their profession for their legal acumen. However, what is seen to have swung the vote in Judge Mahomed's favour was his political insight and credibility, the considerable experience he gained as deputy president of the Constitutional Court and the sheer weight of history. Judges Mahomed and Van Heerden came under close scrutiny when they



**CONTENDER** Mr Justice Henle van Heerden

He faced the JSC on Friday October 4. That same afternoon a decision was reached on what recommendation would be made to President Nelson Mandela.

A week later Mandela held discussions with both candidates.

In terms of the constitution the Chief Justice is appointed by the President in "consultation with the cabinet and the JSC".

Presidential spokesperson Mr Parks Mankahlana confirmed yesterday that the President had received the JSC's recommendation and that the matter had still to go before the cabinet.

"An announcement is not expected this week but could come up when cabinet meets next Wednesday," he said.

Although Mankahlana cautioned that it was not a "foregone conclusion" that the President would accept the recommendation of the JSC, Judge Mahomed's appointment is almost certain to get the presidential nod.

The announcement will most likely re-open the debate on the extent to which the decision by Mandela to publicly endorse Judge Mahomed's 11th-hour nomination influenced the JSC's final decision.

Mr Justice Mahomed is considered by many to have put in a more polished performance in front of the JSC, and is seen as being more likely to promote reform and bring court rulings in line with the new constitution.

Mandela's intervention in some quarters, especially among Judge Van Heerden's supporters, is considered to have clouded the process.

The issue over who takes over the job of Chief Justice was shrouded in controversy long before the JSC closing date for nominations on September 11 with an intense battle being fought behind the scenes.

It took on distinct political overtones with judges and jurists split largely along progressive and conservative lines.

While Judge Mahomed's appointment will be widely welcomed by progressive forces in the legal fraternity it is likely to cause a great deal of consternation among the old guard and conservative judicial structures.

All South African judges are appointed by the JSC but when it comes to the appointment of the Chief Justice and the President of the Constitutional Court, the President is constitutionally required to play an active role.

The JSC consists of the Chief Justice, the president of the Constitutional Court, the Minister of Justice, one representative for the judges, two representatives of the advocate's profession, two representatives of the attorney's profession, four senators, one representative of the law faculty, and four persons nominated by the President.

● See Page 7



**CHIEF JUSTICE IN WAITING** The votes swung in favour of Mr Justice Ismail Mahomed who was widely tipped to take over from retiring Chief Justice Mr Justice Michael Corbett.

# A-G's office denies conflict with TRC over amnesty

By EDWIN NAIDU

Former Vlakplaas commander Brigadier Jack Cronje and Captain Jaques Hechter are expected to appear in court tomorrow on 28 counts of murder, despite a tug-of-war between the Truth and Reconciliation Commission and Transvaal Attorney-General Dr Jan D'Oliveira over their applications for amnesty.

The two former security policemen, due to appear before an investigative inquiry of the TRC on Monday along with three others, are expected to be released on R1 000 bail when they appear in court tomorrow, and to have their case postponed to February.

Defence lawyer Willem Brits and former Vlakplaas commander Dirk Coetzee have criticised D'Oliveira, Coetzee saying it was a "deliberate move by D'Oliveira

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to upset the amnesty proceedings"

D'Oliveira, who left for Canada last night on a six-week study trip, had discussions with the commission on Tuesday, when he told them he would be going ahead with plans to prosecute Cronje and Hechter.

The two are due to appear before the TRC on Monday, along with Colonel Roelf Venter, Captain Wouter Mentz and Warrant Officer Paul van Vuuren. All five have applied for amnesty.

TRC vice-chairman Dr Alex Boraine confirmed there had been urgent discussions with D'Oliveira to allow warrants of arrest to be served on the two, while ensuring they would be allowed to attend the hearing of their amnesty application.

He said the TRC was surprised at D'Oliveira's decision to issue

warrants of arrest a few days before the amnesty applicants were due to appear.

"However, we will not obstruct justice by interfering in the service of warrants of arrest. At the same time, we are determined that the amnesty application next week should go ahead," he said.

Boraine said that after talks with D'Oliveira, the TRC was confident that, although the applicants may be charged in court, they would be available for the amnesty hearings.

"The TRC respects the work with which the attorneys-general are charged and would not obstruct the course of justice. However, the commission is an independent body and we also have a mandate from Parliament which we are bound to implement.

"In particular, we are determined to keep faith with those

who have applied for amnesty, and to ensure that they appear before the amnesty committee as arranged," he said.

State prosecutor Torie Pretorius said the A-G's office had taken a decision to prosecute because there was a strong case against the two amnesty applicants.

The prosecution was not an attempt to put the TRC's hearings off track. "We started the investigation two years ago and feel satisfied that we have a strong case. The wheels of justice must keep on turning," he said.

He denied there was any conflict between D'Oliveira and the TRC. "Instead, we complement and sometimes overlap each other."

► Killer cries over massacre mistake

# Take out the comrades!

(252) *sewelan*  
17/10/96

**L**ESS THAN A WEEK after former defence minister General Magnus Malan and his 15 co-accused were acquitted of the 1987 KwaMakhutha murders, former security policeman Brian Mitchell has sworn that state security strategies in the late 1980s sanctioned murder to maintain the apartheid system

An affidavit by Mitchell, supporting his amnesty application to the Truth and Reconciliation Commission in Maritzburg on Tuesday, outlines a strategy which condoned political murders and mistakes to enable security forces to restore law and order

The KwaMakhutha accused were acquitted of 13 murders after Judge Jan Hugo dismissed key State witnesses as untruthful. He said it was not clear that the military had masterminded the massacre by backing offensive action by military-trained Inkatha supporters

But, according to Mitchell's affidavit, offensive action by Inkatha and its police allies included armed attacks against their common enemy the "comrades"

The police specifically trained special constables to be "available to render military and offensive assistance to Inkatha" in line with their counter-revolutionary strategy

Mitchell has applied for amnesty for 11 murders, two attempted murders and arson committed on his orders on the night of December 2 1988 at Trust Feeds, New Hanover, where he was the station commander

## Political struggle

"I saw myself engaged in a political struggle. I believed I was acting within the course and scope of my duties. My motive was political, not personal," he said

Mitchell said he was driven by his determination to implement the counter-revolutionary strategy which was developed by the Joint Management System on which he served as secretary

He said an inquiry into the role of the JMS in the Trust Feeds massacre was never held despite the recommendation of Judge Andrew Wilson and promises by a former law and order minister

"It was in my interests that it should be revealed there was a strategy, that there were mistakes by security force members because of the Nationalist government's policy, and the police were used by them to do their dirty work"

Mitchell referred to a secret document setting out the government's strategy through the police against "revolutionary forces", namely the United Democratic Front and the African National Congress

Mitchell said when the security forces had failed to prevent the spread of political violence,

While acknowledging his role in human rights abuses under apartheid, former security policeman Brian Mitchell says the whole truth will emerge if politicians own up. Feature Writer **Claire Keeton** reports ...



**Brian Mitchell ... claims that a state security strategy once sanctioned murder to maintain apartheid.**

they decided to attach about 16 000 special constables as an auxiliary force to the roughly 48 000 existing police force members

They were employed to be a "physical force an auxiliary or third force" against UDF and ANC comrades, according to Mitchell's affidavit "Policing acquired a black face. Black offensive power was added to the riot units"

Mitchell said in his experience that riot unit commander Captain Deon Terblanche decided to make special constables available "to render military and offensive assistance to Inkatha" where their leadership was weak in New Hanover

## Total onslaught

Terblanche told Mitchell "not a further inch of soil in his area" would fall under the influence of the UDF-ANC

Mitchell said in his affidavit the operation at Trust Feeds was typical of a total onslaught strategy in which any means were justified to combat the revolutionary threat

The first step of an operation was a riot police exercise to remove any weapons from the area targeted and to arrest UDF/ANC leaders

"This would render UDF-ANC supporters more vulnerable to the attack, which would take place with the assistance of the special constables and in conjunction with the Inkatha Youth

Brigade," Mitchell claimed

In preparation for Trust Feeds, Terblanche allegedly ordered Mitchell to post six special constables with the local Inkatha branch

"I understood them to be the hit squad that would render offensive assistance to Inkatha"

On December 2 1988 the riot police detained young men from Trust Feeds under state of emergency regulations

Mitchell said this operation told him the attack was about to take place

He noticed the store of a prominent UDF activist burning when he returned to Trust Feeds on the night of December 2 and went to find the special constables

"Based on the orders I had been given and on my training, I ordered the special sergeant to 'take out' the comrades or terrorists. I also personally gave two orders to attack the UDF comrades," Mitchell said he never sought the death of women or children at the wake

## Disposed of cartridges

The policeman in charge of the special constables, Captain Jacobus van den Heever, allegedly disposed of police cartridges that would have incriminated them in the murders

After being questioned about his role in the killings, Mitchell was told "not to worry"

"I accepted the incident would be covered up," he said

But in 1991, Major Frank Dutton exposed the cover-up and Mitchell was arrested along with four special constables on charges of murder and attempted murder

He was convicted and sentenced to death on April 27 1992, and his death sentence was commuted to 30 years' imprisonment two years later

Mitchell said he deeply regrets what happened at Trust Feeds "I now realise that it should never have happened. I believe I have already served as an example of what happens when an important state instrument is used and abused to do things which it should not be doing"

He called on all members of security forces, "past and present, who have been involved in similar actions and conduct", to come forward and tell the TRC what happened

"It is also important that those in the previous government stand up, accept responsibility and come forward"

# "We killed the wrong people"

## Brian Mitchell tells TRC of Trust Feeds massacre

By Claire Keeton

**F**ORMER policeman Brian Mitchell exposed the ruthless state security strategy of the 1980s, which resulted in operations such as the Trust Feeds massacre, at a public hearing of the Truth and Reconciliation Commission in Maritzburg yesterday.

But Mitchell admitted "The whole operation (at Trust Feeds) went wrong. The wrong people were victims, the wrong house was taken out."

He said he could not explain why the special constables under his command had targeted that particular house in which 11 innocent people, including children, were killed. The order was to kill "comrades".

However, Mitchell said the use of special constables to attack popular organisations, in particular the United Democratic Front and the African National Congress, was central to the state's security strategy.

In an amnesty application and an affidavit to the TRC, Mitchell claimed he was indoctrinated during his long service in the police force to the extent that he believed he was implementing security strategy through the Trust Feeds attack.

The relatives and survivors of the massacre bowed their heads and wept when Mitchell, fighting to hold back tears, asked them to consider forgiving him. They indicated, through their lawyer, that they would not oppose Mitchell's amnesty application although they would prefer to see him serve his full sentence.



Brian Mitchell: "The wrong people were victims; the wrong house was taken out."

(252) Rowena 17/10/96  
Mitchell was found guilty of 11 counts of murder and three of attempted murder in April 1992 and sentenced to death. In 1994 his sentence was commuted to 30 years imprisonment.

His application to the TRC's

Amnesty Committee is supported by 600 pages of documents, including top secret security documents on the state's "total strategy" to crush widespread opposition to the apartheid system.

The strategy, implemented through a Joint Management System, ranged

from cold-blooded violence to smear campaigns against church leaders like Archbishop Desmond Tutu.

For example, a confidential document from Pretoria police headquarters, dated 1987, dedicates two pages to possible ways the security forces could discredit Tutu, now chairing the TRC Commission.

Mitchell said President Nelson Mandela was portrayed as a "monster, a communist and a violent man".

"One can see now the deception and the disinformation that was fed to us."

No section of society was left untouched by this security force strategy, which conspired to control everything including the church, media and education.

Mitchell said the security forces were convinced they had to "put very hard" their opponents fighting "fire with fire".

But he has now realised this should never have happened and that the liberation movements were fighting for the freedom of all South Africans.



# Killer cries over massacre 'mistake'

(259) Nov 17/10/96

Policeman brought bloodshed to community where there was peace before, amnesty hearing told

By **ROBERT BRAND**  
Pietermaritzburg

**K**iller policeman Brian Mitchell wept as he pleaded for forgiveness from the families of his victims yesterday, saying the massacre of 11 people in a house in Trust Feed eight years ago had been a "stupid mistake".

Members of the families, in the audience for Mitchell's amnesty hearing before the Truth and Reconciliation Commission in the Pietermaritzburg City Hall, were also crying.

They do not support the amnesty bid by the former captain, who has admitted to ordering four special constables to attack a house in the rural community.

But their lawyer, Essop Cagoe, told the commission they would accept its decision and try to forgive Mitchell in the interest of reconciliation.

The families had settled a compulsory claim against the minister of safety and security out of court, Essop said, and preferred not to testify at the amnesty hearing.

But they listened intently to every word as Mitchell argued that his crime was not an aberration, but part of a strategy of police violence aimed at wresting control of the area from the state's political opponents, the United Democratic Front and the ANC.

"Why should I feel sorry for him?" said shopowner Emmanuel Mbongwe, whose tenants were among the 11 killed in the attack, and whose store was burnt down by special constables acting on Mitchell's orders.

"What has he gone through compared with these people?"

Mitchell's testimony revolved around his unquestioning belief that his primary duty as New Hanover station commander was to fight the state's political enemies with everything at his disposal.

As chairman of the local management centre, he was responsible for "monitoring unrest" and implementing the state's counter-revolutionary strategy.

But he admitted yesterday that he was part of the problem. Trust Feed was peaceful when he arrived in January

1988. There was no unrest to monitor in collusion with IFP leader Jerome Gabela, he established a landowners' association to oppose the Trust Feed Crisis Committee, a democratically elected organisation which had the support of the community but was perceived by the police to be dominated by the UDF.

Ten months later, the once-peaceful community of Trust Feed had been turned into a hotbed of political violence. People left in droves as it became increasingly dangerous not to throw in their lot with the IFP.

A force of special constables, all of them card-carrying members of the IFP, was stationed in Trust Feed, ostensibly to guard Gabela's house.

But on the morning of December 3 1988 they were turned into a deadly force when four of them were ordered by Mitchell to attack a house in which they believed UDF activists were gathered.

In the darkness, they chose as their target a house in which they could see the light of candles. The house was, in fact, full of mourners attending a funeral

wake, most of them supporters of the IFP. Mitchell's "stupid mistake" became a tragedy of monumental proportions.

Documents submitted to the commission by Mitchell yesterday show that special constables were recruited in the 1980s to drive a wedge between opposing black groups.

Mitchell gave the commission a document drawn up by Major-General MFA Steenkamp of police headquarters in Pretoria in 1987.

It compares the special constables to the "witdoeke" vigilante groups of the Western Cape, and says they should form a "physical wedge against the tyranny of the UDF/ANC comrades".

Mitchell testified that special constables were used to help the IFP in attacks on UDF/ANC strongholds so that the violence could be portrayed as "black on black" and the white community would not be affected.

He damned the decision to attack "comrades" in Trust Feed as taken by the police, in conjunction with local IFP leaders, because the UDF/ANC had too much support in the community.

EX-POLICEMAN 'LOST EVERYTHING OF VALUE'

# Massacre: Mitchell begs forgiveness

(252)

2/17/96

**MARITZBURG:** Brian Mitchell, responsible for the 1988 Trust Feed massacre, said yesterday he wanted to be used as an example of what happened when violence was used to solve problems.

**FORMER** police captain Brian Mitchell — who ordered the attack in which 11 Inkatha men, women and children were massacred at Trust Feed in 1988 — yesterday faced the victims and their families and pleaded with them to forgive him.

In an emotion-charged moment at his amnesty hearing, several of the victims and relatives held their heads and wept bitterly. Moments later Mitchell too became choked with emotion as he told the Truth and Reconciliation Commission Amnesty Committee he had lost everything of value, including his family and profession.

Asked how long it had been since he saw his son, he choked back tears as he replied it was several years.

Turning to look straight at the victims' families, Mitchell said "I ask the people involved, directly and indirectly in this case, to consider forgiving me."

He said he wanted to make amends and to be used as an example of what happened when violence was used to solve problems and police were used to "do things they should not be doing."

Earlier the lawyer representing the families said while they could not yet forgive him or support the



**AMENDS:** Brian Mitchell

amnesty application, they did not oppose it and would abide by the ruling of the Amnesty Committee. Mitchell's advocate, Mr Etienne du Toit, urged the committee to accept that the attack had been

politically motivated, had been carried out on the orders of then Pietermaritzburg Riot Unit commander Major Deon Terblanche, and had the "stamp of approval" of the police force at senior level, even if it had not been an authorized operation.

This was evidenced by the subsequent cover-up, the failure of the police hierarchy to hold the inquiry called for by trial judge Mr Justice Andrew Wilson, and Mitchell's own promotion, two years after the massacre, to the rank of captain.

Mitchell said he had been indoctrinated to believe there was a civil war in progress in which the UDF/ANC were enemies of the state. The Joint Management System was devised to support Inkatha and resist the UDF/ANC. Instructions were given that "not another

inch of land" should be lost to the UDF/ANC.

"Blind loyalty and stupidity" had prevented him from revealing earlier the instructions he was given to "take out the comrades" that night, he said yesterday.

A meeting had been held with IFP leadership after which Major Terblanche said he would make six special constables available for an offensive attack on the UDF in Trust Feed. Earlier that day the Riot Unit "swept" the area to weaken the UDF leadership, seize their weapons and make them vulnerable to the planned attack, which was launched by the IFP.

Mitchell told the Amnesty Committee he gave the order for an attack on a house where comrades would gather after the assault "I never meant to kill women and children," he said.

The next day he realised the attack had been a "disaster".

Mitchell insisted he was not present during the actual attack, despite a finding to the contrary by Judge Wilson at his trial. "I don't want this to become the issue... I have been as honest as possible and I am unable to say I was present at the house because I was not there. I would not sabotage this opportunity to be given a second chance.

"I accept the things we did and were involved in were not justified and culminated in a lot of innocent people being killed," he said. The Amnesty Committee reserved its decision, which would be announced "in due course", chairman Mr Justice Hassen Mall said — Own Correspondent



TRUTH & RECONCILIATION COMMISSION

# TRC subpoena for ex-police chief Coetzee

(252)

CLIVE SAWYER  
POLITICAL CORRESPONDENT

ARG 17/10/96

Former police commissioner Johan Coetzee has been subpoenaed by the Truth and Reconciliation Commission.

The subpoena was served last night by the commission's investigative unit and follows subpoenas served last week on Lieutenant-General Basie Smit and Major Krappies Engelbrecht and this week on Lieutenant-General Johan le Roux.

They will appear at investigative inquiries which, in terms of the act governing the commission, will be held in camera.

Meanwhile, the government has vowed to get at the truth of another apartheid-era death shrouded in mystery - that of Mozambican president Samora Machel.

At a commemoration service today, President Mandela said the government would leave no stone unturned to find out what caused the aircraft crash in which Mr Machel died 10 years ago.

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# Mitchell to beg Trust Feed to forgive him for massacre

*Give me another chance, he asks hearing*

ARG 17/10/96  
(252) ARG 17/10/96

JOHN YELD  
ON THE TRUTH COMMISSION

**Pietermaritzburg - Former police captain Brian Mitchell, jailed for 30 years for murdering 11 people in the village of Trust Feed, wants to go to the community to ask forgiveness, the amnesty committee has heard.**

Mitchell is applying to the committee for amnesty for his crimes

Yesterday a lawyer representing the Trust Feed community, Mahmood Cajee, told the committee the people did not wish to testify at the hearing, because civil claims relating to the massacre had been settled

Nether did they want Mitchell to be given amnesty, believing he should serve his full sentence "But they wish to make it clear they will leave the decision on whether amnesty should be given or not to the amnesty committee, as they believe it is in the interests of the country to take it from its dark past," Mr Cajee said

Also, Mitchell had indicated to the

community that he wanted to address it in an appropriate forum where he could ask for its full forgiveness

"They will try to forgive Mitchell if he gets actively involved in the reconstruction of the community he was actively involved in destroying."

Mitchell's counsel, Etienne du Toit, confirmed to the committee that the community was willing to grant Mitchell a hearing "It is his intention to visit the community at an arranged date to offer his apologies"

The committee heard that special constables involved in the Trust Feed massacre wore civilian clothes and drove to the scene in an unmarked car after dark, all in line with a police training manual for clandestine operations against "revolutionary forces" in black townships

Mitchell was sentenced to death for his role in the December 1988 massacre but his sentence was commuted to 30 years in jail, which he is serving in the Pietermaritzburg prison

Mr Du Toit said it was quite clear Mitchell had been acting under the

instructions of a superior officer, Captain (later Major) Deon Terblanche of the Pietermaritzburg riot unit, and that the motive for the attack had been to interfere with gains made by a United Democratic Front-aligned organisation in the area

Mr Du Toit told the committee he would contact the Truth Commission on behalf of Mitchell within days to give information which Mitchell had of human rights violations not relating to the Trust Feed massacre

Mitchell appealed to the amnesty committee for a second chance in life, saying the massacre had been "a stupid, stupid mistake"

In emotional testimony before several hundred people in the City Hall here, the former police captain asked the families of the 11 victims of the massacre and others affected by the incident to consider forgiving him

"As a Christian, and with the wisdom of hindsight, I have come to understand what happened and also why it happened. I now realise it should never have happened and that

this country should have travelled the road then that it is travelling now

"I realise now that the struggle for freedom of the liberation movements was not only a struggle for their freedom but also my freedom and that of white South Africans"

Mitchell, whose wife divorced him after he was convicted, said "I have lost my family and I have lost everything of value to me"

He was overcome with emotion when his junior counsel, Michael Naidoo, asked him when he had last seen his son. Unable to speak and choking back tears, he could only nod as Mr Naidoo answered for him that it had been "several years ago"

At the same time, several people in the audience - including survivors of the shooting and their relatives - were crying openly

Mitchell also called on all members of the security forces, "past and present", who had been involved in similar incidents to acknowledge these publicly and testify before the Truth Commission

## Killer sorry - and victim's son bears no grudge

ASHLEY SMITH  
STAFF REPORTER

**Paarl - A doctor whose mother was shot dead on a farm in Paarl 10 years ago "bears no grudge" against the United Democratic Front activist who committed the murder, the Truth Commission has been told.**

A statement written by Ivan Sieberts was read soon after convicted murderer Philemon Maxam apologised for the slaying of the elderly woman and a gardener on a Vlakkeland farm in 1986

Dr Sieberts wrote "I am happy that Maxam wants to make peace because I too felt the burden of anger lying heavily on me over the years. I am glad he is doing this for her and for me"

Maxam is serving a 25-year sentence in Allendale Prison for the killings, after the Cape Supreme Court overturned two death sentences in 1992



Repentant: Philemon Maxam, right, apologises to Ivan Sieberts for the murder of his mother

Maxam said "My involvement in the murders has been so heavy that it has hung like a black cloud, not only on myself, but on my family as well"

Maxam had gone to the farm on the day of the murder intent on finding

guns to arm UDF members who were involved in a feud with Azapo supporters in Mbekweni township

Dr Siebert's mother, the housekeeper on the farm, was shot after she turned her back on Maxam to fetch

him a glass of water, the commission heard

Describing his political activity during the 1980s in Mbekweni, Maxam said he had been responsible for the implementation of the Mandela Plan in the township and was in charge of a UDF-affiliated organisation called Mbeko "My role was to set up teams of young activists to work on certain strategies to destroy what we saw as apartheid apparatus," he said

He told the commission he also wanted to apologise to the people of Mbekweni who had been taken into police custody and tortured because his organisation had used their homes as bases to plan the operations

"I would like to make peace within myself so that one day when I am released from prison I will be able to look them in the eye," he said

He added that he was prepared to serve the entire sentence and had not yet appealed to the Truth Commission for amnesty

# Amnesty applicants 'to be granted bail'

BD 17/10/96

(252)

Stephané Bothma

PRETORIA — Former security policemen Brig Jac Cronje and Capt Jacques Hechter are still in the truth commission's witness protection programme and will not heed a warning by Transvaal attorney-general Jan D'Oliveira to appear in court today on 28 charges of murder.

Cronje and Hechter's lawyer, Willem Britz, said last night his clients would instead appear in the Magistrate's Court tomorrow.

The matter had been discussed with D'Oliveira, and the two former policemen would be released on bail of R1 000 each after their first appearance. They would also be asked to hand in their passports, Britz said.

"D'Oliveira has given an undertaking that he will not interfere with my clients' amnesty hearings," he said.

Although the two were expected to be charged with 28 murders tomorrow, Britz said they would shed light on about 40 murders when testifying in support of their amnesty applications.

Cronje, Hechter and three other security policemen, Col Roelf Venter, Capt Wouter Mentz and W/O Paul van Vuuren, all applied for amnesty. Their hearings were scheduled for next week. However, arrest warrants for Cronje and Hechter were issued by D'Oliveira on Tuesday and the two were warned to appear in court today.

D'Oliveira also indicated he would use two of the five men as State witnesses against Cronje and Hechter and offer them indemnity in terms of section 204 of the Criminal Procedure Act.

It was established last night that Mentz and Van Vuuren were offered the option of section 204, but that the men declined, refusing to testify

against their former colleagues.

D'Oliveira had given Mentz and Van Vuuren 24 hours to accept the offer, after which the option to become State witnesses would no longer be available to them.

Britz said his clients would subpoena former security policeman Joe Mamasela to testify at their amnesty hearings. Mamasela, currently in an attorney-general witness protection programme, is assisting D'Oliveira with the preparation of several criminal cases against former security force members.

Testifying in the De Kock trial earlier, Mamasela said he had over the years prepared a "thick docket" about security force abuses in the apartheid era. The docket was with D'Oliveira.

Britz said an application would also

Continued on Page 2

## Truth

(252)

Continued from Page 1

BD 17/10/96  
be brought for Mamasela's docket to be made available to them.

He said that if the commission granted his clients amnesty, the law prohibited any criminal or civil procedure against them.

Commission vice-chairman Alex Boraine said yesterday the commission was "surprised at the decision of D'Oliveira to issue warrants of arrest a few days before the amnesty applicants were due to appear".

However, the commission would not obstruct justice by interfering in the serving of warrants.

Comment: Page 13

# TRC comes under fire from Azapo

By **MONDLI MAKHANYA**  
Political Reporter

(292)

Nov 18/10/96

The Azanian People's Organisation has slammed the Truth and Reconciliation Commission for its attempts to halt the trials of former security policemen.

Azapo Gauteng chairman Lybon Mabasa told a Johannesburg news conference yesterday that the TRC's attempt to stop attorneys-general from prosecuting perpetrators of apartheid-era atrocities was tantamount to defeating the ends of justice.

"We are concerned that the commissioners are critical of efforts to bring to book those who perpetrated crimes against humanity. In their thinking, justice is of less value than their reconciliation showbiz and avalanche of tears," said Mabasa.

Azapo earlier this year launched an unsuccessful bid to have the TRC declared unconstitutional because, the organisation argued, the commission denied victims of human rights abuses the right to seek redress through the courts.

Mabasa also announced that the organisation would be holding commemoration services tomorrow in honour of Black National Solidarity Day. The day marks the October 19 1977 government crackdown which saw 17 anti-apartheid organisations and two newspapers outlawed and scores of activists banned and detained.

The theme of this year's commemoration is "Black solidarity in the face of serious offensive and assault on black unity".

Mabasa said this "serious offensive and assault" was characterised by political violence in KwaZulu Natal, taxi violence, violence against black women and children, and "rising levels of crime in the black community causing a general state of trauma".

He blamed the Government for this state of affairs.

"The government of the day is committed to pandering to the whims and wishes of the white community and drawing applause from the international community for being extremely sensible," said Mabasa.

# Church 'has misgivings about TRC'

*Sowetan 18/10/96*

(252)

**By Pamela Dube**  
Political Reporter

THE Dutch Reformed Church has not taken a stand to make submissions to the Truth and Reconciliation Commission in spite of the presentation by its Stellenbosch diocese to the commission this week.

On Monday DRC dominee Dr Hannes Koornhof of Stellenbosch apologised before the TRC sitting in Paarl for the church's role in supporting apartheid and being silent about the injustices of the National Party government.

He admitted that the DRC had failed to speak out against the "racist attitudes of its members. We came to be deaf to the protests and cries of many of our brothers and sisters in faith."

DRC national moderator Dominee Freek Swanepoel told *Sowetan* yesterday that the Stellenbosch diocese had "the right to speak to the commission. But the church nationwide has not taken any stand on the TRC, and we cannot say whether we agree with Stellenbosch."

## Not enthusiastic

Swanepoel said all the DRC diocese would meet at the end of the month to discuss the Stellenbosch presentation. "That's when we will decide whether we follow their (Stellenbosch) route or not," he said.

However, Swanepoel added, the DRC was not presently enthusiastic about the operations of the TRC. "We still have concerns about the commission. Some members of the church still feel the TRC is out for revenge and not reconciliation."

He said the general membership of the church "is waiting eagerly to see an end to the TRC activities so that we can start talking reconciliation."

In the past the DRC only accommodated white members. "We supported apartheid on biblical grounds. We were of the conviction that every ethnic grouping had a right to congregate among their own," Swanepoel said.

Koornhof told the TRC that the DRC was uncritical of apartheid

**'The DRC is not presently enthusiastic about the operations of the TRC. We still have concerns about the commission'**

because they trusted the National Party leaders who were members of their church to do what was right. "This uncritical assumption further reinforced the widespread acceptance of apartheid as being in the interest of all people in the country," he said.

In 1986 the new breed of the church's leadership started questioning the principle and decided that membership be opened up to other races. However, the decision was not unanimous.

Some of the conservative leaders and congregations decided to leave the DRC and formed a breakaway church, the Afrikaanse Protestantse Kerk.

In 1990 the DRC decided to go further and invited its sister churches in the black communities - the United Reformed Church in Southern Africa (for Africans and coloureds) and the Indian version, the Reformed Church in Africa (RCA) - to discuss unity.

## All inclusive

Despite Swanepoel's insistence that there was progress in uniting the churches, the RCA's moderator Dominee Kisten Moodley said there was not much the DRC was doing to show they had changed.

He added that even though the DRC now espoused an "all inclusive church", not all was well in the unity making process.

"They have opened doors to us, but they have not changed the system within. They still use Afrikaans despite the fact that not all new members are Afrikaans-speaking," said Moodley.

# New look at amnesty deadline

(252) 8/18/10/96

BY ROBERT BRAND

The Truth and Reconciliation Commission (TRC) is to ask Parliament to extend the cut-off date for amnesty from December 6 1993 to May 10, 1994 - the day Nelson Mandela was inaugurated as president.

The extension would require an amendment to the Promotion of National Unity and Reconciliation Act which, in its present form, allows amnesty only for crimes committed between March 1 1960 and December 6 1993.

Several political parties, among them the PAC and the Freedom Front, argued in submissions to the TRC in August that the 1993 date was arbitrary and should be changed to the date on which President Mandela was inaugurated.

This, they argued, was a more logical cut-off point as it signalled the true start of South Africa's non-racial democracy.

An extension of the cut-off date would benefit members of those two parties mostly.

Among those who currently do not qualify for amnesty, because their acts were committed after the cut-off date are the perpetrators of Cape Town's Heidelberg Tavern massacre and the rightwingers responsible for a spate of pre-election bombings in the Johannesburg area.

Deputy President Thabo Mbeki has indicated that the ANC would be prepared to consider amending the act asked by the TRC to extend the cut-off date.



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MG

18/10/96



LEON MULLER

Heidelberg Tavern attack: in this flashback picture from December 30 1993 emergency services staff remove a body from the Observatory pub

# Pub killers

PICK 'n PAY CLAREMONT

# may get

# amnesty

## *Call for new cut-off*

(252)

JOHN YELD  
ON THE TRUTH COMMISSION

ARG 18/10/96

The Truth Commission is to ask Parliament to extend the cut-off date for political crimes qualifying for amnesty, which could lead to the release of the men jailed for the attack on the Heidelberg Tavern.

This would also allow the cut-off date for amnesty applications for gross human rights abuses to be moved three months from December 14 this year to March 14 next year.

This would give applicants an extra three months in which to apply for amnesty.

The commission will ask that the "arbi-

trary" date of December 5, 1993 be extended to the "far more symbolically important" date of President Mandela's inauguration - May 10, 1994.

If Parliament agrees, those involved in the attack on the Heidelberg Tavern in Observatory on December 30, 1993 will be eligible to apply for amnesty - if they argue that the attack was politically motivated. Four people died and six were seriously injured in the attack.

In June, the three men convicted of the attack were refused leave to appeal against their sentences on four counts of murder, a robbery with aggravating circumstances, two counts of attempted murder, and the

To page 3

## Heidelberg killers could get amnesty

From page 1

unlawful possession of firearms and ammunition.

Brian Madasi of Butterworth is serving an effective jail sentence of 24 years and Zola Mabal and Luyanda Gqumfa each an effective 27 years. The three were allegedly members of the Azanian People's Liberation Army - the armed wing of the Pan Africanist Congress.

The PAC has already asked for the cut-off date for amnesty to be extended so that the three can apply.

If the cut-off date is extended, many supporters of the Freedom Front who were engaged in sabotage efforts in the run-up to the April 1994 elections will also be able to apply for amnesty.

In his submission on behalf of the Freedom Front during the political parties' hearing, party leader Constand Viljoen said he could not be completely open and direct with the commission without incriminating himself and his supporters.

At a press conference today after a full Truth Commission meeting yesterday, chairman Desmond Tutu said that one advantage of changing the date would be an "enhanced participation" of the PAC and the Freedom Front.

His deputy Alex Boraine welcomed today's postponement of criminal proceedings against two former security policemen as "a sensible step". Former Vlakplaas security police base operatives Jack Cronje and Jacques Hechter were released on bail when they appeared in the Pretoria Magistrate's Court on 27 charges, including murder. They are among five ex-policemen who have applied for amnesty. The applications will be heard next week.

ARG 18/10/96

(252)

# Tight lid on top legal appointment

BD 18/10/96

(252)

Deborah Fine

THE judicial services commission would yesterday not confirm or deny a report that its members had voted overwhelmingly in favour of Constitutional Court deputy president Judge Ismail Mohamed as the new chief justice

Commission secretary Inez Greenstein said she had been authorised by outgoing chief justice and commission chairman Judge Michael Corbett "to tell the media that the JSC's deliberations are confidential and we have nothing to say"

The new incumbent will replace Corbett when he retires at the end of the year

The report claimed that a "reliable" source had indicated that the commission had voted 15-1 in favour of Mohamed. Corbett had been the only mem-

ber to vote in favour of the second candidate, senior Appellate Division Judge Hennie van Heerden

Both candidates appeared before the commission during public hearings in Cape Town earlier this month, after which it was to have made confidential recommendations to President Nelson Mandela

Commission member and head of the Legal Resources Centre's constitutional litigation unit Wim Trengove SC would not confirm or deny the report, but said he was "surprised" by the report because it had resolved not to make its conclusions public until after a candidate had been appointed

The commission believed that while the public was entitled in the interests of transparency to know what its conclusions had been, the commission felt it would not be appropriate to reveal its findings until after the process had been completed

Presidential spokesman Joel Netshitenzhe confirmed yesterday that Mandela had received the commission's recommendations and would present the findings to Cabinet next week

# ANC to propose easing terms of abortion Bill

BD 18/10/96 (251)

Wyndham Hartley

CAPE TOWN — The ANC is poised to table amendments to the abortion Bill which will ease the terms under which abortion on request can be granted.

In another development the Catholic Church denied yesterday that it had paid for an abortion for a member of the church who claimed to have become pregnant after an affair with a priest. It said it had paid for psychological counselling and medication, but not an abortion. The woman claimed a bishop had paid for the abortion.

As opposition parties formally expressed their objections to the Termination of Pregnancy Bill for the first time yesterday, it was learned that the ANC would also table amendments which could see the initial 12-week cut-off for abortion on demand "technically" extended.

After three days of public hearings the parliamentary health committee began deliberations on the Bill with opposition parties identifying problem areas in the legislation.

It emerged yesterday that in spite of the hearings, the health department had not been influenced in any way and no changes were suggested.

DP MP Mike Ellis said while the DP

supported the right of every woman to choose, there were aspects of the legislation that, if they remained unchanged, would make it difficult for the DP to support the Bill.

He said that abortion to women between the 13th and 20th week for "socioeconomic reasons" was too vague and the clause should be deleted.

The issue of parental consent was also raised by the DP. Ellis said while under certain conditions it might be impossible for a minor to consult her parents on the issue of abortion, the blanket allowance of abortion on demand to children "prejudiced the rights of parents". He said the circumstances under which a minor could have an abortion without the knowledge or consent of her parents had to be specified in the legislation.

Ellis said children who were pregnant might not be in a position to fully understand the implications and the risks of an abortion.

The DP also objected to clauses which would criminalise doctors who, after refusing to perform an abortion for reasons of conscience, fail to refer the woman to a doctor who would perform an abortion.

Comment: Page 9

# Truth commission to appeal for amnesty period extension

BD 18/10/96 (252)

Stephen Laufer

THE truth commission is to ask Parliament to extend the period for amnesty from December 1993 to May 10 1994, the day President Nelson Mandela was inaugurated.

The decision, taken at a meeting of the commission in Cape Town yesterday and to be officially announced by chairman and former archbishop Desmond Tutu today, will require an amendment to the Promotion of National Unity and Reconciliation Act.

It comes largely in response to submissions by the Freedom Front and the PAC. Both parties want members or sympathisers who perpetrated politically motivated violent crimes in the immediate pre-election period to benefit from the Act's amnesty provisions.

On extending the cut-off date for amnesty applications beyond December 15 this year, the commissioners are understood to have postponed a final decision at a meeting yesterday.

Meanwhile, a commission investi-

gator said yesterday the commission's amnesty committee intended to decide on applications by four former policemen before December 15.

By deciding timeously, the judges hearing applications by convicted Trust Feeds killer Brian Mitchell and former Vlakplaas operatives Dirk Coetzee, Almond Nofemela and David Tshikalanga hoped to offer greater legal clarity to security force perpetrators considering applying for amnesty.

The hearings involving the Vlakplaas three would begin on November 5 in Durban, moving to Mpumalanga and to Pretoria if necessary. The decision to move the hearings — scheduled for nine days — was to accommodate victims and their families.

The commission said yesterday it had served a subpoena on a fourth apartheid era police general on Wednesday.

Former SAP commissioner and special branch head Johan Coetzee had been ordered to appear before an inquiry on October 30.

# Amnesty change may see 'boere' bombers freed

By ADRIAN HADLAND

Right-wing bombers who conducted a violent campaign to prevent the 1994 election will be eligible to apply for amnesty if a bid by the Truth and Reconciliation Commission to extend the amnesty cut-off date is approved by Parliament.

The commission said yesterday it had resolved to ask Parliament to extend the date from December 1993 to the date of the presidential inauguration, May 10 1994, in the interests of national reconciliation.

This would mean that the perpetrators of any serious, politically motivated crime committed between December 1993 and May 1994 would be eligible to apply for amnesty.

While the PAC and the Freedom Front have been pushing for the date change, the ANC has opposed the idea.

President Nelson Mandela said yesterday he was against the move. His spokesman, Parks Mankahlana, said "The president's attitude is that the extension should not be granted."

"The impression has already been created that the South African criminal justice system is soft on crime. The president is not keen to send a message that the Government is willing to make concessions to criminals. He will have to be persuaded before he changes his mind."

Mankahlana said, however, that it was up to Parliament to decide on the matter.

Among those who could be affected by a date change are a number of rightwingers, including six sentenced to jail terms ranging from five to 26 years for

a pre-election bombing campaign in which 20 people died and almost 50 were wounded.

Eighteen rightwingers were convicted for their roles in the bombing spree. Three who escaped - Abraham Myburgh, Nicolaas Barnard and Jan de Wet - are still at large.

Others who might qualify for amnesty include the Azanian People's Liberation Army cadres involved in the Heidelberg Tavern killings in Cape Town in December 1993 as well as in attacks in the East London area, along with some of those involved in political violence in KwaZulu Natal. Nine people were killed on average every day in the province during March 1994; 180 lost their lives in the last two weeks of 1993.

The Shell House attack, in April 1994, in which more than 50 people died, the Bophuthatswana coup and an Azanian Liberation Army attack on a Baha'i church in Mdantsane in March 1994 could all fall into the extended amnesty period, as could incidents on the East Rand, where there was an explosion of violence.

The granting of amnesty is far from automatic. Two judges heading the commission's amnesty committee are responsible for deciding whether a crime is political. More than half the 1 007 applications received have been returned to applicants as they have not disclosed political objectives for their crimes.

In defending its decision to push for an extension, the commission said yesterday the initial cut-off date had been set arbitrarily as the day the interim constitution was adopted. May

10 1994, when Mandela was inaugurated as president, marked the opening of a new chapter in South African history and had far more symbolic importance.

The commission said the PAC and Freedom Front had indicated they would be willing to cooperate with it if the date were changed. "We believe that it would be an act of generosity in keeping with the spirit of the reconciliation which we seek to promote to move the date," the commission said.

If Parliament agreed to shift the date, the December 14 deadline for amnesty applications would also need to be set back three months to allow those enabled to apply for amnesty reasonable time to do so, while easing other time restrictions imposed on those currently involved in the amnesty process.

The commission emphasised that its proposal was only a recommendation and Parliament would have to decide whether to accept, amend or reject the idea.

"It would be premature to assume that the dates will change and the commission will not act under that assumption."

Meanwhile, Sapa reports that commission deputy chairman Dr Alex Boraine said yesterday the taxpayer would be saved millions of rands by the commission's decision to grant two former Vlakplaas operatives an amnesty hearing before they went on trial.

Former security policemen Brigadier Jack Cronjé and Captain Jacques Hechter appeared in court yesterday in connection with 27 crimes.

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P.T.O

## ◆ Amnesty

Boraine said it would be an enormous waste of the state's money if, after a protracted and expensive criminal trial, the accused were convicted and then qualified for amnesty.

“By going the route of hearing an amnesty application first, the amnesty committee can decide whether they qualify before a trial. If they are not granted amnesty, they can still be tried in the courts.”

He confirmed that former police commissioner General Johan van der Merwe had been subpoenaed to appear at next week's amnesty hearing of Cronjé, Hechter and three other security policemen – Colonel Roelf Venter, Warrant Officer Paul van Vuuren and Captain Wouter Mentz.

“He will appear at the hearings in a sort of collective unity with the men who worked under him. If this is to happen then it is logical to assume that Van der Merwe will be contemplating applying for amnesty.”

# I was loyal soldier in war on terrorism, says riot policeman



Brian Mitchell: a police officer whose loyalty to the apartheid state was beyond question.

## Killer applies for amnesty

JOHN YELD  
ON THE TRUTH COMMISSION

(252)

AR 4 19/10/1986

Convicted "Trust Feed massacre" killer Brian Mitchell was once a dedicated, professional police officer.

As he put it in his testimony to the Truth Commission's amnesty committee this week "I served my country and the people in my areas with diligence"

His professional pride was such that he chose to resign from the South African Police after his conviction for his involvement in the murder of 11 men, women and children at the peaceful Natal Midlands hamlet of Trust Feed in December 1988; rather than want to be fired.

This was so that he could keep the two medals he had won during his 16 years of police service - ironically, medals awarded for "faithful service"

"Most of them were Afrikaans-speaking, who brought with them their ways, their attitudes, ways of thinking, fears, beliefs. At a young age I was susceptible to this influence. Not all of it, though, was negative."

Mitchell also described his anti-riot experience after he'd been transferred to Natal

"We were divided into six sections of six white members. Each section had a Land Rover - a sergeant and a driver in front, and four members at the back

"Many hours were spent cramped up in the back of those Land Rovers - winter, summer, rain, cold or shine

"Obviously, many hours were spent talking and exchanging ideas. It took a certain person to adapt to those conditions. One had to be ready, no matter what the circumstances. We were trained and re-trained to



His pride in his medals was such that, at one point during his stay on Death Row in Pretoria Central before his 11 death sentences were commuted to 30 years' imprisonment; he called his advocate to the prison for a special consultation about how he could get to keep them.

The advocate, senior counsel Etienne du Toit, was amazed, and pointed out that the medal issue was "rather minor" compared to the punishment hanging over his head, the amnesty committee heard.

But Mitchell's concern was indicative of how he saw himself at the time – a police officer whose loyalty to the apartheid state was beyond question even if, as he put it, the police had been used by the NP government of the day "to do their dirty work".

And of course he expected loyalty in return. "I believed that I could rely on the backing of the police irrespective of the outcome of my trial," he said in the comprehensive affidavit which accompanied his amnesty application.

"We all fought for the same cause during the total onslaught years."

Mitchell's affidavit – in places poignant and moving – reveals publicly for possibly the first time the indoctrination and bravado, followed by the fear and then the growing sense of futility, that many of his police colleagues must have experienced during their defence of the apartheid regime.

Joining the police straight after completing matric, the young recruits had just finished their basic training in June 1976 when they were ordered onto the back of Bedford trucks and driven to face the angry black students of Soweto.

"As a young white South African I was for the first time confronted with an uprising that left me shivering in my boots," he recalled.

"During this uprising I experienced the solidarity of the black masses like never before, and the brutality of the law enforcers to put down the uprising. The hostility of the blacks towards us was real and constant."

At that time, the police riot unit

frustrating hours doing this.

"We were never taught how to deal with emotions."

It was a theme Mitchell returned to again in his affidavit. "We were never taught how to deal with our fears, our hatred, our frustration, or fatigue – the killings, burnings and stone throwing, the petrol bombs."

Like his fellow former police colleague, Eugene de Kock, Mitchell spent time "on the border", supposedly defending South Africa against the communist onslaught.

But the reality of that particular experience was not without a cost.

"Being faced with 'contact' situations and losing a very good friend as well as detonating a land mine were part and parcel of my experience."

"On returning home my wife wanted to know what had happened to me to change me so much. This was in 1982."

"We were returned home and expected to live a 'normal life' without being debriefed and told how to deal with our experiences."

"Up until today I get a feeling of fear that grips my heart and I feel my flesh crawl."

Mitchell said it was not easy to make amends for what had happened – "in fact, it is impossible" – but that he wanted to express his deep regret for all those affected by the Trust Feed massacre.

"As a Christian and with the wisdom of hindsight, I have now come to understand what happened and also why it happened. I now realise that it should never have happened and that this country should have travelled the road then, that it is travelling now."

"What has happened to me and in my life and in the lives of so many people in this country is a tragedy. I would like to be used as an example of what happens when violent means are employed to solve problems, instead of consultation and discussion."

"I want to be used as an example of what happens when police force members are employed to do things which they should not be doing."

***'We were never taught how to deal with the killings, burnings and petrol bombs'***

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ARCT

ARCT

19/10/96

# Amnesty officers square up to the state

B. MARLENE BURGER

**SIMMERING** tension between the truth commission and the Transvaal attorney general's office will come to a head tomorrow when five former security policemen launch their bids for amnesty.

The expected public showdown follows months of behind-the-scenes negotiations between Dr Jan D'Olivera, whose team investigating the Third Force has spent almost three years probing the horrors of the apartheid era, and truth commission executives Archbishop Desmond Tutu and Dr Alex Bogane.

At the centre of the row are former Vlakplaas commander Brigadier Jack Cronje and erstwhile Northern Transvaal security branch captain Jacques Hechter, who were charged in Pretoria on Friday with the murders of 27 activists.

Along with Colonel Roelf Venter, Captain Wouter Mentz and Warrant Officer Paul van Vuuren, Cronje and Hechter filed their applications for amnesty just days before D'Olivera issued warrants for their arrest.

The amnesty hearings start in Johannesburg tomorrow, when D'Olivera's office will "vehemently" oppose a demand that the

state witnesses lined up against Cronje and Hechter be called to corroborate their confessions before the truth commission.

It is the issue of the witnesses that has angered D'Olivera's office, but the attorney acting for the five security policemen, Willem Britz, says that if he cannot bring the witnesses before the amnesty committee amicably, he will ask the truth commission to subpoena them.

The witnesses include former Vlakplaas operative Joe Mamasela, who admitted while testifying against his former commanding officer, Eugene de Kock, late last year that he had been in-

voled in some 50 assassinations Mamasela has turned state evidence in, return for indemnity from prosecution, as has former Pretoria murder and robbery squad member Sergeant Deon Gouws, implicated in 10 of the murder charges against Cronje and Hechter and another of the witnesses Britz wants to call.

Dr Torre Pretorius, a member of the state team that secured De Kock's conviction on 89 charges including six of murder, will argue the case for justice before the amnesty committee tomorrow.

"Under no circumstances will we agree to have our witnesses exposed in this forum before they

have given their testimony in court. It is an accepted legal principle that the prosecution is entitled to protect its interests, and we will not forfeit the right to present the strongest possible case in court in the event of amnesty not being granted to these two men," Pretorius said.

Pretorius said the state saw no need for its witnesses to corroborate their confessions, "provided, of course, the applicants tell the truth".

The first salvo in the battle for justice was fired in June when the five launched what D'Olivera's staff saw as a "pre-emptive strike" aimed at avoiding prose-

caution by joining forces with another 17 former security policemen in approaching the truth commission with an offer to provide information about some 50 covert operations, including 40 murders.

At the time, D'Olivera made it clear he took a dim view of the move since all 22 men were the subject of investigations that were in an advanced stage. Their approach was endorsed by several retired police generals, including former commissioners Henne de Witt, Johan Coetzee, Mike Geldenhuys and Johan van der Merwe. D'Olivera's move this week to charge two of the original 22

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alleged perpetrators before their amnesty applications were dealt with echoes the action of the Natal Attorney General, Tim McNally, who was criticised for charging Vlakplaas commander Dirk Coetzee with the murder of Durban lawyer Griffiths Mxenge seven years after Coetzee first publicly confessed to giving the orders for the operation and some months after he applied for amnesty.

The truth commission reacted by expediting selected amnesty hearings, including those of Coetzee, Cronje, Venter, Hechter, Mentz and Van Vuuren. ELIAS MALULEKE reports that the truth commission will

hear evidence from the five policemen on how 10 youths from Mamelodi were lured to their deaths by security branch policemen posing as Umkhonto we Sizwe cadres.

They were told that they were being helped to skip the country to join the ANC military wing. Instead they were killed on June 27 1986.

The 10 youths, who were travelling in a minibus driven by Mamasela, were ambushed by police hit squads at Mmolotsi village, near the Botswana border. They were loaded onto an old minibus rigged with landmines and blown apart.

# Massacre at midnight

(252) CP 20/10/96

By WALLY MBHELE

**SHOCKING confessions about the killing of prominent Botswana businessman Sam Chand – whose legs were stolen after his body was blown to pieces – are among the many chilling tales of murder expected to cause a stir at the Amnesty Committee hearings from tomorrow.**

Chand, four members of his family and a security guard were executed in 1990 in a ruthless cross-border raid – blamed on the apartheid government's hit squads at the time

Chand, who was associated with the Pan Africanist Congress, his wife Hagera, three sons (Ameen, Ridwaan and Imran), security guard Mathekwan Pule and the family's dog were all shot dead during the night of April 21 1990.

The house – just over the border from Zeerust – was rocked by a massive explosion after the attack. Bodies were found mutilated beyond recognition when they were removed from underneath the rubble.

In the gruesome massacre Chand's body was blown apart with explosives – which, according to family members, were tied around his body after he had been shot.

Pieces of his flesh were picked up under a tree – but his legs were never found

The faces of Chand's wife and three sons were riddled with bullet wounds and their heads were crushed by the falling roof

South Africa will get a chance to hear what happened that horrific night when top policemen start pleading for amnesty before the Truth and Reconciliation Commission in Johannesburg from tomorrow.

One of Chand's surviving daughters, Fawzia, told City Press she had kept the hope alive for six years that one day it would be revealed who had killed her parents and brothers.

It was widely speculated at the time that a special South African hit squad was responsible. However, the

## 'Why did you take my dead father's legs?'

By WALLY MBHELE

THE HEAT is on. From tomorrow until the end of next week, five former policemen are expected to reveal details of more than 40 murders committed during their years as hit-squad operatives in the notorious Vlakplaas unit.

Fawzia Chand, a member of one of the victims' families, wants to know only one thing from her father's alleged killers when they start pleading for pardon: "Just where are my father's legs?"

Fawzia's father, Sam Chand, his wife, three sons and a security guard died in a grisly cross-border operation in 1990 carried out by a Vlakplaas hit squad led by convicted murderer Colonel Eugene de Kock, according to affidavits in the TRC's possession

Chand's body was blown to bits and his legs were never found

But even if they tell her what happened to her father's legs, she won't forgive them, says Fawzia –

"because the way they killed my family was so cruel, it was terrible!"

Fawzia, who survived the massacre because she was in Johannesburg at the time of the raid, says her anger does not stem from "why they were killed – but how they were murdered".

"If De Kock and his men had anything to do with the death of my father, who was alleged to have been helping the PAC, they still had no right to murder him."

"They should have sought some other form of punishment – rather than mutilate their bodies in that barbaric way I'm very hurt"

"This talk of amnesty," she says angrily, "is all rubbish. These people must be punished"

□ The five former policemen who have applied for amnesty are Brigadier Jack Cronjé, Colonel Roelf Venter, Captain Wouter Mentz, Captain Jacques Hechter and Warrant-Officer Paul van Vuuren.

then minister of law and order, Adriaan Vlok, said the police had "nothing to do with the attack"

Just when Fawzia was about to give up hope of finding out the truth, truth began to emerge last week

As chickens come home to roost, sworn affidavits – handed to the TRC by former members of the notorious Vlakplaas unit – allege the raid was carried out with the full knowledge of Generals Krappies Engelbrecht and Basie Smith.

Vlok, Smit and Engelbrecht have all been summoned to appear before the TRC and give evidence

Pleading for pardon, five hit-squad policemen have told how Vlakplaas operative Mathinus Ras passed on information about the Chand family to Engelbrecht and Smit. Vlakplaas was later given a green light to raid the house. During the raid, De Kock and another un-

named policeman were injured, according to affidavits submitted to the TRC

According to an affidavit, another Vlakplaas operative, Douw Willemse, shot a guard who had raised alarm – and then shot Chand, his wife Hagera and two other people.

She said the attackers had descended upon their house shortly after midnight. The security guard on duty was heard crying, "Why kill me, what have I done?"

The hit squad then attacked Chand's nine-bedroomed house where he was sleeping with his wife. His three sons present at the time were sleeping in separate bedrooms.

"It means had I and my sister, Asia, been at home, we would have also been killed," said Fawzia.

The only one who escaped was the family's domestic worker, Mmaletsatsi Tshekedi, who jumped out of the window of her outside room.

# Apartheid skeletons tumble out

By **DESMOND BLOW**

EP 20/10/96  
STARTLING EVIDENCE is expected tomorrow – when top police officers will for the first time give “full disclosure” about crimes committed under the apartheid government

Five former security police officers are to appear before the Truth and Reconciliation Commission (TRC) – and must be granted amnesty if they make a “full disclosure” and their crimes had a political motive

Two of them – Brigadier Jan Hattingh (Jack) Cronjé (59) and Captain Jacques Hechter – appeared in court on Friday charged with 27 murders and the case was transferred to next year.

If they do not make a full disclosure concerning the case against them, they will not be granted amnesty – and the attorney general will be able to continue the case against them.

Their attorney, Willem Britz, said they knew this – and would hold back nothing.

The two were released on bail and went back into the TRC's witness protection programme



— FULL-DISCLOSURE —  
will spill the beans

— Brig Jack Cronjé (left) and Capt Jacques Hechter will spill the beans

■ Pic: TLADI KHUELE

□ City Press understands that former security branch captain Hechter will reveal the full story of the murders of Dr Fabian Ribeiro and his wife – and name the high-ranking military officers with whom he was involved in the killings.

□ We also understand that Brigadier Cronjé, a former commander of the Vlakplaas “hit squad” – before Eugene de Kock, from 1983 to 1985 – will reveal that approval was made at cabinet level, including former state president P W Botha, for student members of Cosas to be booby-trapped.

□ The officers will also disclose the full story of what happened

to the Pebco Three – three Port Elizabeth activists who disappeared in 1985.

Their evidence is vital to find out the truth – because all documents were destroyed before President Nelson Mandela came to power

□ Former police commissioner Johan van der Merwe has been subpoenaed to answer allegations by the five.

The TRC expects their “confessions” to prompt a flood of other police and military officers to make full disclosures and seek amnesty before the final amnesty date runs out on December 14 – less than two months away

□ TO PAGE 2

# Apartheid skeletons tumble out

□ FROM PAGE 1

□ The fact that the five – the other three former policemen are Colonel Roelf Venter, Captain Wouter Menz and Warrant-Officer Paul van Vuuren – have rushed to the TRC has angered Gauteng Attorney General Jan D'Oliviera and his team, who brought former Colonel Eugene De Kock to justice and have worked around the clock to bring charges against Cronjé and Hechter

This has caused a clash with the TRC (See Page 2.) Britz, the attorney for the five, said the attorney general had approached Van Vuuren four months ago to give evidence against the others – but he had refused as the five were friends

“The five approached me and said they

were prepared to give evidence for the AG against their superiors – but not against one another

“We took their decision to the AG, who said he would let us know – but we heard nothing further and on September 25 they approached the Truth Commission. On October 7 the AG decided to prosecute Cronjé and Hechter for 27 murders”

□ These include the murder of former Kwa-Ndebele minister of internal affairs Piet Ntuli, who died in a car bomb explosion on July 19 1986

The other murders – all of black people – took place in several incidents in 1986 and 1987.

The charges do not include the Ribeiro murders or the disappearance of the Pebco

Three, but the charges against the two are provisional and City Press understands that it was the intention of the AG to bring these charges later when the two would be joined by other accused

Cronjé and Hechter, who has difficulty walking as his one leg was badly damaged in a car accident in 1988, were released on bail of R1 000 each and the case was postponed to March 24 next year

They were ordered not to contact any of the state witnesses and to report to their nearest police station once a week from November 6

Transvaal Deputy Attorney General Anton Ackermann SA undertook to supply a list of state witnesses against the accused

the culmination of months of discussion between the two bodies.

■ Reports by Sapa, Ecom, Own Correspondent

# 'Truth versus justice' storm

By DESMOND BLOW

CP 20/10/96  
TO BE CHARGED or not to be charged, that is the question. Should the attorney generals and their special squads of top detectives spend millions of rands of taxpayers' money to bring political murderers to justice – only to have them granted amnesty if they volunteer to make a full confession to the Truth and Reconciliation Commission?

This question caused a crisis this week

Transvaal Attorney General Jan D'Oliviera arrested two former top detectives who had been under investigation for months after it had been announced that the two – Brigadier Jan Hattingh (Jack) Cronjé (59), former head of the Vlakplaas "hit squad", and Captain Jacques Hechter (44) – were among five former policemen who would give evidence before the Commission.

Hechter is known to have some involvement in the murders of Dr Fabian Ribeiro and his wife. City Press understands that the AG has not charged him with their murders as they are still being investigated, and that the AG intends to later charge military personnel with the murders, possibly with the two accused.

However, if the TRC is satisfied

(252)  
with the evidence the two give, it is compelled to grant them amnesty under the interim constitution – and the AG will have to withdraw the case against them.

This has caused bitterness in some circles – especially among the bereaved families who feel that justice is not being served.

Chris Ribeiro, son of Dr Fabian Ribeiro and his wife, feels that the policemen have only rushed to the Commission because they knew of their imminent arrest and that they feel no remorse for their actions.

He feels justice can only be served and reconciliation can only be brought about if the killers pay for their crimes.

He has criticised the TRC for "being insensitive" by not informing bereaved families that witnesses were to appear before it regarding the slaying of loved ones

Attorney Willem Britz, who represents Cronjé and Hechter, denies that his clients do not feel remorse.

Archbishop Desmond Tutu, chairman of the TRC, told City Press that the Commission's function was to reconsolidate the nation.

"The TRC did not make the law.

He stressed that had the politicians not come to an agreement over past atrocities – and "they were horrible" – the country would have gone up in flames.

## 'Don't mess with Schools Bill'

EDUCATION Minister Sibusiso Bengu on Friday said the government would brook no opposition to the recently approved South African Schools Bill

Addressing a media briefing in Durban, Bengu said the Bill, approved by the National Assembly's education portfolio committee on Tuesday, had the overwhelming support of the Cabinet.

"We warn those parties (opposed to the Bill) not to repeat the same mistake by trying to delay the education transformation process – because that would be a futile exer-

cise," Bengu said.

On Tuesday the National Party, which with the Freedom Front and the African Christian Democratic Party voted against the measure, said it would weigh up its options before deciding what action to take.

The Bill has been designed to redress the imbalances in state schooling brought about by decades of apartheid. It provides for only two categories of school – public and private – which will mean the end of the Model C system, and lays down ground rules for equitable funding, admission and language policy. – Sapa

CP 20/10/96

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**Priest in  
The Rev.**

## Boraine 'staggered at failure to check facts'

(252) *Mar 21/10/96*  
**OWN CORRESPONDENTS**

TRC vice-chairman Alex Boraine has criticised editors for not checking their facts in the wake of a call by the founding conference of the South African National Editors Forum for the amnesty applications of five senior police officers to be heard in public.

"The editors have their facts wrong. The amnesty hearings are open, like all other amnesty hearings have been. It staggers me that editors, of all people, should not check their facts."

Raymond Louw, the Sanel

member who proposed the motion, said he had based it on a statement issued by the TRC about 10 days ago.

However, TRC media liaison officer Christelle Terreblanche said the statement was probably related to the subpoena of the senior police officers for investigation under Section 29 of the National Unity and Reconciliation Act, which the law specified had to be conducted in camera, and not to the amnesty hearings.

Meanwhile, City Press editor Khulu Sibiyana confirmed at the conference that he had been sum-

moned to ANC headquarters by an "upset" President Mandela to explain an editorial he wrote criticising the president's public backing of Mr Justice Ismail Mahomed for the position of chief justice.

Sibiyana said Mandela was "very upset - he thought I should have understood the circumstances much better, especially as a black journalist."

Mandela had told him that unless he had nominated Judge Mahomed he "would have been left with Mr Justice van Heerden and he felt there must be a black chief justice", Sibiyana said.

ca



Mr Albert Maele of Louis Trichardt was shot three times by a farmer who "mistook" him for a dog".  
PIC KHATHU MAMAILA

## TRC to probe MI missing files

*Some Jan 21/10/96 (252)*

THE Truth and Reconciliation Commission will today explore the issue of missing Military Intelligence files when the defence force's old and new guard appears before it in Cape Town, commission deputy chairman Dr Alex Boraine said yesterday.

"I'm sure it will be raised by the generals themselves, and if not, by the commission members," he said.

The missing files contain detailed information about MI operatives and covert-style military operations during the apartheid era.

Members of Parliament's oversight committee on intelligence discovered during a recent visit to the MI academy that the files were missing.

The issue was further exacerbated

when SA National Defence Force chief General George Meiring later told the joint committee on defence that he believed the files had been destroyed.

The commission hearings will include submissions from representatives of the now defunct SA Defence Force and its successor the SANDF.

Boraine said it was hoped that the SADF submission would cover the military's role during the apartheid era and also detail specific events involving gross human rights violations.

Although a wide spectrum of former generals had contributed to the submission, it was not clear whether former defence minister General Magnus Malan had been consulted.

Boraine said it would be hard to

anticipate the contents of the SADF submission, but if there were any omissions the commission would recall the generals for further information.

The SADF submission will be presented by retired Lieutenant-General Deon Mortimer, former Chief of Army Staff (logistics).

The SANDF submission, to be presented by Meiring, was aimed at showing the difference between the old military and the new, Boraine said.

Meiring had wanted to make a separate submission as he felt enormous changes had been made.

"We welcome any contribution that suggests the sort of changes that have taken place and still need to take place," Boraine said - *Sapa*

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PARLIAMENTARY RECORD

# Anti-crime laws threaten to sideline human rights

**SUSIE COWEN and NOBUNTU MBELLE**  
LEGISLATION MONITORS FOR THE HUMAN RIGHTS COMMITTEE

**I**N LIGHT of the government's commitment to fight crime, six crime bills have become the focus of activity in Parliament's justice committees. Last month, the committees heard public submissions on the bills. The Portfolio Committee (National Assembly) and the Select Committee (Senate) are now deliberating jointly in a bid to pass the bills before the end of session.

Three bills deal with international co-operation in criminal matters. The Extradition Amendment Bill revises procedures for extradition requests; the International Co-operation in Criminal Matters Bill aims to assist foreign states to obtain evidence from South Africa; and the Proceeds of Crime Bill aims to create procedures in South African law to confiscate the proceeds of crime.

The Extradition Amendment Bill seeks to simplify extradition procedures, thereby encouraging reciprocity between South Africa and other countries. It does this by removing the need to enter into formal extradition treaties and by limiting the court's role in the extradition procedure. The major point of contention in the committees is a section that provides that a certificate from a requesting country, stating that they have sufficient evidence for a prosecution, is conclusive proof of such.

This debate highlights the problem that, while there is a clear need for simplifying procedures and facilitating co-operation between countries, the bill fails to address key human rights concerns adequately. There is also no clear policy on whether South Africa should extradite fugitives to face cruel and inhumane punishments, such as the death penalty, or face unfair trials. Neither are there clear provisions for ensuring accountability for the minister's decisions. The submission by the Human Rights Committee (HRC) included proposals to deal with these problems.

The fourth bill is the Special Investigations Units and Special Tribunals Bill, which empowers the president to set up investigation units and tribunals to deal with serious government corruption. Some amendments have been introduced by the committees, including those dealing with appointment procedures. Broad agreement seems to have been reached on the bill, although final discussions are still to take place before voting.

The last two bills propose amendments to the Criminal Procedure Act. Although they have not yet been formally tabled in

Parliament, the committees will be finalising deliberations on them early this week. The first deals with police trapping procedures and aims to prevent abuse of the trapping system by setting out the parameters in which evidence obtained would be inadmissible during a trial. It is also made clear that police who engage in unlawful trapping operations will be prosecuted.

Committee members consider trapping procedures to be crucial in combating crime effectively and are thus concerned that the bill, as initially proposed, might have the effect of outlawing trapping entirely. Current deliberations on the bill are thus focusing on defining the minimum standard that the trap ought to comply with to be in line with constitutional provisions.

It is crucial that human rights concerns are given priority so that members of the public do not become innocent victims. Clear provisions should be enacted to prevent further abuse and corruption in the police service, problems that in themselves pose a threat to the safety of the public.

The Criminal Procedure Second Amendment Bill also aims to simplify procedures and targets several provisions in the Act. A key theme in the bill is to ensure that delays in trials are not caused unreasonably. At present, there are approximately 30 000 awaiting-trial prisoners, some of whom have been waiting for up to 18 months. The HRC has recommended that there should be an investigation into trial delays after three months have lapsed.

Other matters dealt with in the bill include legal representation, plea bargaining, transfer of cases between courts, giving evidence through closed-circuit television, providing proof of undisputed evidence and the admissibility of confessions.

The justice committees will be meeting every day this week in Committee Room G26. They are expecting to finalise the bills by Friday, to be passed before the session ends on November 8.

It is crucial that key human rights concerns are not sidelined in the rush to deal with crime and to meet these deadlines. In considering South Africa's constitutional requirements and the standards set in other constitutional states, it is hoped that the committees will give due regard to the impact of these laws, in promoting and fostering a human rights culture in South Africa.

*The Institute for a Democratic South Africa, the Human Rights Committee and Black Sash have jointly set up the Parliamentary Monitoring Group to monitor parliamentary committees. Monitoring is done by volunteers.*

CT 2/10/96

(152)

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# Magistrates want to train as Supreme Court judges

Star 21/10/96 (252)

OWN CORRESPONDENT

Court experience

Durban - Senior magistrates in South Africa will approach Justice Minister Dullah Omar to start a training scheme so that they can become Supreme Court judges

The resolution was taken by 90 magistrates attending the Association of Regional Magistrates of South Africa congress at Botha's Hill near Durban this weekend

Outgoing chairman Theo Reed said that while many regional magistrates had the same qualifications as judges, they had not been able to acquire Supreme

The congress expressed its dissatisfaction with magistrates' salaries and said that between 1985 and this year, the wage discrepancy between regional magistrates and judges had increased.

Delegates also noted that Omar had not yet responded to their request for a delegation to discuss salaries with him.

The congress passed a resolution calling for the association to register as a trade union under the Labour Relations Act of 1995 because of the "unsatisfactory" salary negotiations over the past two years

# Policemen may confess at least 40 murders (252)

Star 21/10/96

## Former government members expected to be implicated in booby-trap grenades

STAFF REPORTER AND SAPA

A plan to supply booby-trapped hand-grenades to anti-apartheid activists was approved at cabinet level in the 1980s, according to evidence to be presented to the Truth and Reconciliation Commission's amnesty committee this week.

Key members of the former NP government are expected to be named as having consented to the plan.

This was disclosed yesterday by Pretoria attorney Willem Britz, who is representing five policemen, among them former Vlakplaas operatives, who have applied for amnesty. Britz said his clients' testimony would "set the dominoes falling".

Former police commissioner General Johan van der Merwe will be the first witness to testify in the amnesty applications. His evidence will be the start of one of the most significant TRC hearings so far. He has been subpoenaed to testify on behalf of the five policemen.

The policemen, all former members of the Northern Transvaal security branch, are expected to confess their involvement in at least 40 murders. Their evidence is likely to implicate other high-ranking police officers and former cabinet ministers, including Louis le Grange and Adriaan Vlok.

Among the incidents for which the men admit responsibility is the murder of Mamelodi doctor Fabian Ribeiro and his wife Florence, the disappearance of the so-called Pebco Three, the murder of KwaNdebele cabinet minister Piet Ntuli and the kidnapping and murder of 19 Mamelodi youths.

The highest-ranking policeman

in the group is retired Brigadier Jack Cronjé, who commanded the Vlakplaas unit in the early 1980s. The others are Captains Wouter Mentz and Jacques Hechter, Colonel Roelf Venter and Warrant Officer Paul van Vuuren.

Cronjé and Hechter appeared in court last week on charges of murder. If their amnesty bid fails, they will go on trial in January. The hearing takes place before the five-member amnesty committee in the Johannesburg City Hall.

Britz said he would ask the commission today to subpoena four state witnesses, including former security policeman Joe Mamasela, in the case against Hechter and Cronjé.

He said the four would provide corroborating testimony and demonstrate to the amnesty committee that his clients were making a full disclosure of all relevant facts.

"My clients need a fair opportunity to appear before the commission and to apply for amnesty. These state witnesses will corroborate what we are saying is true."

However, the Transvaal Attorney-General's office has indicated it will oppose any attempt by Britz to subpoena the state witnesses. Deputy Attorney-General Dr Tone Pretorius is expected to appear before the committee to argue against Britz's application.

Britz said today's proceedings in the Johannesburg City Hall would start with him reading out a statement on "truth and reconciliation" signed by the five applicants.

Once he and Pretorius had argued subpoenaing the four state witnesses, former police commissioner Gen Johan van der Merwe would take the stand.

# Admit to dirty war, Nats told

*Ex-cops testify* (252) ARG 21/10/96

JOHN YELD  
ON THE TRUTH COMMISSION

Johannesburg – Five former security policemen applying for amnesty for up to 40 murders, bombings and assassinations have called on the National Party to admit authorising actions outside the law while in power.

In an opening statement to the Truth Commission's amnesty committee here today, the five said they had been "thrown in the gutter" by the NP government.

They also seriously doubted the statements made by former state president F W de Klerk to the Truth Commission at its hearings for political parties in Cape Town in July.

At that hearing, Mr De Klerk said he had never been part of any decision, by the Cabinet, the State Security Council or any committee, authorising gross human rights violations.

He said that neither he nor any of his

colleagues had directly or indirectly authorised such actions.

The five former security policemen said in their statements they were calling on the former NP government and their superiors to explain certain orders which had been given to them and about which they would testify at the hearing.

They also called on the former government "to admit to authorising actions outside the normal processes of the law, such as are demonstrated by the facts of our deeds, and the authorisations thereof"

The five are Brigadier Jack Cronje, a former commander of the notorious Vlakplaas hit squad base, and his colleagues Colonel Roelf Venter, Captain Wouter Mentz, Captain Jacques Hechter and Warrant Officer Paul van Vuuren.

The deeds for which the five are applying for amnesty are understood to include up to 40 murders and include revealing

## Admit ordering dirty tricks, ex-cops tell NP

(252)

From page 1

ARG 21/10/96  
who ordered the assassination of Mamelodi doctor Fabian Ribeiro and his wife Florence, and how, why and by whom the "Pebco Three" activists were murdered in Port Elizabeth in 1985.

The hearing started nearly 50 minutes late because of negotiations among lawyers representing all the parties. It immediately bogged down in a discussion as to whether all victims and their families had been properly notified about the hearings.

Pretoria attorney Willem Britz read a nine-page opening statement signed by the five ex-policemen saying they had come "in a spirit of peace and reconciliation".

The five said they would give evidence about their actions during the conflict and would show these were "purely and simply" associated with upholding the National Party government and apartheid, fighting communism, and resisting the liberation of South Africa. "We have decided to come forward as we believe, contrary to the leaders of the previous government and our superiors in the security forces, that the time for conflict is past."

"We call on all other members of the security forces to come forward and take part in this process of reconciliation and nation-building, as we believe that it is the only alternative to further conflict and separation of the people of this country."

After the opening statement had been read, the amnesty committee started hearing arguments from the advocate representing the five – Roelof du Plessis of the Pretoria Bar – regarding the subpoenaing of certain witnesses, and of documents which were in the possession of Transvaal Attorney-General Jan D'Oliveira.

Mr Du Plessis said Dr D'Oliveira had indicated that he wanted to call these witnesses as state witnesses in the court case in which Brigadier Cronje and Captain Hechter have been charged.

Mr Du Plessis said a representative from Dr D'Oliveira's office was present at the hearing and was expected to oppose it.

To page 3

APPL 10/21

# People must be aware of rights and how to access them

Statutory "rights" institutions have thus far failed to become an integral part of the lives of South Africans, says Tim Marchant

(25/97)

10/21/96

OVER the past two-and-a-half years an interlocking web of statutory "rights" institutions has been created to protect human rights in SA. The imminent creation of the Commission on Gender Equality will complete the protecting web as provided for by the interim constitution.

Chapter 8 of the interim constitution provides for four rights institutions: the public protector, the human rights commission, the commission on gender equality and the commission on the restitution of land rights.

There are two other new institutions provided for in the interim constitution which might be considered in the same rights-defending category — the truth commission and the Constitutional Court.

These institutions look to our past as well as our future. The two that investigate past injustice, the truth commission and the land commission, are both charged with finishing their respective tasks within a specific time, the truth commission within two years of December last year, the land commission within five years of April last year.

The first stage appointments to operation. The first stage has been for parliament to create enabling legislation which augments the bare bones of the interim constitution.

The next stage was the process of selecting candidates to be appointed to the commissions. At the time, concern was raised by the Human Rights Committee, among other groups, that candidates needed to be selected on the basis of a human rights background.

It is clear that the process of institutional establishment has taken place at different speeds. One of the new institutions, the public protector, began with a head start as it emerged out of the previously existing office of the ombudsman, the others began with nothing at all. Some have benefited from the profile of their mission or their personnel.

Many difficulties have been faced by these institutions relating to the difficulty of institutional establishment. Particularly time-consuming has been the bureaucratic ordeal with government departments.

In some cases, commissioners have had to wait six months to acquire a chair. In

effect, each of the new institutions has taken between four and nine months to establish institutional infrastructure and become operational.

They have found it difficult simultaneously to establish themselves and perform their constitutionally designated functions. With the exception of the Constitutional Court there has been no period of grace in which the institutions could organise themselves. As a result, criticism has emerged from civil society over the perceived lack of energy among commission members.

However, with the obvious exception of the gender commission, the principle difficulties of institutional establishment have now been overcome. The nature of the difficulty has shifted to the tasks at hand.

While institutional capacity building is being tackled with some success, the area of communication appears a much tougher nut to crack. The truth commission is alone in having a national profile and some public knowledge of its role.

Even here, there has been no education programme to explain the limits of the truth commission's mandate. Furthermore,

while the commission's human rights violations committee appears to have done fairly well in communicating its purpose to the public, very little information has been forthcoming from the reparation and rehabilitation committee after 10 months.

The Constitutional Court may have a national profile but there is little evidence that the public is aware of what its powers are. Indeed to judge by the number of incorrectly referred cases there are many in the judiciary in the same boat.

In its first year, the court was poorly covered by the media, with the result that little is known either of the work of the court or of what it is constitutionally mandated to do. Initially, the court did little to make the task of reporting on its activities easier.

Now coming to the end of its first year of existence, the human rights commission has yet to stamp its authority on human rights issues, to ensure that it is the automatic referral point for all whose rights have been violated.

But perhaps the least effective of the institutions thus far when considered in terms of the constituency which must be

reached to satisfy the constitutional mandate is the land commission. Admittedly, it is faced with the difficult task of reaching the most marginalised people in the country.

Added to this is a devilishly difficult procedure to bring about land restitution. Nonetheless, the land commission has yet to adopt the sort of creative communication strategies required.

A real problem area for the new institutions, which has cast a shadow over communication and capacity, is the constitution-writing process. They have had to lay institutional foundations under the interim constitution not knowing exactly what the final constitution will look like.

A related issue is that of jurisdiction between the bodies, and thus is something which will have to be worked out between the human rights commission, the public protector and the gender commission in particular.

The final constitution makes provision for seven state institutions supporting constitutional democracy. These are the public protector, the hu-

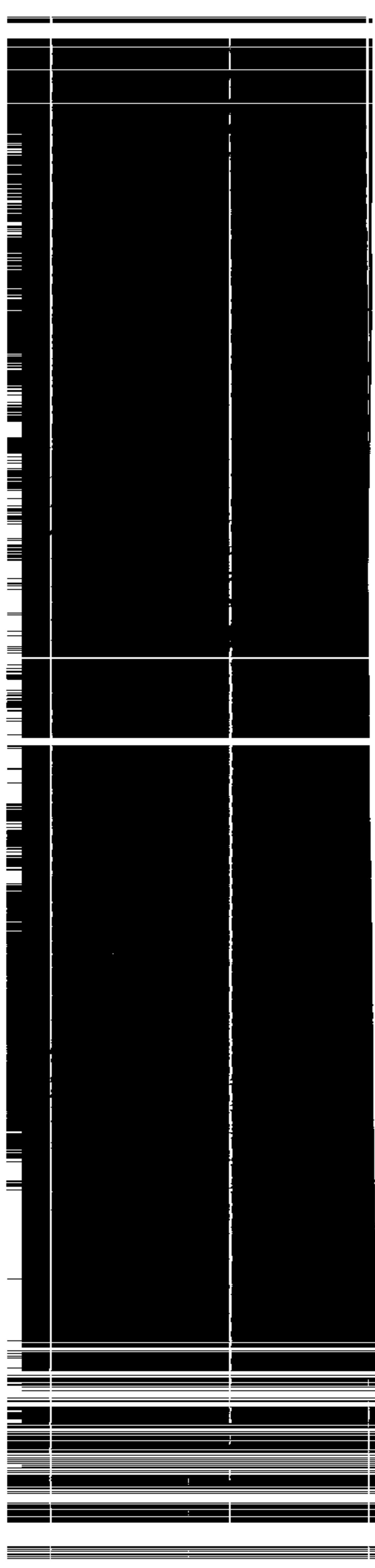
man rights commission, the commission for the promotion and protection of the rights of cultural, religious and linguistic communities, the commission for gender equality, the auditor-general, the electoral commission, and the independent authority to regulate broadcasting.

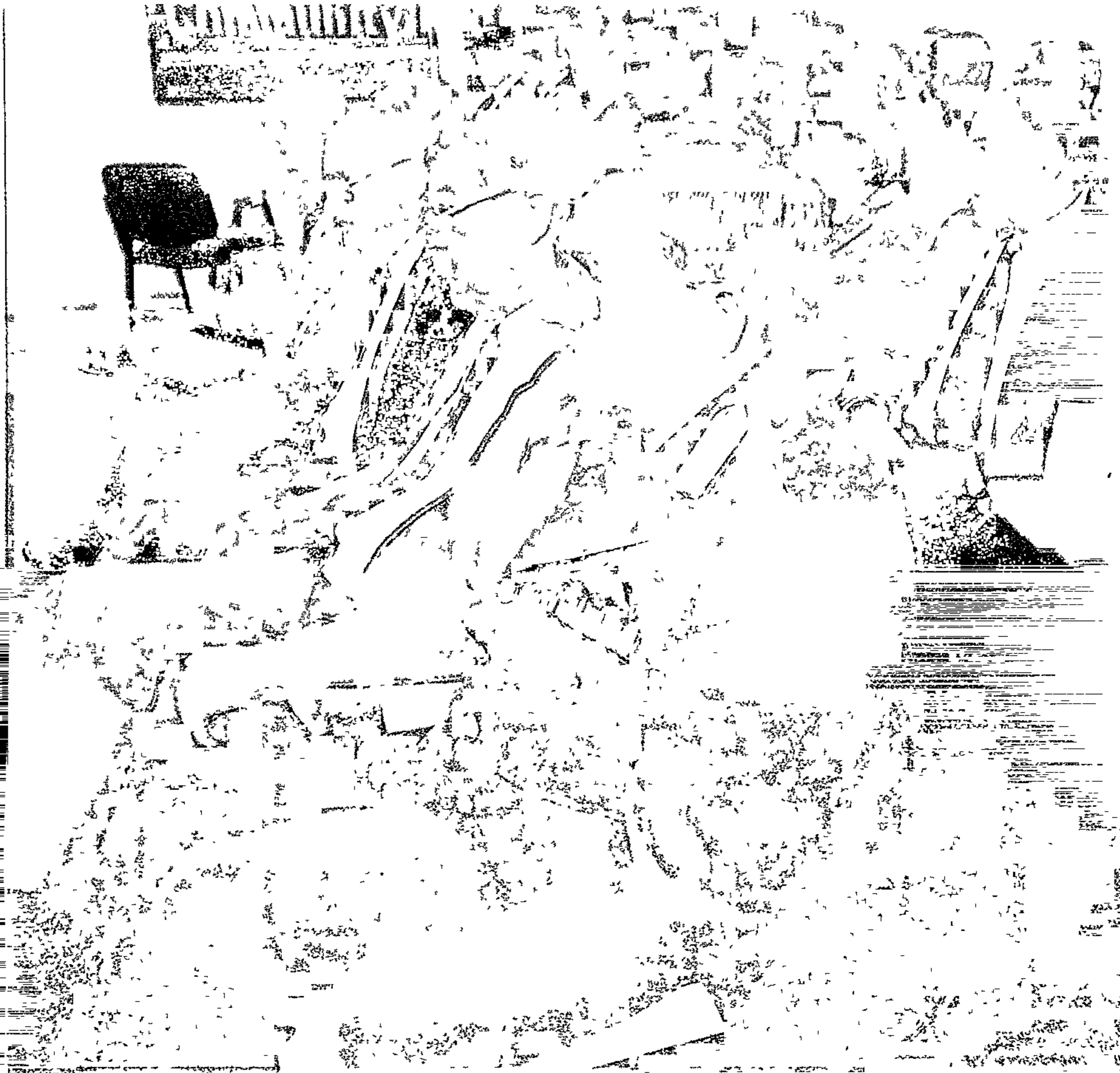
The constitution provides that these institutions be "independent, and subject only to the constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice." Political agreement has recently been reached on the matters of appointment (60% of the National Assembly) and dismissal (66%).

The human rights commission, having long fought for the establishment of a human rights culture in this country, is enthusiastic about the provision of powerful rights institutions in our constitution.

However, it remains an uphill task to ensure that the rights which exist on paper have meaning to the majority of the inhabitants of this country. The people need to be aware of the rights to which they are entitled and how to obtain access these rights.

Tim Marchant is a researcher for the Human Rights Committee of SA.





LEON MULLER

Top brass: Generals Deon Mortimer and Jan Klopper and Brigadier Callie Steyn listen to General Georg Meiring's testimony before the TRC.

# MI files were destroyed - Meiring

JOSEPH ARANES AND WILLIAM-MERVYN GUMEDE  
ON THE TRUTH COMMISSION

National Defence Force chief Georg Meiring has admitted that Military Intelligence files were destroyed but has defended the action, saying the destruction "must be understood in the context of a war having taken place".

General Meiring appeared before the Truth and Reconciliation Commission today along with retired defence force general Deon Mortimer.

The two handed written submissions to the commission on the role of the defence force during the apartheid era. General Meiring told the commission that in the run-up to the April 1994 elections certain documents that could have implicated members of the former SADF were destroyed. He said he never gave the order for the destruction of the documents and that he could not remember who had

General Meiring said that at no stage was the SADF instructed by any political party to destroy certain documents and that if he had been so instructed, the SADF would not have complied.

The SANDF had a list of some documents that had been destroyed and would make it available to the commission.

General Meiring said some of the documents were destroyed after being fully audited by the auditor-general and that others were given to the Harms Commission which investigated "dirty tricks" and the Kahn Commission which looked into secret projects.

The documents were destroyed to protect life in the run-up to the elections. "We regret the loss of life, personal grief and suffering of those affected on all sides.

"I have sincere appreciation for the deep scars left on our society by the conflict of the past and the ensuing animosity, fear,



Heavyweight: General Deon Mortimer carries documents into the TRC hearing in Cape Town.

mistrust, suspicion, insensitivity and even hatred. I also fully realise that to forgive, to forget and to become friends again will take time," said General Meiring.

He also regretted the casualties of the "war".

General Meiring said the SANDF would make its resources available to the commission and call on its members to come forward to help the commission and to tell of what had happened.

He promised the commission free access to all records and documents that could help their investigations.

The apartheid government believed it

was confronted by a total onslaught and had to develop a total strategy to counter it, retired defence force general Deon Mortimer told the Truth and Reconciliation Commission in Cape Town today.

General Mortimer was the SA Defence Force chief of staff.

General Mortimer said the need for a total strategy was identified in the 1979 white paper on defence as the process of ensuring and maintaining the sovereignty of the state authority in a conflict situation.

He said that through the evolution of warfare, the emphasis shifted from purely military to an integrated national action with the aim of resisting the total onslaught on a national basis.

In order to formulate the total strategy to counter the total war being waged against the country, the government established the State Security Council (SSC) for managing the machinery of the state.

The SSC was then established with the country's president as its chairman and a number of senior cabinet ministers, the chief of the SADF, the commissioner of police and the directors general of national intelligence, foreign affairs and justice all being statutory members.

General Mortimer said the influence of the ANC strategy of revolutionary warfare helped develop the government's own counter revolutionary strategy.

The strategy against the ANC included the development of military infrastructure, effective counter-insurgency operations and the disruption of the ANC's operational command structures.

He said between 1986 and 1988 this strategy was further developed.

This included getting the general population to accept and support the new aims of peaceful and revolutionary political change and to combat revolutionary organisations that sought change through violence.

(252) ARG 21/10/96

# 'PW ordered Khotsso blast'

(2592)

Lawrence 22/10/92

By Mzimasi Ngudle

**F**ORMER president Mr PW Botha personally ordered the 1988 bombing of Khotsso House, the headquarters of the South African Council of Churches in Johannesburg, former police commissioner General Johann van der Merwe told the Truth and Reconciliation Commission yesterday.

Van der Merwe, the first witness to testify in the Johannesburg City Hall in the amnesty applications of five security policemen who have confessed to human rights abuses, also named two National Party cabinet ministers who approved gross human rights violations.

"During 1988, I received an instruction from Mr Adrian Vlok, then minister of law and order, that Khotsso House was to be damaged by explosives to such an extent that it could no longer be used."

"According to Vlok, this instruction had come from president PW Botha personally," said Van der Merwe.

He said former police minister Mr Louis le Grange had approved the use of the "zero handgrenade" - timed to ensure that people throwing such grenades would be killed instantly.

### Modified grenades

Van der Merwe said he had decided that suitably modified handgrenades were the only way to stop African National Congress activists from killing policemen.

"I then made a recommendation to General Johan Coetzee, who in turn presented it to law and order minister Louis le Grange, who approved it," he said.

Van der Merwe then instructed Brigadier Jack Cronje to hand over modified handgrenades to activists under the guise that they had been supplied by the ANC.

"It later transpired that many



Former state president PW Botha



Former police commissioner General Johann van der Merwe

**According to Vlok, this instruction came from president PW Botha personally**

activists were killed or injured when they launched armed attacks against the homes of policemen."

TRC lawyer Advocate Cocky Mpshe said the handgrenades had killed nine or 10 activists.

The handgrenade killings constitute 16 incidents out of 50 gross human rights violations on which five former security policemen will testify.

The incidents include the killing of Pretoria medical practitioner, Dr Fabian Ribero, and his wife Florence, the Eastern Cape Peboo Three - Mr Brian Nyalunga, Mr Joe Jele and Mr Piet Ntshu - and the killing of nine KwaNdebele activists.

In their joint statement to the TRC yesterday, the five security policemen, Brigadier Jack Cronje, Colonel Roelf Venter, Captain Wouter Mertz, Captain Jacques Hector and Warrant-Officer Paul van Vuuren, said they had decided to take responsibility for their past after they were deserted by the National Party, which they had helped keep in power.

They regretted their past deeds and called upon former president Mr FW de Klerk and their superiors to explain the orders they gave them to commit gross human rights abuses.

After reading their statement, their lawyer, Mr Roelf du Plessis, applied to the commission to subpoena Transvaal attorney-general Dr Jan D'Oliveira and

State witnesses who will testify against the five in a pending criminal trial.

Amnesty Committee chairman Mr Justice Hassan Mall said the committee would reserve its judgment on the application.

The application was opposed by D'Oliveira's lawyer, Mr Torrie Pretorius, on the grounds that it would prejudice subsequent criminal trials should the five be refused amnesty.

The five "seriously doubted De Klerk's denial that the former Cabinet and its State Security Council had never authorised apartheid atrocities".

"We ask, do not desert us further. Do not turn your backs on us. Help us," they vowed to make a full disclosure of their deeds, saying they believed that, contrary to their superiors and NP leaders, "the time for the conflict was past".

"We call upon our superiors and leaders of the previous government not to deny responsibility but to stand by their people and admit responsibility for what was done by us in our endeavours to keep them in power."

### Authorising actions

"We call upon them to explain certain orders given to us - about which we shall testify - and to admit authorising actions outside the normal processes of the law."

"We believe that the TRC is a necessary mechanism to obtain the truth. Time for deception is past. Time for denial is past. Time for justification is past," they said in the statement.

They said they expressed "compassion and regret to the families of those who have suffered as a consequence of our deeds".

The five made their amnesty applications shortly before D'Oliveira issued their warrants of arrests.

● See Pages 2 and 4 - How young activists were booby-trapped

# V.L.O.K., Van der Merwe seek amnesty

(2/5/92)

Commission told that PW ordered Khotso House bombing and that the cabinet knew about booby-trapped handgrenades

Star 22/10/96

ANDREAS VLACHAKIS

By ROBERT BRAND

**R**etired police commissioner Johan van der Merwe and former law and order minister Adrian Vlok are to apply for amnesty from the Truth and Reconciliation Commission following dramatic new disclosures about their involvement in apartheid-era crimes.

Van der Merwe yesterday admitted he had ordered the booby-trapping of handgrenades which killed ANC activists in 1986, and the 1988 bombing of Khotso House, Johannesburg headquarters of the SA Council of Churches.

The order for the bombing of Khotso House had come "personally" from PW Botha.

Botha had been reprimanded to him by the cabinet. The grenade attack had been sanctioned at cabinet level, he said.

Van der Merwe was testifying before the TRC's amnesty committee in support of an amnesty application by former security policeman Brigadier Jack Cronje, Colonel Roelf Venter, Captains Jacques Hechter and Wouter Mentz, and Warrant Officer Paul van Vuuren. They are expected to admit their involvement in 40 murders, which they say were sanctioned by the government.

Van der Merwe said he would apply for amnesty for the Khotso House bombing and the Khotso House incident. "If there are other incidents they think I should take responsibility for, then I will apply for amnesty for those incidents. It would make no sense for me not

to apply for amnesty if I support amnesty applications by my subordinates," he said.

Vlok, contacted at his Pretoria home, would not comment on Van der Merwe's allegations but confirmed that he would also apply for amnesty for at least the Khotso House bombing.

Van der Merwe denied that specific orders were given by him, the police top structure or the government for any other illegal acts. He said, however, that the general political climate during the 1980s had created a perception among policemen that it was expected of them to go to any lengths to fight the liberation struggle.

### More reports

"I am fully aware that the actions of various members of the security branch may in the present circumstances appear to be cold-blooded and murderous in nature," he said, adding that propaganda had led to a situation where individual policemen could no longer distinguish between lawful and unlawful acts.

He conceded, however, that no actions by Cronje or his subordinates had ever been repudiated by police top brass or the government.

Speaking to journalists after the hearing, Van der Merwe said former president F.W. de Klerk had not been aware of any of the illegal operations. "De Klerk was never part of the security system as such. I have no reason to believe he was aware of those matters." The hearing continues today, with Cronje expected to take the stand.



Spilling the beans former police commissioner General Johan van der Merwe speaks to journalists after testifying before the TRC's amnesty committee yesterday.

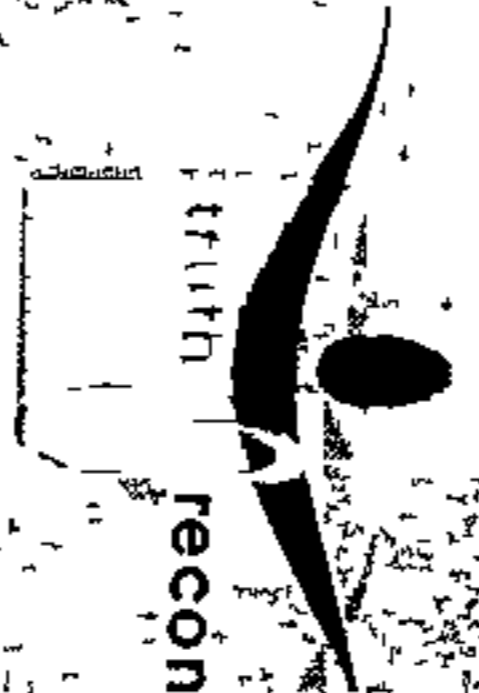
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22/10/96

# 'Soulless SADF submission inadequate'

By DASY JONES

Cape Town - TRC deputy chairman Dr Alex Boraine has slammed the "bland" and "soulless" submission made by former SADF members in Cape Town yesterday.

"My overall impression is that this submission is breathtaking in its one-sidedness," Boraine said. "I find it almost unbelievable that in 80 pages there is no acknowledgement or acceptance of responsibility for a single death during the apartheid era."



truth  
reconciliation  
Commission

There had been no admission of any mistakes or any unlawful actions committed by the SADF, he said, adding that an inquiry finding which held the SADF as an institution responsible for the deaths of the Cradock Four had not been mentioned.

Human rights violations committed by the ANC, the PAC and right-wing organisations had been mentioned, but the SADF had been presented as a "knight in shining armour simply doing its job", he said.

Freedom Front leader and former SADF chief General Constand Viljoen said yesterday he would be willing to provide detailed information about defence force activities, especially in Angola, Sapa reports. He was speaking after the SADF submission to the TRC.



PW Botha ... he ordered the bombing of the SA Council of Churches HQ, the Truth Commission heard yesterday. An aide to Botha said he may respond to the allegation today.



## COMMISSIONERS UNIMPRESSED

# SADF's submission 'a dry bone with no flesh' on it

CT 22/10/96

(252)

**TRUTH AND RECONCILIATION** commissioners were unimpressed yesterday with the submission made about the former SADF. "To me it is depressing, because if we are re-writing our history we need to be honest," said Dr Khoza Mgojo.

**ROGER FRIEDMAN** writes.

**A**s a group of former senior policemen began to lance the old security police boil before the Truth and Reconciliation Commission's amnesty committee in Gauteng yesterday, senior soldiers and ex-soldiers were delivering a submission in Cape Town described by commission deputy chairperson Dr Alex Boraine as "breathtaking in its one-sidedness"

After a short statement by the Chief of the South African National Defence Force, General Georg Meiring, followed by a much lengthier submission "in respect of the former SADF" by the retired Major-General Deon Mortimer, Boraine said it seemed the military was trying to project itself as "a knight in shining armour simply doing its job"

Commissioner Dr Khoza Mgojo agreed with Boraine "To me it is depressing, because if we are re-writing our history we need to be honest"

After the submission, Freedom Front leader General Constand Viljoen suggested it was possible that none of the commissioners could "understand the defence force" because none of them came from military backgrounds

Viljoen, an apartheid-era defence force chief, said he believed the submission had been a good starting point to a relationship between the SANDF, former officers and the commission

Mgojo said of the submission "Just historical data with no feeling at all. It was just a dry bone with no flesh"

The lengthier of the two submissions was prepared by a group of retired and serving military officers convened by Meiring "to assist the TRC meet its responsibilities in accordance with the constitution, as well as the Promotion of National Unity and Reconciliation Act", according to Meiring, who calls the group "a nodal point"

The submission included a lengthy analysis of the "revolutionary war in South Africa from the perspective of the SADF", with a tiny section devoted to "black on black violence", a section into which the KwaZulu-Natal conflict between "the charterists and the IFP" fell

Later in the submission, under the heading Special Projects, the Nodal Point devoted a single paragraph to Operation Marion, the code-name of an SADF operation offering paramilitary support to Inkatha in the late-1980s and the subject of some interest in the recent Kwa-Makutha trial of former defence minister General Magnus Malan. KwaZulu chief minister, Chief



**'STARTING POINT':** General Constand Viljoen



**SOUGHT SUPPORT:** Chief Mangosuthu Buthelezi

Mangosuthu Buthelezi, requested paramilitary support from the South African government, and the government "tasked the SADF to render the support", said Mortimer, a former chief of staff logistics. No further details of Operation Marion were provided

Mgojo said afterwards "To me their admission that the SADF helped Inkatha is nothing short of Third Force activities"

Under the heading Defence Strategy, Plan-

ning and Authorisation, Mortimer said the SADF was "pre-eminently a peacekeeping task force", but, "owing to the perceived threat and the increasing instability in Southern Africa, the SADF strategy was directed at ensuring the security of the people of the RSA by taking offensive, pro-active steps"

Under the heading Defence Force Operations, the Nodal Point provided lists of internal and external operations, but conceded the lists "may not be complete"

A chronological list of 64 internal operations conducted between 1980 and 1993 included cordon and search operations in Welkom (twice), and "hitchhiker who threw stones at vehicles is shot through arm in Witwatersrand area (December 31, 1985)"

Just seven "external operations .. against ANC (MK) and PAC (Apla) bases and facilities" were listed: two in Mozambique, one in Transkei, one in Lesotho, two in Botswana and one in Botswana and Zimbabwe

Of the dreaded special force, the Civil Co-operation Bureau, the submission had this to say "During 1985/1986 the ANC changed its tactics by intensifying its underground and unconventional methods both internally and externally. This led the SADF to counter the changing threat and establish a new subdivision of special forces called the CCB in May 1986. Civilian and demilitarised personnel from various sources were appointed under contract to form the CCB"

It was "internationally accepted practice to have an organisation or organisations in military forces which are capable of carrying out special military tasks". But no CCB-related documentation was believed to exist, other than that supplied in evidence to the Harms Commission, the Nodal Point said

Meiring submitted that "professionalism, diligent planning and goodwill enabled the relatively painless process with which six forces, joined shortly after the elections by Apla as the seventh, unified in the National Defence Force" in 1994

"My humble submission today is that the SANDF, in the way it was established, and is now developing, perhaps sets an example for reconciliation," he said

At a press conference held once the generals had departed, Boraine said he found the submission "bland" and "profoundly disappointing". No reference had been made to the SADF engaging in any unlawful activities, he said, labelling the Nodal Point's lack of culpability for apartheid-era wrongs as "breathtakingly one-sided and really almost audacious"

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CT 22/10/96



**DOCUMENTS DESTROYED:** SANDF chief General Georg Meiring submitted a statement to the Truth and Reconciliation Commission in Cape Town yesterday in which he said certain documents containing information about informants and military agents had been destroyed before the 1994 general election **PICTURE: AP**

# General admits Khotso bombing

CT 22/10/96

(252)

**OWN CORRESPONDENT**

**JOHANNESBURG:** Retired police commissioner General Johan van der Merwe and former Law and Order Minister Mr Adriaan Vlok are to apply for amnesty from the Truth and Reconciliation Commission after dramatic new disclosures about their involvement in apartheid-era crimes

Van der Merwe admitted yesterday he had ordered the booby-trapping of handgrenades that killed eight ANC activists in 1986, as well as the 1988 bombing of Khotso House, the headquarters of the SA Council of Churches

The orders for the bombing of Khotso House had come from then State President P W Botha, and had been relayed to him by Vlok. The grenade operation had been sanctioned at cabinet level, he said

Van der Merwe was testifying before the TRC's amnesty committee in support of an amnesty application by former security policemen Brigadier Jack Cronjé, Colonel Roelf Venter, Captains Jacques Hechter and

Wouter Mentz, and Warrant Officer Paul van Vuuren. They are expected to admit their involvement in 40 murders, which they say were sanctioned by the previous government

Van der Merwe said he would apply for amnesty for the Khotso House bombing and the handgrenade incident, and possibly for other incidents, depending on the testimony of the five policemen

"If there are other incidents they think I should take responsibility for, then I will apply for amnesty for those incidents. It would make no sense for me not to apply for amnesty if I support amnesty applications by my subordinates," he said

Vlok, contacted at his Pretoria home, would not comment on Van der Merwe's allegations, but confirmed that he would also apply for amnesty for at least the Khotso House bombing

Van der Merwe denied that specific orders were given by him, the police top structure or



the government for any other illegal acts. He said, however, that the general political climate during the 1980s had created a perception among policemen that it was expected of them to go to any lengths to fight the liberation struggle

"I am fully aware that the actions of various members of the security

branch may in the present circumstances appear to be cold-blooded and murderous in nature," he said, adding that propaganda had led to a situation where individual policemen could no longer distinguish between lawful and unlawful acts

He conceded, however, that no actions by Cronjé or his subordinates had ever been repudiated by the police top brass or the government

Van der Merwe said former President F W de Klerk had not been aware of the illegal operations carried out by the security police

The hearing continues today, with Cronjé expected to take the stand

# Row brews on 'super A-G'

## - Kahn fears political boss

ARG 22/10/96

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LINDSAY BARNES  
CRIME DESK

Controversy is brewing over the extensive legal powers that will be vested in South Africa's proposed "super attorney-general", who need not have legal training.

There are growing fears that the country's top prosecutor could be a political appointee with no knowledge of the law. Under the new constitution, the newly created national director of public prosecutions will have the power to issue policy directives to provincial attorneys-general, to intervene in the prosecution process and to review decisions to prosecute or not to prosecute.

But the new constitution allows the president to appoint anyone to the position of national director of public prosecutions, as it does not stipulate that the person must have legal qualifications.

This oversight could render the system unworkable, said Western Cape Attorney-General Frank Kahn, who expressed concern at what he believed to be a grave error in the constitution.

The Law Society of the Cape said the appointment of a person without legal qualifications to the post was "unacceptable".

The national director will be appointed to oversee all provincial attorneys-general and will have the power to intervene in the prosecution process when policy directives are not complied with.

Although the "super A-G" need not have legal training, the law requires other attorneys-general to be appropriately qualified.

It was argued before the Constitutional Court that the new super-official should at least be a qualified lawyer, but despite this the Constitution was returned unchanged on this point.

Mr Kahn said he was concerned at the prospect of having to persuade a layman national director about the merits or demerits of complex legal issues.

"This is one man on the top, responsible to no one. These little things get slipped through in the new South Africa," he said.

"There was always concern among the attorneys-general that the national director of public prosecution would be a political appointment and assurance was given that it would not be," he said.

"There is no safeguard against abuse from any (future) government.

"The President can do anything. It's an hypocrisy. Can we condone a situation where the public could be in the hands of a total layman? The Constitution must protect people at the end of the day."

"To not insist on a legal qualification is crazy," Mr Kahn said. "We deal every day with complex legal issues. We have the right to appeal. We decide when to argue or when to abandon an appeal. How on earth can a man who reviews us not be required to have legal degrees?"

Ben Griesel from the Cape Bar Council said the omission of a stipulated legal qualification in the Constitution was "regrettable" as it was possible for the President to appoint anyone to this position.

But Krish Govender, publicity secretary for the National Association of Democratic Lawyers, said he had faith the government would appoint a person who could carry out the task in an efficient manner. He believed the wording should remain as it was.

"I want to be very optimistic and positive about the wording and that the person appointed would be appropriately qualified and suitably trained for the job."

"I believe this is a nuance in the draft and a necessary safeguard not to be over-specific when there are tremendous changes taking place in the legal system and the education sector," he added.

Attorney-General Tim McNally of KwaZulu-Natal said he required time to study the Constitution before making comment.

# ASSASSINS FOR

## Vlakplaas chief tells of state's secret

JOHN YELD  
ON THE TRUTH COMMISSION

Johannesburg - Apartheid security forces set up a secret organisation to draw up a hit list of activists to be eliminated, the Truth Commission heard here today.

Because there was a "war situation" in South Africa in the 1980s, it had been necessary for security police to eliminate activists, former Vlakplaas commander Jan Cronje told the amnesty committee

He said a secret organisation called Tre-wits - from its Afrikaans acronym for Against Revolutionaries Information Tar-get Centre - had been established in 1985 to identify potential targets

Initially targets had been identified in neighbouring states, including "terrorist bases" of the African National Congress, but its activities had later been expanded to include targets within South Africa

Brigadier Cronje said it was possible that the instruction to kill Piet Ntuli, a KwaNdebele cabinet minister, had origi-

nated from Tre-wits The death of Mr Ntuli is one of about 40 murders for which Brigadier Cronje and four former security police colleagues are applying for amnesty

Brigadier Cronje said that Tre-wits had collected information from regions about planned targets

Meetings were held once a month, during which information from all security sectors was considered and targets were identified

In each region a record was kept of who the activists were, where they came from and "who were the troublemakers", he said

"(Colonel) Tom Louw made the compilation from the information and compiled a document which was then used to identify targets

"It was a secret component because only people who were working with terrorism, were involved with it

Brigadier Cronje said the State Security Council knew about the existence of Tre-wits, particularly with regard to the actions outside South Africa

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Because of the war situation in South Africa, it was sometimes necessary to "eliminate activists by killing them"

Detention in terms of the security legislation was not sufficient, because it was limited and of short duration

"There was no choice other than to take normal wartime action and to eliminate activists. It was considered necessary under the circumstances

Reports about the deaths of activists were sent to head office and there was never any repudiation or instruction that

such eliminations had to stop," he said.

Answering questions by his counsel Roelof du Plessis, Brigadier Cronje said he had watched the television programme on Vlakplaas commander Eugene de Kock on television last night and had seen former state president P.W. Botha say in a library clip that the government would "eliminate the terrorists"

He had regarded these words as confirming that instructions to eliminate activists would have come directly from Mr Botha or the State Security Council.

hit-list group

# APARTHEID

# PW Botha 'ordered dirty tricks by police'

BO 22/10/96

(252)

Stephen Laufer

FORMER president PW Botha and two of his ministers had ordered police dirty tricks in the 1980s which left several anti-apartheid activists dead or maimed and reduced Khotso House to rubble, former police commissioner Johan van der Merwe said yesterday.

In 1988 the then law and order minister Adriaan Vlok had instructed Van der Merwe to organise an explosion which would damage Khotso House — headquarters of the SA Council of Churches and several trade unions — “to such an extent that it could no longer be utilised” Vlok had told him that the instruction had come from Botha. The security forces had believed at the time that the building served as “a sort of internal headquarters of the ANC”.

Van der Merwe was testifying before the truth commission in support of amnesty applications by five former SAP officers — Brig Jack Cronje, Col Roelf Venter, Capt Jacques Hechter, Capt Wouter Mentz and W/O Paul van Vuuren. The officers served in the SAP's Vlakplaas killer squad and the Northern Transvaal security branch.

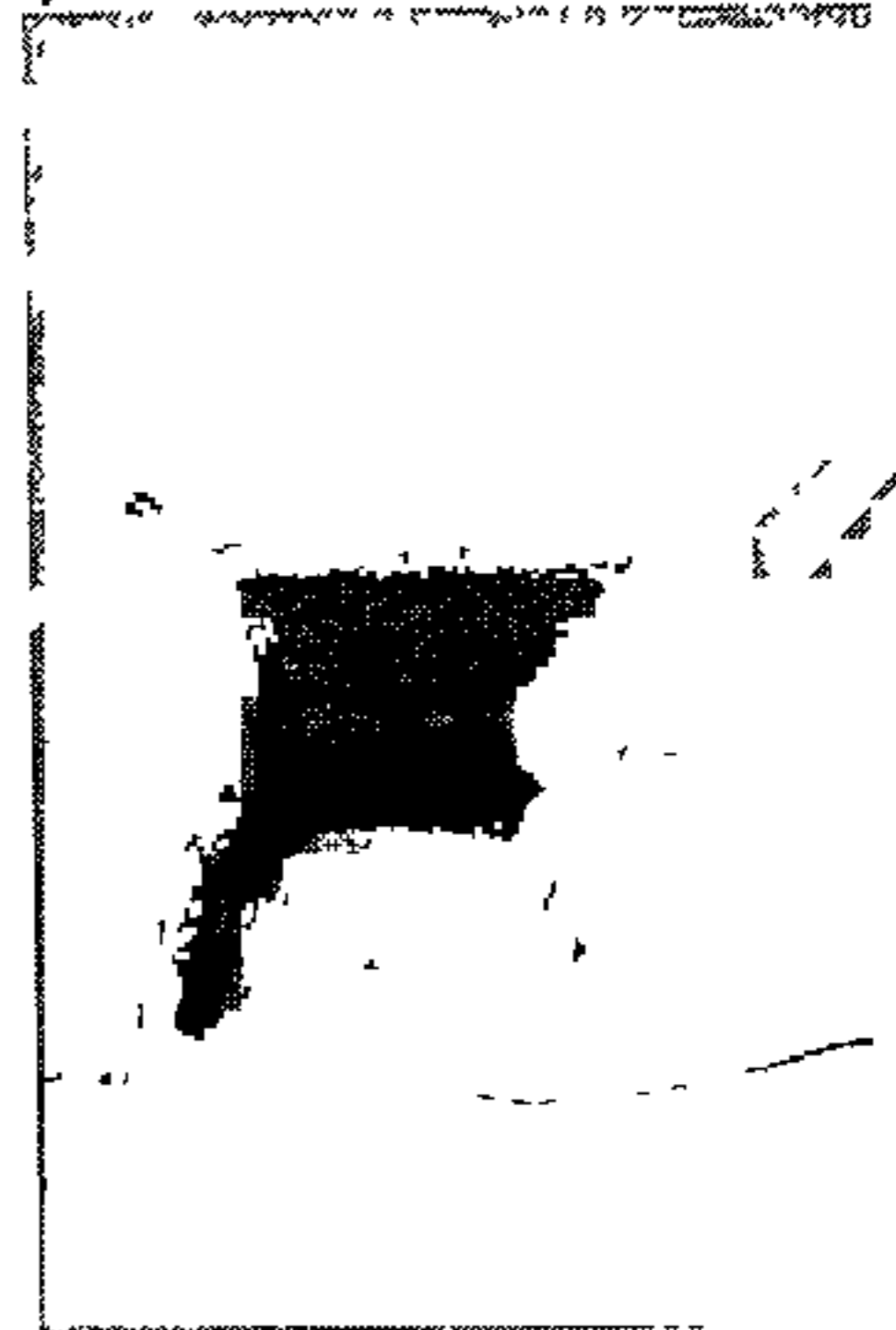
They have been implicated in up to 40 murders, including the deaths of the Pebco Three, Mamelodi doctor Fabian Ribeiro and his wife Florence, and two groups of youths lured from the township on the pretext that they were being taken for military training by the ANC. Cronje and Hechter were formally charged in Pretoria on Friday with 27 murders.

Two years earlier then police minister Louis Le Grange had approved a proposal from Van der Merwe, who headed the security branch at the time, to supply booby-trapped hand grenades and a limpet mine to East Rand anti-apartheid activists. The Duduza activists had been targeting black policemen.

Believing the ANC to be the source of the grenades, eight activists had been killed and others injured when they launched attacks on the homes of policemen. Another activist had died while attempting to sabotage an electric substation using the limpet mine.

Van der Merwe said he was aware that actions by security branch members and others in the SAP might “appear cold blooded and murderous”.

However, “militaristic and political-



Van der Merwe

ly inspired speeches often made it difficult for the security forces, who were becoming emotionally involved, to distinguish between that which was

Continued on Page 2

## PW Botha

Continued from Page 1

normally justifiable in terms of the law and that which was not.”

Van der Merwe said after yesterday's hearing that he would personally apply for amnesty for the Khotso House explosion and in connection with the booby-trapped weapons, and “maybe more if my men think I should take responsibility” for actions which were yet to be revealed.

Asked whether he thought members of former governments should ask for amnesty, Van der Merwe said everyone had to live with their consciences.

“They know the truth, I know the truth, the men know the truth.”

It was a general perception among those who served in the SAP that they had been abandoned by the NP.

He was of the opinion that Vlok would also come forward and apply for amnesty, Van der Merwe said, although “I cannot speak for him”.

Former president FW de Klerk had “never been a part of the security system as such and I don't know whether he knew of other matters” not being discussed before the commission.

The body's deputy chairman, Alex Boraine, welcomed Van der Merwe's testimony, calling it “an indication that the flood wall has broken”.

There were indications that further big amnesty applications were coming.

# Truth commissioners reject military's submission

Linda Ensor

CAPE TOWN — The first formal submission to the truth commission by the former military establishment was rejected out of hand by the commission yesterday as a waste of time and "profoundly disappointing".

Instead of coming clean about its past, the SANDF provided a "litany of self-righteousness and self-justification", commissioner Khoza Mgojo complained.

The "bland" submission by former chief of logistics Maj-Gen Deon Mortimer lasted three hours but contained no details of why the SADF had undertaken operations, under whose command it acted and how many people had died as a result.

The submission went into great detail about the acts of violence committed by the ANC, PAC and the right wing, while presenting the SADF as "a knight in shining armour simply doing its job", an angry commission deputy chairman Alex Boraine said.

He said that if the commission had seen the report beforehand it would have rejected it, as it had the report by the police generals.

Boraine told Mortimer — his report was compiled by the SANDF's nodal point, which liaises between the commission and the military — that he found it almost unbelievable that in 80 pages there was no acknowledgement that the SADF could have perpetrated crimes in implementing apartheid policy.

Boraine said the commission's investigations and research departments would go through the SANDF's submissions and questions might be addressed directly to Defence Minister Joe Modise, Deputy Defence Minister Ronnie Kasrils or SANDF chief Georg Meiring.

## Amnesty testimony is not barred from further actions

Stephen Lauffer

AMNESTY applicants could not expect their testimony before the truth commission to be automatically barred from use in prosecutions, the amnesty committee said in Johannesburg yesterday.

Judge Hassan Malli was responding to a request by Roelof du Plessis, the advocate representing five former SAP officers asking for amnesty for up to 40 murders, for an interpretation of the Act governing the commission's work.

Malli said a decision on whether evidence given before the committee was admissible elsewhere had to be left to the other judicial instance.

"We cannot bind the powers of another tribunal," Malli said. The committee's ruling means that the evidence of amnesty applicants will not be automatically protected from being used in court if their applications fail.

It was greeted by broad smiles from representatives of Transvaal attorney-general Jan D'Oliveira's office who attended yesterday's hearing. The panel reserved judgment

on separate requests by Du Plessis to subpoena four former SAP members who have agreed to become state witnesses against three of the five who have applied for amnesty.

Du Plessis said the four — Capt Jaap van Jaarsveld, W/Os Joe Mamasela and Andre Oosthuizen and Sgt Deon Gouws — could support and corroborate the evidence given by his clients, who sometimes had gaps in their memories of incidents which took place 10 years ago.

Opposing the motion, advocate Torie Pretorius of the Transvaal attorney-general's office, said that while he was not opposed to the amnesty applications, he was concerned about the integrity of the prosecutions.

Investigations against Brig Jack Cronje, Capt Jacques Hechter and others had been underway since late 1994.

He was concerned that minute syntactic differences in evidence given to the amnesty committee and before a court could be used to undermine the credibility of the state's witnesses during later prosecutions.



Former police officers, from left, W/O Paul van Vuuren, Brig Jack Cronje, Capt Jacques Hechter, Capt Woutner Mentz and Col Roelf Venter prior to the amnesty committee hearing in Johannesburg yesterday.

## Publication of financial register may be delayed

CT(OR) 22/10/96

## Apartheid-era police plaque removed

CAPE TOWN — Disclosing the truth about the past would free the community to move forward together towards freedom and democracy, ANC MP Reggie Oshiphant said yesterday.

He was speaking at a ceremony at carrying nature of the SA police during the apartheid years.

He had fought to have the plaque removed because to him it had represented "everything that is evil, everything that is repressive in South

## Vehicle probe involving racing driver set to widen

THE vehicle theft and fraud investigation involving racing driver Willie Hepburn, 53, who was arrested in Cape Town at the weekend while preparing for a race, was set to expand after police discovered numerous suspected false addresses for vehicle buyers.

Hepburn was expected to appear in a Pretoria court today on more than 40 vehicle theft and fraud charges. He was arrested in the pits at the Killarney race track on Friday and was being held at Pretoria Central police station.

Organised crime investigators had already seized more than 20 suspected stolen vehicles and were investigating a further case involving 80 vehicles.

Also on Friday, police arrested Doornfontein motor dealer Ios Camard, who was released on R10 000 bail after appearing in court on fraud charges at the weekend. His case was postponed to November 6.

Two accomplices, Leon Swart and Jakes de Jager, were also arrested in connection with both cases.

Police appealed to anyone who may have bought vehicles at Hepburn Conversions in Midrand or Ca-nario's Joemo Motors in Deppe Street, Doornfontein, to contact investigating officers Capt Charles Botha or Sgt John Barnard. — Sage.

# PW Botha may

# be forced to

AKG 22/10/96

# answer to TRC

(252)

# Subpoena considered

JOSEPH ARANES AND ROBERT BRAND  
ON THE TRUTH COMMISSION

The Truth Commission will consider a subpoena to force ex-state president PW Botha to answer questions and allegations about his role in apartheid-era human rights violations.

TRC deputy chairman Alex Boraine disclosed this today after retired police commissioner Johan van der Merwe and former law and order minister Adriaan Vlok indicated to the TRC yesterday they would apply for amnesty, after dramatic new disclosures about their involvement in apartheid-era crimes.

General Van der Merwe admitted yesterday that he had ordered the booby-trapping of handgrenades which killed 10 ANC activists in 1986, and the 1988 bombing of Khotso House, the Johannesburg headquarters of the SA Council of Churches.

The general said the order to bomb Khotso House had come to him via Mr Vlok, direct from Mr Botha.

Mr Boraine said it came as no surprise that General Van der Merwe had indicated he would apply for amnesty.

"I hope he applies for amnesty very soon and that Mr Vlok, who is on our list of people we plan to subpoena, will also apply for amnesty and make a full disclosure. This way our subpoena will fall away and

he can answer all the allegations that have been made against him.

"The news that Mr Botha actually gave the order to bomb Khotso House is new to us and the commission will have to give serious consideration to what action we need to take. I think we will seriously consider subpoenaing him if it will help in the work of the commission," Mr Boraine said.

General Van der Merwe was testifying in Johannesburg in support of an amnesty application by former security police officers Brigadier Jack Cronje, Colonel Roelof Venter, captains Jacques Hechter and Wouter Mentz, and Warrant Officer Paul van Vuuren.

But at the TRC's offices in Cape Town yesterday, the former South African Defence Force presented its submission to the commission about its involvement during the conflict, without taking any responsibility for its actions.

After hearing the submission, Mr Boraine said he was disappointed that the submission had had "no soul". He said it was time former SADF personnel showed the same willingness as former police generals in coming out with the truth.

General Van der Merwe told the TRC yesterday the orders for the bombing of Khotso House had come from the then state president PW Botha, "personally" and had been relayed to him by Mr Vlok.

# 'Groot Krokodil' quiet as a mouse over bomb order claim

CLIVE SAWYER  
POLITICAL CORRESPONDENT

The former "Groot Krokodil" of South Africa, who used to have the country's most powerful officials trembling in their boots, has so far remained quiet as a mouse after evidence that he ordered the 1988 bombing of Khotso House, headquarters of the South African Council of Churches

"I am afraid he is unapproachable," Marlene Hartman, former president PW Botha's secretary, told the Cape Argus from his home at the Wilderness.

Mr Botha was today musing over how to respond to statements to the Truth Commission by former police commissioner Johan van der Merwe that the former president had ordered the bombing of Khotso House in Johannesburg.

# An apartheid warrior speaks: the unspeakable

AKG 22/10/96

(252)

JOHN YELD  
ON THE TRUTH COMMISSION

Johannesburg - In a sweltering and airless side hall of the City Hall complex here, former police commissioner Johan van der Merwe made the startling admission that certain actions by his men in defence of apartheid could be regarded as "cold-blooded and murderous".

Just a few years ago such a scenario would have been unthinkable. But yesterday, the Truth Commission's five-member amnesty committee and an attentive audience of about 150 - mostly journalists, lawyers and commission staff and a handful of family members of victims - listened in amazement to a deadpan General Van der Merwe giving

# CCB active shortly before 1994 poll

WILLIAM-MERVIN GUINDE  
AND JOSEPH ARANES  
ON THE TRUTH COMMISSION

The Civil Co-operation Bureau (CCB), which has been linked to SA Defence Force "dirty tricks", was operational until two months before South Africa's first democratic elections in April 1994.

Retired army general Deon Mortimer, former logistics chief of the SADF, told the Truth and Reconciliation Commission in Cape Town yesterday the CCB only really disbanded in February 1994.

He said all documents relating to the CCB had been either destroyed or had vanished except for those in the records of the Harms Commission - which investigated "dirty tricks" operations by the apartheid government.

The CCB, an arm of the SADF Special Forces, was established in May 1986 to counter the ANC's underground operations in the country and abroad.

Former president F W de Klerk has said the clandestine organisation was closed down in 1991.

Deputy chairman of the Truth Commission Alex Boraine criticised the SADF's submission as one-sided for failing to mention any unlawful acts the SADF had committed.

# Van der Merwe, Vlok put amnesty bid on hold

Ms Hartman said Mr Botha had not listened to radio broadcasts or watched television reports about General Van der Merwe's statement "and does not have the facts at hand".

Meanwhile, Shurley Gunn, the activist blamed at the time by former police minister Adriaan Vlok for the Khotso House bombing, welcomed the evidence to the commission.

first-hand testimony of the apartheid government's state-sponsored violence against its political opponents.

Naming former state president P W Botha and his former police ministers Louis le Grange and Adriaan Vlok as directly involved in ordering or sanctioning attacks, General Van der Merwe set the scene for the amnesty application by five of his former colleagues, which is expected to last up to two weeks and to open the floodgates of information about "dirty tricks" by the former security forces.

Speaking in English at a fast pace, General Van der Merwe read a 29-page personal submission into the record before answering questions by Roelof du Plessis, the advocate representing the five policemen.

Attached to his submission was a 12-page statement on the role of the South African Police in the conflict of the

past, compiled by him and three other former police commissioners, Mike Geldenhuys, Johan Coetzee and Henne de Wit.

In his submission, General Van der Merwe said that as the security situation in South Africa had continued to deteriorate and "the climate of violence and unrest increased", it had led to a hardening of attitudes and the creation of a climate of hate, within the ranks of the police and among civilians, combined with a lowering of morale of both these groups.

"Militaristic and politically inspired speeches often made it difficult for the security forces, who were becoming more and more emotionally involved, to be able to distinguish between that which was normally justifiable in terms of the law and that which was not."

# Viljoen offers to reveal rights abuses by SADF

WILLIAM-MERVIN GUINDE  
STAFF REPORTER

Former South African Defence Force chief Constand Viljoen has expressed his willingness to disclose information about defence force human rights abuses, especially in Angola.

Speaking after the SADF submission to the Truth and Reconciliation Commission, which was described by deputy chairman Alex Boraine as "wholly breathtaking in its one-sidedness", he said he would help the commission where possible.

Dr Boraine said the SADF submission was "audacious in its failure to acknowledge culpability for the deaths of innocent women and children".

General Viljoen said most senior members of the SADF were unwilling to seek amnesty for military activities unless they were implicated in gross violations of human rights. "Former SADF members felt the same as (Mpumalanga) Premier Mathews Phosa, who argued that former Umkhonto weSizwe members would not seek amnesty for military operations because it was done on military orders."

General Viljoen said most senior members of the SADF were unwilling to seek amnesty for military activities unless they were implicated in gross violations of human rights. "Former SADF members felt the same as (Mpumalanga) Premier Mathews Phosa, who argued that former Umkhonto weSizwe members would not seek amnesty for military operations because it was done on military orders."

incidents until he was certain he would not be accused of any further crimes.

In an interview, Mr Vlok also confirmed he would seek amnesty for the Khotso House bombing, but not immediately.

"I am going to wait and see what happens. I am busy preparing my amnesty application now. It is being handled by my attorney," he said - Sapa



LEON MULLER

The generals speak: former SADF generals Jan Kloppe and Deon Mortimer give evidence

General Mortimer listed 64 operations the SADF had been involved in between 1980 and 1993 "to curb the activities of terrorists and communists".

The operations included the neutralisation of anti-apartheid activists abroad and cross-border raids against ANC and PAC bases and offices in neighbouring coun-

# Van der Merwe, Vlok put amnesty bid on hold

Johannesburg - Former police commissioner General Johan van der Merwe and former law and order minister Adriaan Vlok are waiting to see if they are implicated in any further human rights abuses before formally applying for amnesty from the Truth Commission.

General Van der Merwe implicated himself and Mr Vlok in the 1988 bombing of

Khotso House in Johannesburg, then the headquarters of the SA Council of Churches, when he testified in support of amnesty applications by five former security police men yesterday.

He also admitted to ordering the booby-trapping of handgrenades which killed eight ANC activists in 1988.

He said today he would delay applying for amnesty for the bombing and grenade



# Secret hit squad

Source 23/10/46

(292)

former Vlakplaas boss exposed



Former security policeman Colonel Roelof Venter takes the oath yesterday before testifying at amnesty hearing of the Truth and Reconciliation Commission in Johannesburg. Venter admitted being party to the abduction of three activists known as the Pebco Three in May 1985, but denied involvement in their subsequent murder.

## By Mzimasi Ngudle

**T**HE FORMER State Security Council's unlawful operations were exposed yesterday when former Vlakplaas commander Brigadier Jack Cronje told the Truth and Reconciliation Commission about a special counter-insurgency unit formed to eliminate members of the liberation movements.

Testifying in the Johannesburg City Hall, Cronje said the SSC ordered Colonel Tom Louw to establish Trewits - a unit which discussed and targeted members of the African National Congress, the Pan Africanist Congress of Azania and the South African Communist Party.

Cronje also said the SSC, then headed by former president PW Botha, authorised and approved killings, attempted murders, torture and severe ill-treatment of human rights activists.

Outlining the context in which he and his colleagues committed gross human rights abuses, Cronje said security police believed there was a full-scale war. This belief, he said, was further fuelled by inflammatory speeches by Botha who called "for the elimination of the enemy".

### Gave instructions

While working as head of the security branch in Springs, Cronje was instructed by former police commissioner General Johann van der Merwe to use booby-trapped handgrenades which killed eight ANC activists in 1985.

"Van der Merwe gave me the instruction in Springs. He said he got the instruction from former law and order minister Mr Louis le Grange and that Botha approved it," Cronje said.

In a television documentary on Monday, former Vlakplaas operative Mr Joe Mamasela confirmed handing over the grenades to a group of activists who were later blown up in an explosion.

Cronje said the decision to form Trewits was made after the SSC felt that the legal system was inadequate to deal with the "communist onslaught".

"There was no other means except to use military options and to eliminate the activists. This was considered necessary under the circumstances."

"Reports of the killings were sent to the head office and there was never repudiation or orders that eliminations should stop."

In his application for amnesty, Col Roelof Venter said Trewits supplied them with a list of people who were to be attacked.

However, Venter came under attack from TRC lawyer Advocate Cocky Mpshe for not specifically admitting to the killing of the Pebco Three - Mr Qaqawuli Godolozu, M. Siphon Hashe and Mr Champion Galela - for which he is applying for amnesty.

While admitting to abducting the three in 1985, Venter said he later heard that the bakkie in which they were travelling was burnt.

"I do not remember instructions that they should be killed. I had no knowledge of any decision that they should be eliminated."

"Involved in the operation were Lt Deon Niewoudt, Capt Sakkie van Zyl, Gert Beeslar and former askaris Mamasela, Mr Koole Mogoai and a Mr Radebe."

Meanwhile, TRC deputy chairman Dr Alex Boraine said they would follow up Van der Merwe's allegations that Botha ordered the bombing of Khotso House, the headquarters of the South African Council of Churches in Johannesburg.

"The allegation cannot be ignored. The commission will not hesitate to subpoena Botha where necessary," he said.

He urged all members of the security forces to apply for amnesty.

"While the commission has recommended that the closing date for amnesty applications be extended by three months, there is no guarantee that this will happen," he said.

PIC AP

# Bigger workload for the HRC

(252)

Nov 23/10/96

## Commission given more challenges on a hopelessly inadequate budget

By HELEN GRANGE

Socio-economic rights, included in the new Constitution, will result in an additional workload for the Human Rights Commission (HRC), which, despite this, has been unsuccessful to date in getting presidential approval for a bigger budget

The constitutional rights to basic socio-economic resources such as

housing and water means the HRC has the additional mandate of monitoring the Government's delivery on this front, a senior HRC official said this week

The interim constitution, which will become obsolete if and when the Constitutional Court ratifies the new Constitution, provided only for political and private rights.

HRC chairman Dr Bar-

ney Pityana has openly complained that the commission's R6,4-million budget is hopelessly inadequate

It is understood that an appeal to President Nelson Mandela to augment this has fallen on deaf ears

■ The HRC is preparing to hold public hearings into violations of human rights within prisons and has announced similar inquiries

will be held into the predicaments of agricultural workers and homeless children

The HRC is currently investigating 15 cases, a number relating to unfair discrimination on the basis of gender or race in state institutions

Three cases have been settled or resolved, including a case arising out of allegations of violence by warders of Knysna Prison

and a complaint concerning unfair discrimination by the Durban College of Education

The commission has received more than 300 complaints which it was unable to investigate as they did not fall within its jurisdiction

However, many of these cases have been referred to the appropriate body, including the Public Protector

## Madiba's long 'lost' letter

By JEALOUS BWALYA

Livingstone

President Nelson Mandela is missing a letter from Zambia

It has remained locked in a drawer in Lusaka since just after his release in 1990

A communications officer in the office of Zambian President Frederick Chiluba has been charged with stealing the money he claimed from petty cash for posting letters

Peter Daka, mail clerk at State House for more than 15 years, allegedly stole the postage money intended for hundreds of letters dating back to 1988

Chiluba is enraged by this "breach of loyalty and security" and has ordered that all staff at State House submit details of their background

Security guards found the letters in Daka's desk. They included one personally written and signed by former Zambian president Dr Kenneth Kaunda.

The letter was addressed to Just released South African prisoner, Nelson Mandela - Star Foreign Service

## TV journo says she had 'unfair deal'

By CHERYL HUNTER

Media Reporter

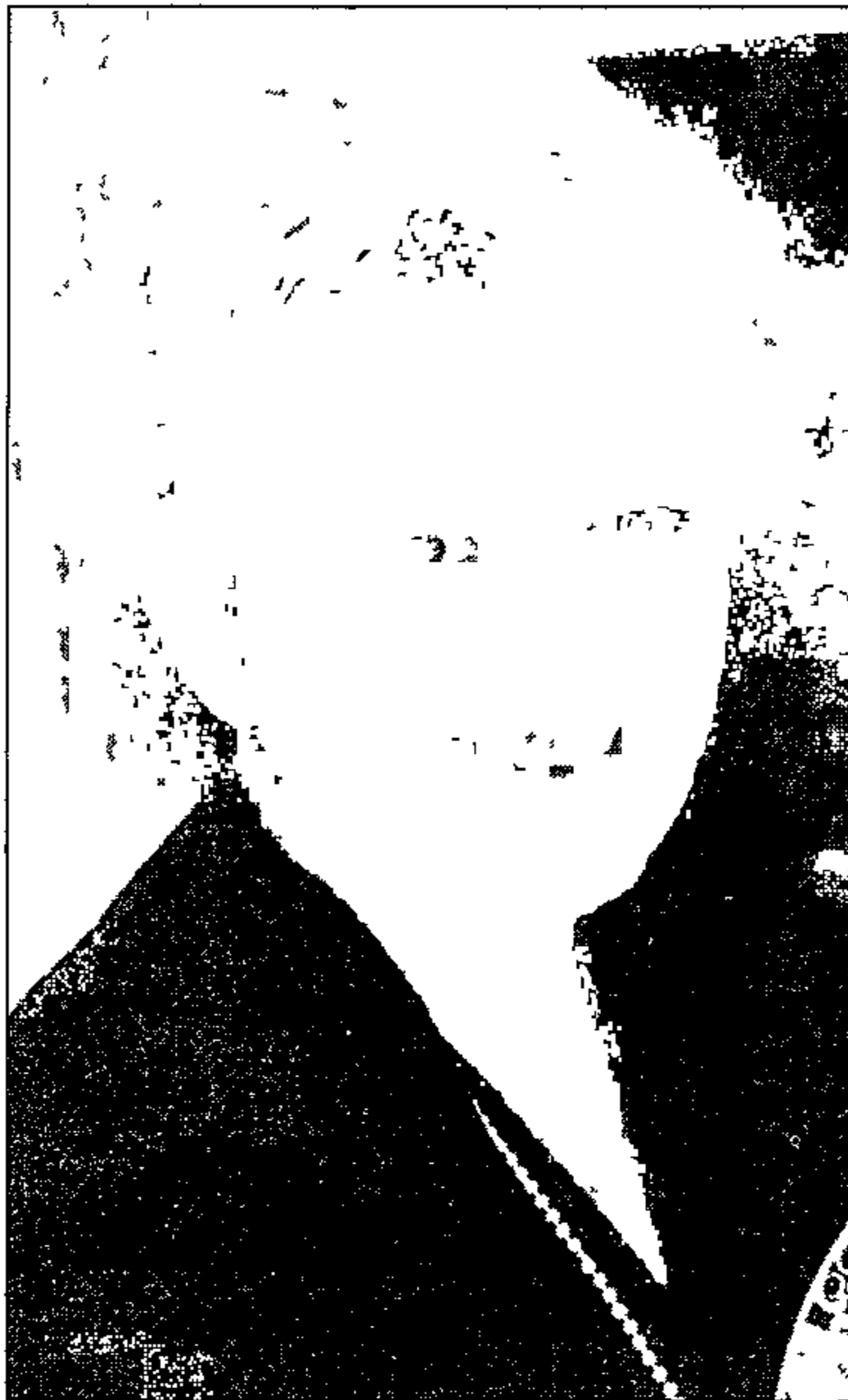
SABC television journalist Isabel Jones believes she was given an "unfair deal" by weekend newspapers accusing her of prejudiced and biased reporting

Presenter of the popular *Fair Deal* programme, Jones was reported to the Broadcasting and Complaints Commission of South Africa (BCCSA) last week by the subject of one of her programmes

Staff of Paul Zwick Productions - the company which Jones uses to produce *Fair Deal* - had signed a petition against the opening of a low-cost restaurant in Blairgowrie before they produced a programme on the issue

But Jones was "hopping mad" yesterday "I was approached by several people at a local post office where I was mailing a letter to do something about the restaurant and that's when I took it up as a community issue

"I had no idea that some of the production staff had signed a petition and I did my own research and asked my own



Accusations . Isabel Jones is 'hopping mad'.

questions," she said

"Had I known who had signed the petition, I don't believe it would

have made any difference because I approached this project as I have all of my others," she added

"No one exerted any influence over me during the making of this programme," she said

She said newspapers had used her name in articles instead of those who had known about and signed the petition prior to the programme, and also claimed reporters had misquoted her

Zwick, one of the signatories, said he was responsible only for the technical side of the production and had nothing to do with editorial content

"Isabel asks the questions and approves the programme. She brought it to us for production and the decision to go ahead with any programme has nothing to do with this company," Zwick said

BCCSA spokesman Rene Conradie said she did not think the commission could resolve the problem because the complaint was not about the content of the programme, but about personal involvement in the production

"We only deal with complaints pertaining to the contents of a programme," Conradie said

# As SSC head, P W Botha

HENRY LUDSKI  
POLITICAL WRITER

FORMER state president P W Botha masterminded the sinister and powerful State Security Council (SSC) as far back as 1972 when he was still minister of defence.

It was then that he piloted the Strategic Intelligence and State Security Council Bill through Parliament. But it was six years before

he was able to wield the total power that the SSC gave him.

One of the first things he did when he was elected prime minister in 1978 was to convene a meeting of the SSC, which afterwards assumed a much more central position in decision making — effectively becoming an inner-cabinet.

The National Intelligence Interpretation Branch, the meetings of which were almost always attended and chaired by Botha, was given

the task of monitoring the day-to-day effectiveness of measures to counteract the total onslaught.

The SSC, a statutory body, at the time comprised Botha, who had then assumed the position of state president, defence minister General Magnus Malan, law and order minister Mr Louis le Grange, justice minister Mr Kobie Coetsee, foreign affairs minister Mr Pik Botha, Mr Chris Heunis, Mr Gerrit Viljoen and director-generals from

## Would have been briefed on 'dirty tricks'?

the corresponding departments, "everything"

Democratic Party member Mr James Sells, a security management expert, who wrote his masters thesis on state security structures, said that while it was possible that other people might have been given only executive summaries, I suspect that P W Botha, who liked to know what was going on, knew



He said that if the SSC, as stated at the Truth and Reconciliation Commission by former commander Brigadier Jack Cronje, gave regular intelligence reports to the council, it knew the extent of the atrocities and covert operations that were being com-

mitted. President Botha would have been given the full picture of the operations. As the man ultimately responsible there's no way he wouldn't have known," said Sells.

Botha, who now lives at Wilderness and who yesterday was attending to flood damage to his house, is reportedly "upset" about the revelations at the TRC by former police commissioner General Johan van der Merwe that Botha had ordered the 1988 bombing of Khotso House, the headquarters of the South

(292) ET 23/10/96  
African Council of Churches.

Botha, as the prime promoter of the idea that a total response had to be developed to meet the total onslaught, provided the general go-ahead — in consultation with other co-opted members of the SSC — for security forces dirty tricks.

The SSC's role was to define national security needs, and the cabinet at the time, which included National Party leader Mr F W de Klerk, would have approved the

broad parameters of a campaign to give effect to a total strategy.

Instructions would have been conveyed by the SSC to the lower level for detailed implementation. Their activities were top secret and although there is evidence that not all cabinet ministers on the SSC were privy to briefings on the outcome of various operations, Botha and possibly selected military officers, would have been given details.

# EX-Vlakplaas cop tells of Peboco kidnapping

**JOHANNESBURG:** The family of the Peboco Three, who were abducted and killed in 1985, contested yesterday the version of the events surrounding their disappearance by a former Vlakplaas member who is applying for amnesty.

**FORMER** Vlakplaas policeman Colonel Roelof Venter has admitted his part in the abduction of three Port Elizabeth activists known as the Peboco Three, but said he was not involved in their subsequent murder.

Testifying in his amnesty application before the Truth and Reconciliation Commission yesterday, Venter said he had followed orders to kidnap the three from the H F Verwoerd Airport and hand them over to the Port Elizabeth security police.



"I do not know how they were killed or what happened to their bodies," Venter said. The families of the three, represented by their lawyers, disputed Venter's version of events. They said he must have known the three would be killed. The families opposing amnesty for Venter, Port Elizabeth with other Vlakplaas members want to know only where the bodies are, what exactly happened to them and who was responsible. Venter has not supplied this information, attorney Ms Belinda Harle told the amnesty committee.

While in Port Elizabeth, they fell under the command of the regional security police, at the time Colonel Nic van Rensburg (now a retired general), Venter said.

They were asked to "pick up" three activists at the airport. "We were unknown in that area and could therefore act without arousing suspicion."

The Askars picked up the three, with Venter and two members of the Port Elizabeth security branch, Captain Sakhe van Zyl and Lieutenant Deon Nieuwoudt, waiting in a car nearby.

"The objective of the operation was to interrogate them, get information from them, remove them from the area and neutralise their involvement," Venter said. He denied that the purpose of the exercise was to kill them.

He said that after the three were picked up, they were taken to "a place near the sea" and then to a deserted police station near Cradock, where he last saw them while holding a braai with Port Elizabeth security policeman Ak, that stage, the three seemed "totally normal, with no apparent injuries".

He returned to Port Elizabeth, but the Askars remained behind to help with the interrogation. "I did not take part in the interrogations, but I deduced that they would later be eliminated because their backs had already been destroyed" — Own Correspondent

## PW swamped by calls — and floods

**FORMER** president Mr P W Botha's home has been flooded with faxes, telephone calls — and the Towu River which burst its banks yesterday after four days of heavy rain.

The "Groot Krokodi" had little interest in dealing with the rising tide of media interest

prompted by claims on Monday that he had ordered the bombing of the South African Council of Churches headquarters, Khotsiso House, in 1988.

Instead, Botha set about evaluating flood damage. An aide at his Wilderness home, Die Anker, said it had



**AMNESTY SEEKERS:** Mr Paul van Vuuren (left), Brigadier Jack Cronje and Captain Wouter Mente leave the Johannesburg City Hall after a session of the TRC yesterday

## Reconciliation must be coupled with justice

JOHANNESBURG: Mr Veli Mazibuko is not bitter towards Joe Mamasela, the man who gave him booby-trapped handgrenades that blew away two fingers on his right hand 10 years ago.

He just wants Mamasela, and other Vlakplaas operatives and "dirty tricks" policemen, to go through the same procedure free-

dom fighters followed for amnesty. "Reconciliation must be coupled with justice," said Mazibuko. "People from liberation movements were first tried in a court of law before being granted amnesty resulting in some having criminal records. Why should the other side be different with those on the other side what about the justice part of

the whole thing?" Mazibuko says Mamasela gave him and 20 other students the handgrenades in June 1986, having learned he was an MK guerrilla. "I never reached a court of three which we would have thrown the grenades at the houses. Instead, I remember being hauled into the air just after pulling the safety pin."

Three members of Mazibuko's group survived the explosions and were arrested on arrival at a local hospital. Mazibuko finished his matric in prison and later obtained a B.Sc. degree from the University of Natal. He is director of the Duduza Resource Centre, co-ordinating development projects in the township — Own Correspondent

## Peboco Three: 10 years of mourning

**(252) DT 23/10/96**  
THE "death squad" — to which former Vlakplaas commander Brigadier Jack Cronje referred in his evidence before the Truth Commission yesterday — left a long trail of victims.

During 1985-1987, the secret intelligence unit identified and "eliminated" a long list of "troublesome" activists.

Among those who died during this period were Port Elizabeth activists Miss Gladys Tengelle, Mr Sparrow Mkontlo, Mr Sicele Mhlauli, Mr Fort Galata and Mr Matthew Goniwe, Natal University academic Dr Richard Turner and Dr Fabian Ribiero and his wife, Florence, and Mr Griffiths Wkenge, a prominent human rights lawyer, and his wife, Victoria.

Among others killed during this period, most of them by assassins who have not been identified and many in confirmed attacks by South African operatives, were:

**1985:** Alex Pilane, East Rand student, abducted and beaten to death; Verron Nkadineng, killed in a car-bomb explosion in Botswana; Brian Mazibuko, stabbed to death on the East Rand; Gasuabe Huh-huli, shot dead in Vryburg; 12 SA refugees killed in an SA Defence Force raid in Botswana.

**Toto Dweba**, found on 25 August with his neck almost severed and both hands cut off at the wrist; Thabo Mokoena, abducted and killed; Godfrey Piuso, shot dead in Pimville; Batandwa Ndondo, shot dead by two SA and two Transkei security policemen; Letu Rasego, abducted and found burnt to death; Ian Zamisa, abducted and shot; and Zalisile Mziyholo, shot.

**1986:** Ester Masuqu, killed by a hand-grenade; Frank Martin, killed in a petrol-bomb attack; Joyce Moring, killed in a bomb attack; Antonio Pateguana, Suzana de Souza, Joao Charvane, killed in an attack in Mozambique.

**Pansu Smith**, Sipho Dlamini, Busi Majola, killed in an attack in Mbabane; Stanley Nhlapo, kidnapped and found dead; Matsela Polokela, killed in a raid on Botswana; Joseph Mthopeng, abducted and murdered; Muntu Khanyle, Joseph Mthembu, Sanelle Khawula and Russell Mhonzulu, killed by a Vlakplaas squad under the command of Eugene de Kock.

**Sidney Mbisi**, former bodyguard of late ANC president Mr Oliver Tambo, gunned down by police after being detained; Sonwabo Ngxala, kidnapped and stabbed; Fuzile Lupulwana, abducted, stabbed and burnt; Walter Ledwaba, killed in an explosion; Jomo Mlize, beaten and hacked to death; Leon Meyer, Jackie Quinn and seven others in an SA hit-squad attack on a house in Maseru, Lesotho.

**1987:** Gibson Ncube, died after drinking poisoned beer; Tsitsi Chizha, killed when a television set exploded in her flat; Mildred Msoni, Tatu Nkwanane, Theopholis Dlodlo, shot dead in Swaziland; Yvonne Nkese, shot dead in Soweto; Nkosinathi Shabangu, shot dead by an unknown gunman; Eric Mntonga, knifed and mortally wounded by a severe blow.

**Cassius Make**, Paul Dikalede, Eliza Tshini, gunned down; Calibus Nyoka, shot nine times while in boat; Samuel Ndlovu, shot; Mhosana (first name unknown), shot; Amos Tshabala, stabbed; Petros Mhisi, stabbed

DT 23/10/96

# Evidence from former policemen contradicts submission by Stephen Lafer

Stephen Lafer

THE SA Defence Force was much more deeply involved in SA's dirty war against its internal opponents than the military admitted in its submission to the truth commission on Monday, evidence to the body's amnesty committee by former Vlakplaas commander SAP Brig Jack Cronje has indicated.

Cronje revealed for the first time the existence of a top secret "counter-revolutionary information target centre", known as Trewits, which

identified and prioritised anti-apartheid activists to be "intimidated or eliminated".

Military intelligence and the SADF special forces had taken part in the group's monthly meetings. The group's members had included SAP security branch and national intelligence representatives.

The state security council, which included security ministers, the president, the foreign minister, and heads of the security services among its members, had known about Trewits, and

particularly of its operations beyond SA's borders.

Activists had been targeted with the aim of damaging their property and even murdering them in order to intimidate the anti-apartheid movement, to reassure whites that the security forces were on top of the situation, and to protect information obtained under interrogation.

Murders of high profile activists had also been designed to pre-empt military actions performed by Umkhonto we Sizwe.

Attacks on activists' houses, including bombings, had been part of a disinformation strategy designed to suggest black on black violence and the existence of power struggles within the liberation movements.

The resulting perception by whites that they were involved in a life-and-death struggle had driven them into the arms of the NP.

"The security branch worked for the NP. We had to carry out their instructions to keep them in power," Cronje said.

## Commission

(252)

Continued from Page 1  
Elizabeth airport in May 1985.

But, while pressed during cross-examination, he said: "I think it is reasonable to believe the police killed them because I last saw them in the hands of the police."

As a Vlakplaas officer serving under Cronje, he had been in the Eastern Cape with a group of Askaris for "14 to 21 days" assisting local security branches in identifying and arresting activists, including MK cadres. Vlakplaas unit members had been under the command of the local security branch whenever they were active in the provinces, and he had been instructed by Port Elizabeth security branch Capt Sakkie van Zyl to abduct Gagawuli Godolozzi, Sipho Hashe, and Champion Galela from the airport.

Abduction by policemen unknown in the Eastern Cape would allow the SAP to deny knowledge of their fate. Van Zyl had reported to then Col or Brig Nic van Rensburg, who had later become a general. "He must have had orders from Van Rensburg," Venter said.

Under cross examination by counsel for the families of the Pecco Three, Venter said he was unaware that then law and order minister Louis le Grange

had been in Port Elizabeth the day before the group's abduction.

He denied detailed knowledge of what had happened to them, as he had handed them over within minutes of the abduction to Van Zyl and Lt Gideon Newoudt — recently found guilty of murdering fellow policemen in the Motherwell car bombing case.

Two days later he had discovered that they were being held at a disused police station outside Cradock, where he had fetched his askaris, including Joe Mamasela.

Mamasela is among four former policemen who have agreed to act as state witnesses and testify against Cronje and other former security branch policemen.

During a braai and drinking session outside Cradock he had seen three men who had been hooded by the police, but he had not noticed any injuries.

Council for the families said they would oppose amnesty for Venter because his submission lacked maternal detail.

They wanted to know who killed their loved ones and where they were buried. But Venter had been disingenuous, making strenuous efforts to deny complicity in the deaths of the three, and had not added to what was already known of their fate.

It has been asserted on many occasions that the SADF's special forces gave birth to the Civil Co-operation Bureau (CCB), believed to be involved in the murders of several anti-apartheid activists inside the country.

Cronje's co-applicant for amnesty, former SAP Col Roelf Venter, told the committee he did not know whether the Pecco Three had been on a Trewits list for elimination when he led the group which abducted them from Port

Continued on Page 2

Picture: Page 6  
Comment: Page 13

SADF

BD 23/10/96

## Commission may subpoena Botha on Khotso House blast

Stephen Laufer

(252) PD 23/10/96

THE truth commission would subpoena former president PW Botha if he did not co-operate with investigations into Monday's allegation that he had ordered the bombing of Khotso House, commission deputy chairman Alex Boraine said yesterday.

The allegation — by former police commissioner Johan van der Merwe, who said he had received direct instructions to carry out the bombing from then law and order minister Adriaan Vlok — could not be ignored, and the commission would seek the fullest information.

Boraine called on Van der Merwe and Vlok to make full disclosure not only on the Khotso House incident, but on everything they knew about. He appealed to all members of the former security forces involved in gross human rights violations not to delay their amnesty applications.

Political parties, former anti-apartheid activists and SAPS commissioner George Fivaz joined Boraine in commending Van der Merwe for his statement to the amnesty committee. It is being seen as a turning point in the body's search for the truth.

Fivaz said testimony on the bombing and the booby trapping of hand grenades graphically illustrated the dangers of using police as an extension of party-political interests. Van der Merwe's approach to the human rights abuses of the past could enhance the process of reconciliation and healing. The loyalty of the new SAPS was to the constitution.

The ANC said Van der Merwe's testimony vindicated its view that covert operations against anti-apartheid activists were not the work of maverick elements in the security forces, but had been sanctioned at the highest levels of the state. It suggested that FW de Klerk's testimony on behalf of the NP had in many instances fallen short of the whole truth.

The DP said credit should go to Transvaal attorney-general Jan D'Oliveira whose diligent work had flushed out the confessors now appearing before the amnesty committee. Their individual accounting would help restore the rule of law.

Rev Frank Chikane, who was secretary general of the SA Council of Churches when its Khotso House headquarters were bombed by the SAP, called for a direct apology to the body's staff and officials. "This would be healing for me and many others," he said.

Sapa reports that Botha was flooded with faxes, telephone calls and by the Touws River which also burst its banks on Tuesday after four days of heavy rain. The "Groot Krokodil" had little interest in dealing with the rising tide of media interest prompted by claims that he ordered the bombing of Khotso House, in 1988, instead evaluating damage to his home, which was ankle-deep in water.

□ President Nelson Mandela said he saw no possibility of the cut-off date for amnesty being extended. Commission chairman Archbishop Desmond Tutu had proposed an extension to May 10 1994.

NEWS

# Milestone as SA judiciary enters a new era

## New chief justice Mahomed vows to restore 'legitimacy of the law'

WILLIAM-MERVIN GUMEDDE  
STAFF REPORTER



New Chief Justice - Judge Ismail Mahomed

South Africa's new chief justice says the country's most urgent and vital challenge is restoring the legitimacy of the law in the eyes of the people.

Judge Ismail Mahomed, South Africa's first black silk, overlooked several times for judicial appointments by previous governments, was appointed to the post by President Mandela.

The present chief justice Michael Corbett retires next year.

"I hope that I will be able to contribute to the urgent need to salvage the image of the law so that it in fact is, and is properly perceived to be, a friend and protector of the people instead of an instrument of racial, gender or political oppression," said Judge Mahomed.

He said it was only through the restoration of that legitimacy that the law could play its most important role in bringing justice to the people and restoring the

moral fabric of a society so tragically damaged for so long by the pain and the shame of a racist past.

Judge Mahomed, 64, said he was deeply conscious of the fact that the country was irreversibly committed to a new constitutional future based on equality and freedom.

"The president and the country of my birth have deeply honoured me by appointing me to a very high judicial office which would give me the opportunity of giving effect to that commitment."

Judge Mahomed's appointment was hailed as a victory by those organisations calling for the transformation of South Africa's courts and criminal justice system. Krish Govender, national publicity secretary of the National Association of Democratic Lawyers, said Judge Mahomed's appointment was "a message that real change is about to begin in the judiciary".

Jody Kollipen, director of Lawyers for Human Rights, said Judge Mahomed's

appointment heralded a new face in the transformation of the judiciary. The National Party also welcomed his appointment, saying he was an outstanding jurist with the ability, credibility and record on the bench to make a great success of the job.

It was therefore a pity that Mr Mandela had made the appointment controversial through his premature indication of his preference for Judge Mahomed over the other excellent candidate, senior appellate Judge Henne van Heerden, the NP said.

Judge Mahomed, who will be based at the Appellate Division in Bloemfontein, said he looked forward to getting the help of the entire judiciary in his task.

But he said he had received the announcement of his appointment with "the same mixed feelings which have agitated me ever since my nomination for the position".

"The pain is substantially emotional. It comes from the inevitability and the irony of having to have my chambers in the city

and the province which historically made the greatest assaults on my dignity and my self-esteem by discriminating against me on the grounds of colour and colour alone".

According to the Free States' earlier petty apartheid laws aimed at Indians, every meaningful public facility had been denied him when as an advocate he had to argue cases on appeal in Bloemfontein.

"Before the sun could set I was compelled to skulk away across the provincial borders in order to avoid any contravention of the law."

"My return to that province reviews fresh wounds and painful memories which I cannot and would not want to obliterate."

Judge Mahomed's appointment was announced by cabinet secretary Jakes Gerwel who emphasised that President Mandela had followed the constitution by consulting the Cabinet after consultation with the judicial Services Commission.

Judge Mahomed has had a distinguished record in the legal profession spanning almost 40 years. He had a career

marked by a string of firsts, many of them relating to breaking racial restrictions which, under the apartheid government hampered so many would be lawyers who were not white.

His 35-year practice at the bar included considerable civil and criminal litigation although he concentrated on human rights.

He was the first South African to be chief justice of Namibia and in that capacity had been responsible for several trend setting human rights decisions based on the country's Bill of Rights. He also served on the bench in Botswana, Swaziland and Lesotho.

During successive states of emergency in the 1980s, Judge Mahomed led many of the most important legal challenges to the emergency legislation.

Judge Mahomed also co-chaired the Conference for a Democratic South Africa (Codesa) and the subsequent conference which eventually negotiated a democratic constitution for the country.



## Judge slams parole system

(252) Star 24/10/96

A Pretoria Supreme Court judge has slammed the Government's parole system as it relates to criminals serving long prison sentences.

Sentencing Joseph Makua (20) to an effective 33 years in prison for the murder of Witbank couple Johannes and Magdalena van der Merwe and another woman in July 1993, Mr Justice J M C Smut said yesterday the release on parole of long-term prisoners weakened the efficiency of the justice system.

When convicted murderers, rapists and robbers were released

before they had served their full sentences, the community lost confidence in the court system, he said.

Makua, who pleaded guilty, was also sentenced to 10 years' jail for robbing the Van der Merwes of household goods worth R71 000. The sentences will run concurrently.

The court heard how Makua and two others drove around for hours with the bodies of the Van der Merwes in the boot of a stolen car in an attempt to sell them to witchdoctors. — Pretoria Correspondent



# TRC GOILILARS COOPS

## Former security policemen to be grilled about Pebco Three

By Mzimasi Ngudle

**F**ormer security policemen who were involved in the Pebco Three case are expected to be grilled about their role in the case during the next few days.

The hearing is expected to be held at the Robben Island Correctional Centre, where the men are currently being held. The hearing is expected to be held on Monday, Tuesday and Wednesday.

The hearing is expected to be held in the presence of the public. The hearing is expected to be held in the presence of the public. The hearing is expected to be held in the presence of the public.

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# Mohamed appointed new SA Chief Justice

(252) *Sametari 24/10/96*

**By Rafiq Rohan**  
Political Correspondent

MR JUSTICE Ismail Mahomed was yesterday appointed South Africa's first post-apartheid Chief Justice to succeed Mr Justice Michael Corbett who retires next year

The decision ended months of speculation and also sent a clear signal to judges and jurists that the Government was in favour of a progressive rather than a conservative judiciary

Although the process has been clouded in controversy, Cabinet Secretary Professor Jakes Gerwel said when announcing the appointment, "It

was not a controversial discussion in the Cabinet"

The controversy arose earlier this year when it was suggested that President Nelson Mandela had publicly thrown his support behind the 64-year-old Justice Mahomed

Gerwel explained the procedures yesterday and said it was the President's duty to consult with the Cabinet on the issue before the decision was announced to replace outgoing Chief Justice Corbett

Mandela received the two nominations for the position by the Judicial Services Commission - the other was Mr Justice Henrie van Heerden

Gerwel said the President and Cabinet were not bound by the view of the JSC

The JSC publicly interviewed the two candidates on October 4

Gerwel said both candidates were considered "fit and proper persons" for the post. The JSC voted on the two names and Mahomed was apparently voted in by a 15 to one margin

The JSC is made up of the Chief Justice, the president of the Constitutional Court, the Minister of Justice, a representative of judges, two representatives of advocates, two representatives of attorneys, four senators, a representative of law faculties and four people appointed by the President

# Colonel 'not telling all'

(252) *howe* 24/10/96

**T**HE SECRETS OF THE apartheid security system are beginning to be unravelled in testimony by amnesty applicants to the Truth and Reconciliation Commission.

But the first of five former security policemen to appear before the amnesty committee this week failed to testify in the spirit of "full disclosure" required by the Truth Commission.

Instead, Colonel Roelof Venter denied personal complicity in the murders of the three Port Elizabeth Black Civic Organisation members in 1986, but revealed the names of other policemen involved in the operation which abducted and kill them.

He confirmed that the assassination of Charles Sipho Hashe, Qaqawuli Godolozu and Champion Galela was a police operation and admitted that he had organised their abduction from the airport in Port Elizabeth.

But it took much tense cross-examination before he acknowledged that their abduction and detention was likely to have ended in the activists' deaths.

"At that stage, I did not think so but later I thought that was the case," a red-faced Venter said.

## Disappointing submission

Legal representatives for the families of the Pebco Three argued that Venter should be refused amnesty, as his submission was "disappointing".

Their lawyer, Belinda Hartle, said the families already knew their loved ones were abducted, tortured and murdered but had hoped to "establish the finer details" from the amnesty application.

"The families need to establish who the perpetrators were and where the bodies are, so that they can hold a proper burial for them and put this matter to rest," Hartle said.

She said Venter's submission was lacking in material detail and even failed to identify the Pebco Three by name.

Hartle accused Venter of being "insincere and not even beginning to acknowledge his complicity in gross human rights violations".

She said given the reputation of Vlakplaas (as a base for police death squads), it was likely their action against the Pebco Three would result in their "permanent removal" from society.

Her colleague, Mpumelelo Nyoka, attacked Venter for failing to disclose the relevant facts concerning the Pebco Three. "The Truth Commission does not want half-truths which undermine truth and reconciliation," he said, supporting Hartle's petition to refuse Venter amnesty.

Venter told the Truth Commission that he received instructions from his commander at

Although he confirms the killing of the Pebco Three as a police operation, Colonel Roelof Venter denies his involvement in the killing. **Claire Keeton** reports...



**Colonel Roelof Venter . . . the families of the Pebco Three are opposed to his amnesty because of his evidence**

Vlakplaas, Brigadier Jack Cronje, to go to Port Elizabeth to assist in quelling the unrest.

During his time there, he executed instructions from the regional commander of the security branch, which included an order to pick up three prominent activists at the airport.

Venter said his Askaris picked up the men and they were delivered to Port Elizabeth security policemen at a meeting place along the coast.

## Captives at a braai

He claimed that he only saw the captives a few days later at a braai at an old police station near Cradock and he was unable to see if they had been harmed.

But Venter confirmed that the normal form of security police interrogation was violent. "The normal way was to assault people, intimidate and humiliate them as a means of gaining information," he said.

Venter said that from time to time, there were instructions for activists to be eliminated as the Pebco Three were "great trouble-makers".

"The head of the Eastern Cape security branch, General Nic van Rensburg, must have given the instruction," said Venter.

The murder of the Pebco Three was not an isolated incident, but was in keeping with the way that the security police dealt with political

leaders they perceived as a threat to the apartheid government.

Before Venter's testimony about the Pebco Three, he confirmed that the C3 counter-intelligence unit at Vlakplaas, known as "Trewits", was established in 1985 to target opponents of the government.

Trewits is an Afrikaans acronym for the Counter Revolutionary Information Target Centre.

He said initially it focused on activists abroad but later it included South Africans within the country.

"If people were on the list and identified as targets then attacks were going to be directed at these people. The most active people were at the top of the list."

He said members of the special forces and military intelligence – both part of Trewits – would execute the attacks outside of South Africa while regional commanders of the security police would plan internal attacks against activists.

## State knew of ops

Prior to Venter's testimony, former Vlakplaas commander Jack Cronje insisted that the State Security Council must have known of Trewits.

Cronje said "If any one from the State Security Council said they were not aware of the actions of the security police, that would not be true."

Cronje explained that the security police treated the conflict in South Africa during the 1980s as a war.

"It was therefore necessary to eliminate insurgents, terrorists and activists, where the circumstances required it," he said, leaving no doubt that "eliminate" meant kill.

## Drastic action

Cronje said the justice system was not equipped to deal with the soldiers of the liberation movements in a way that would permanently neutralise them, so the security police had to take drastic action.

He said specific authorisation was not required for every incident and power was delegated down the hierarchy to combat the "destabilisation" of the country by any means necessary.

The cold-blooded killing of the Pebco Three, who were on their way to the airport to meet their British sponsors, is a clear example of the methods used by the security police.

# New Chief Justice Ismail Mahomed intends to salvage image of the law

Star 24/10/96

(252)

BY PATRICK BULGER  
AND HELEN GRANGE

Ismail Mahomed - who, when he appeared as an advocate in the Appeal Court, was forced by apartheid to leave the borders of the Orange Free State before dark - is South Africa's new Chief Justice

His appointment, which comes into effect on January 1, was announced by President Nelson Mandela yesterday

In his 12 years at the Johannesburg Bar and during cases heard at the Appeal Court at Bloemfontein in the then Orange Free State, Mahomed was subjected to the discriminatory racial measures exercised against all Indians in the province

"Every meaningful public facility in the Free State was denied to me when I made my appearances as an advocate in court, and, before the sun could set, I was compelled to skulk across the provincial borders in order to avoid contravention of the law" (Indians were not allowed to spend the night in the OFS)

Mahomed, South Africa's most senior black legal practitioner, said his main aim would be to restore the legitimacy of the law and to make it the protector of the people. He beat Appeal Court Judge Hennie van Heerden, to the

top post after an often-bitter campaign tinged with racial overtones had split the country's judicial community

The controversy was marked by Mandela's personal intervention when he put Mahomed's name forward for consideration by the Judicial Services Commission after Mahomed had earlier declined to

be considered because of the controversy evoked by his nomination. Sources said Mandela had personally pleaded with Mahomed to make himself available. Mahomed said yesterday he had accepted the nomination with "the same mixed feelings which have agonised me ever since my nomination for the position"

He said a feeling of pain, substantially emotional, came from the "inevitability and the irony of having to have my chambers in the city and the province which historically made the greatest assaults on my dignity and my self-esteem by discriminating against me on the grounds of colour and colour alone"

Mahomed, who is deputy president of the Constitutional Court, was the first black lawyer to become a senior counsel, in 1974. He practised at the Bar for



Chief Justice  
Ismail  
Mahomed

35 years during which time he built up a reputation for defending political cases

Mahomed was repeatedly overlooked for an appointment to the Bench during the apartheid years. In 1991 he was made a judge of the Supreme Court and in 1993 he was appointed an acting judge of the Appeal

Court

When constitutional negotiations began in late 1991, Mahomed was one of two judges chosen to preside in the Convention for a Democratic South Africa. This year he was appointed chairman of the South African Law Commission.

Mahomed received a telephone call from the Office of the President yesterday, telling him of the appointment and congratulating him. He said he had been deeply honoured by the appointment and hoped he would be able to contribute to the "urgent need to salvage the image of the law"

"I see the restoration of the legitimacy of the law in the perception of the populace as the most vital and the most urgent challenge for all lawyers. I look forward to receiving the help of the entire judiciary in this task"

CHIEF JUSTICE OUTLINES HIS VISION

# Aim to restore legitimacy of law

ET 24/10/96 (252)

**RESTORING** the legitimacy of the law is the most vital challenge facing lawyers, says the new Chief Justice. **BARRY STREEK** reports

**A**S widely expected, President Nelson Mandela yesterday announced the appointment of Mr Justice Ismail Mahomed, 64, whom he himself had nominated, as the new Chief Justice

Judge Mahomed, deputy president of the Constitutional Court and Chief Justice of Namibia, is the first black person to be appointed to the position. The National Party welcomed the appointment.

In a statement Mr Justice Mahomed said he was deeply conscious of the fact that the country was irreversibly committed to a new constitutional future based on equality and freedom.

"The President and the country of my birth have deeply honoured me by appointing me to a very high judicial office which would give me the opportunity of

giving effect to that commitment."

Restoring the legitimacy of the law in South Africans' perceptions was the most vital challenge for all lawyers, he said.

"It is only through the restoration of that legitimacy that law can play its most important role in bringing justice to the people and restoring the moral fabric of our society so tragically damaged for so long by the pain and the shame of our racist past."

Judge Mahomed, who will be based at the Appellate Division in Bloemfontein, said he had received the announcement of his appointment with mixed feelings.

He said it was ironical that his chambers would be in the city and the province which "made the greatest assaults on my dignity and my self-esteem".

Every meaningful public facility in the then Free State had been denied to him when as an advocate he had to argue cases on appeal in Bloemfontein. "Before the sun could set I was compelled to skulk away across the provincial borders in order to avoid any contravention of the law."

# Real reconciliation requires that the full

ROGER FRIEDMAN

IT is not possible to equate apartheid, which was itself a crime, with resistance to apartheid, authors Professor Kader Asmal, Mrs Louise Asmal and Mr Ronald Suresh Roberts said last night at the launch of their new book

primary purpose of the book was to examine and confirm the criminal nature of apartheid, so that neither South Africa, nor any other country, would ever tread that path again, the authors said.

They also drew attention to the call for a "law of nullity" contained in the book, arguing that legislation should be enacted to systematically undo "the appalling work

words for the author of a review of the book, which was published in the Cape Times yesterday.

In his review, University of Cape Town lecturer Professor Hermann Gilhorne wrote: "I could find very little original in the book and its research is superficial, amateurish and with no sensitivity to process and changes over time. If a book that deliberately sets

# truth be known

Truth and Reconciliation Commission, their book — Reconciliation Through Truth: A Reckoning Of Apartheid's Criminal Governance — sought to show that true reconciliation could only be attained when the truth was known and recognised by all, they said.

A "meife laundry list of specific outrages and crimes committed" would, however, not suffice. The

that was done by apartheid's kangaroo courts in making criminals out of our country's most eminent citizens"

"Top of the list is President Nelson Mandela himself, who, in spite of being the most morally-respected statesperson in the world today, remains a criminal in the land that he governs so well."

Asmal, meanwhile, had harsh

out to produce a partisan indictment can be called a 'ground breaking synthesis', words have lost all meaning."

Gilhorne further wrote that the authors "had been less than honest" with the readers regarding the declaration of apartheid as a crime against humanity. "Their thesis is that the apartheid system constituted a crime against humanity

Asmal said he was astounded that the Cape Times had chosen to publish the review, saying Gilhorne's arguments were "intellectually not sustainable".

Co-author Roberts said that Gilhorne's political orientation, as contained in his previous writings, was more noticeable in his review than any argument he presented based on the book's contents

CT 24/10/96

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## Majority say truth body will succeed

Farouk Chothia

(252)

BD 24/10/96

DURBAN. — THE overwhelming majority of South Africans — 60% — believed the truth commission would lead to greater reconciliation, and 78% favoured amnesty for perpetrators of past political crimes, a Human Sciences Research Council survey has found.

The countrywide Omnibus survey was conducted in July. A total of 2 241 people were interviewed and the findings were released yesterday.

It found that blacks were most optimistic that the commission would bring about greater reconciliation (70%), followed by Indians (59%), coloureds (53%) and whites (26%).

In a party breakdown, ANC supporters (75%), PAC supporters (68%) and IFP supporters (57%) were the most optimistic. This was followed by DP supporters at 39%, NP supporters at 37% and the supporters of right-wing parties at 15%.

Support for qualified amnesty among all respondents stood at 45%, while 32% favoured a general amnesty. On whether only apartheid-related abuses or all abuses should be investigated, nearly 20% were undecided.

The survey found that 50% of blacks wanted only apartheid crimes investigated against 15% of whites who did. A total of 38% of coloured respondents wanted investigations to include abuses by liberation movements, but 37% did not. Indians were more supportive of investigations including liberation movements (50%), while 31% were against this.

# New chief justice Mahomed seeks the support of entire judiciary

Tim Cohen and Ingrid Salgado

JUDGE Ismail Mahomed, who was appointed SA's first black chief justice yesterday, called on the entire judiciary to support him in restoring the legitimacy and sovereignty of the law in the eyes of SA's majority.

President Nelson Mandela appointed Mahomed to replace current Chief Justice Michael Corbett, who retires at the end of the year. There are strong indications Justice Hennie van Heerden, whom Mahomed piped, at the

post, will be appointed his deputy. Mahomed said he had mixed feelings about his appointment since it meant returning to Bloemfontein. As a young advocate in the city, he was denied access to public facilities because of his colour, while the law compelled him to leave the Free State's borders before dark. "My return to that province revives fresh wounds and painful memories which I cannot and would not want to obliterate," he said. However, he realised SA was irrevocably committed to a new constitu-

tional future based on equality and freedom. He hoped to contribute to "the urgent need to salvage the image of the law." The judiciary needed to be a friend and protector of the people, instead of an instrument of racial, gender and political oppression. In appointing Mahomed, Mandela picked the man he publicly backed from the start of the process—a move which sparked controversy from opposition political parties. Cabinet secretary Jakes Gerwel said that Mandela had followed the

recommendations of the Judicial Services Commission, which partly served to advise government on judicial appointments. The Cabinet discussion was not controversial and Mandela had made his choice after careful consideration of the commission's recommendations and after interviewing both candidates himself, Gerwel said. It is widely understood that the commission voted overwhelmingly in favour of Mahomed, who was SA's first black senior counsel, despite widespread support for Van Heerden

## Mahomed

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Camerer said Mahomed was an outstanding jurist with the ability, credibility and record on the bench to make a great success of the job. It was therefore a pity that Mandela had made the appointment controversial "through his premature indication of his preference for Judge Mahomed over the other excellent candidate," Van Heerden. Appeal Court Judge Joos Hefer called recently for Mahomed to stand down from the selection process after Mandela expressed his support for him—before the commission had recommended a candidate to Mandela. Black Lawyers' Association deputy president Jake Molo welcomed Mahomed's appointment as "a step in the right direction. He is a man with vast experience on human rights issues—a concept that is still foreign to most judges and magistrates."

Mahomed would inspire blacks to attain high positions and lend legitimacy to judicial officers, he said. National Association of Democratic Lawyers vice-president Mohamed Husain said it represented a turning point in the judiciary's history. Mahomed would accelerate transformation and increase the judiciary's credibility. The association hoped he would help create a human rights consciousness and make the judiciary more representative of SA's demographics. It believed that Van Heerden still had a valuable role to play.

Johannesburg Bar Council chairman Dennis Fine said Mahomed would dignify the post of chief justice. "It is a pity there was only one vacancy for two highly accomplished and skilled jurists, both of whom were eminently suited for the position," he said.

In addition to Mahomed's post as Constitutional Court deputy president, he is Namibia's chief justice, an Appeal Court member in Swaziland, and SA Law Commission chairman.

among existing Appeal Court judges. It is understood that Van Heerden, who is the second most senior Appeal Court member, will be a strong candidate for the post of deputy chief justice once the new constitution comes into effect.

During the commission's interview process, Van Heerden said in reply to a question that he would be honoured to take the post of deputy chief justice. NP justice spokesman Sheila

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# ANC will not seek amnesty for acts of war

BD 24/10/96 (252)

**Stephen Laufer**

ANC cadres who had been involved in acts of war would not apply for amnesty even if their actions had resulted in civilian casualties which the party regretted, ANC legal department head Mathews Phosa said yesterday.

The ANC would accept responsibility for all legitimate operations by its cadres, but there would be no apologies for acts of war as it rejected attempts to equate apartheid with resistance to apartheid. The ANC was a signatory to the Geneva conventions governing guerrilla conflict.

Phosa's statement, during a week in which senior police officers implicated former president PW Botha and NP ministers in apartheid atrocities, could harden attitudes among apartheid-era

policemen and army officers still contemplating applying for amnesty. They have until December 15 to apply, although the truth commission wants Parliament to extend the deadline.

Phosa's move signals a further step by the ANC to underline the moral distinction between those involved in implementing apartheid — deemed a crime against humanity by the UN — and those who fought against it.

The bombing of Dresden by British and US forces during the Second World War had been regarded internationally as legitimate even though it had resulted in thousands of civilian deaths, Phosa said. Umkhonto we Sizwe's Church Street, Pretoria, bomb targeting SA Air Force headquarters had also resulted in civilian casualties, but had been equally legitimate.

Where there had been gross human rights violations, the party would help operatives apply for amnesty. Cadres were not required to consult the ANC before applying for amnesty, but it would be advisable for them to do so to obtain legal assistance.

Phosa cited the bombing of an Am-zimtoti shopping centre as an example of an operation which contravened ANC instructions on legitimate targets, saying it was carried out outside the brief of the ANC leadership. If the perpetrator, who was hanged for the bombing, had lived, he would have been encouraged to apply for amnesty.

Asked whether the party feared exposure of senior members as former apartheid state agents, Phosa said: "Let's have the exposure — it will help clear the worms out if they are there."

# Police witnesses subpoenaed

ND 24/10/96 (252)

**Stephen Laufer**

DETAILS of the last days of the Pebco Three and who ordered their deaths are likely to emerge for the first time next Monday when four former security branch officers appear at the truth commission following a decision yesterday to subpoena them.

The orders to Port Elizabeth security policemen Gideon Nieuwoudt and Sakkie van Zyl, former Cradock security branch head Eric Winter and former Vlakplaas operative Gert Beeslaar, to appear before the amnesty committee signal new determination to chase the truth beyond mere confirmation of an amnesty applicant's version of events.

The subpoenas would be delivered today, said amnesty commissioner Judge Andrew Wilson.

The four policemen were named on Tuesday by Col Roelf Venter, who is applying for amnesty for abducting the Pebco Three. Although he told the commission he believed Qaqawuli Godolozzi, Sipho Hashe and Champion Galela had been killed by police, he denied personal involvement.

Following submissions by lawyers for the families of the Pebco Three that Venter might not have made full disclosure, as required by legislation,

his counsel yesterday asked the committee to subpoena Beeslaar and Nieuwoudt. They would be able to back his contention that he had handed the three to Eastern Cape security branch officers, and that they were alive when he last saw them at a disused police station outside Cradock.

Beeslaar had said he would testify voluntarily, said Venter's lawyer, Roelof du Plessis, while Nieuwoudt — currently appealing against a conviction for killing policemen in the Motherwell car bombing — had indicated he would "flatly refuse".

In reply, the committee issued subpoena orders against both of them and added Van Zyl and Winter of its own volition.

The Johannesburg hearings, in which Venter, Brig Jack Cronje, Capt Jacques Hechter, Capt Wouter Mentz, and W/O Paul van Vuuren are asking for amnesty in connection with 16 separate events and up to 40 deaths, were postponed until Monday because amnesty committee head Judge Hassan Mall was ill.

A commission spokesman said the postponement would not affect the amnesty application of former Vlakplaas commander Dirk Coetzee, set to begin in Durban on November 5. If necessary, the Johannesburg hear-

ings would be postponed again

While waiting for the decision on the postponement yesterday, spectators at the Johannesburg hearing witnessed a remarkable act of reconciliation when deputy education minister Father Smangalisso Mkhathshwa shook the hands of all five applicants. Among their amnesty bids is one referring to an attempt to murder him.

David Greybe reports from Cape Town that former president PW Botha indicated yesterday he would not co-operate with the truth commission. The commission warned that if it could not secure his co-operation it would be forced to subpoena him to give evidence.

A spokesman for Botha said the former president was "not terribly concerned", and had "expected this".

Commission deputy chairman Alex Boraine said the commission sought a meeting with Botha in light of allegations by former police commissioner Johan van der Merwe that Botha had ordered the bombing of Khotso House.

Failure to co-operate could, he said, land Botha with a maximum two-year jail sentence. The first of four senior subpoenaed police witnesses, Maj-Gen Krappies Engelbrecht, is due to testify today.

It's crunch time for securocrats as former president Botha faces a possible subpoena and the Defence

# Can PW be forced to speak, or pay?

This week's Khotso House revelations catapult Archbishop Tutu's truth commission into confrontation with PW Botha.  
By Mail and Guardian reporters

MfG 25-31/10/96

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**G**OVERNMENT law advisers are searching for precedents to establish whether PW Botha could face a jail term if he defies a subpoena to testify before the truth commission

President Mandela's office is already bracing itself for a set of civil claims against Botha in the wake of this week's sensational revelations about the former president's role in apartheid-era human rights abuses. Shurley Gunn, an anti-apartheid activist accused by then law and order minister Adriaan Vlok of being responsible for the bombing in 1988 of Khotso House, intends including Botha in her claim for damages for libel and wrongful detention.

Mandela's advisers are concerned that the current president's office would be responsible for meeting the payments of damages and costs of any court judgment against Botha or any

other previous president.

One of Mandela's legal advisers told the *Mail & Guardian* his office was investigating whether Botha would be covered by any presidential indemnities for criminal actions which he sanctioned.

"Our view on the matter from common law and supreme court precedents is that although there are certain indemnities for a president acting in that capacity these do not include immunity from civil claims in regard to criminal acts committed," the adviser said.

Truth commission deputy chair Alex Boraine would not discount the possibility that Botha — who has in the past made no secret of his contempt for the commission — may be subpoenaed, but said that all other avenues would be explored first.

In spite of speculation that Botha was about to respond publicly to this week's testimony by former police

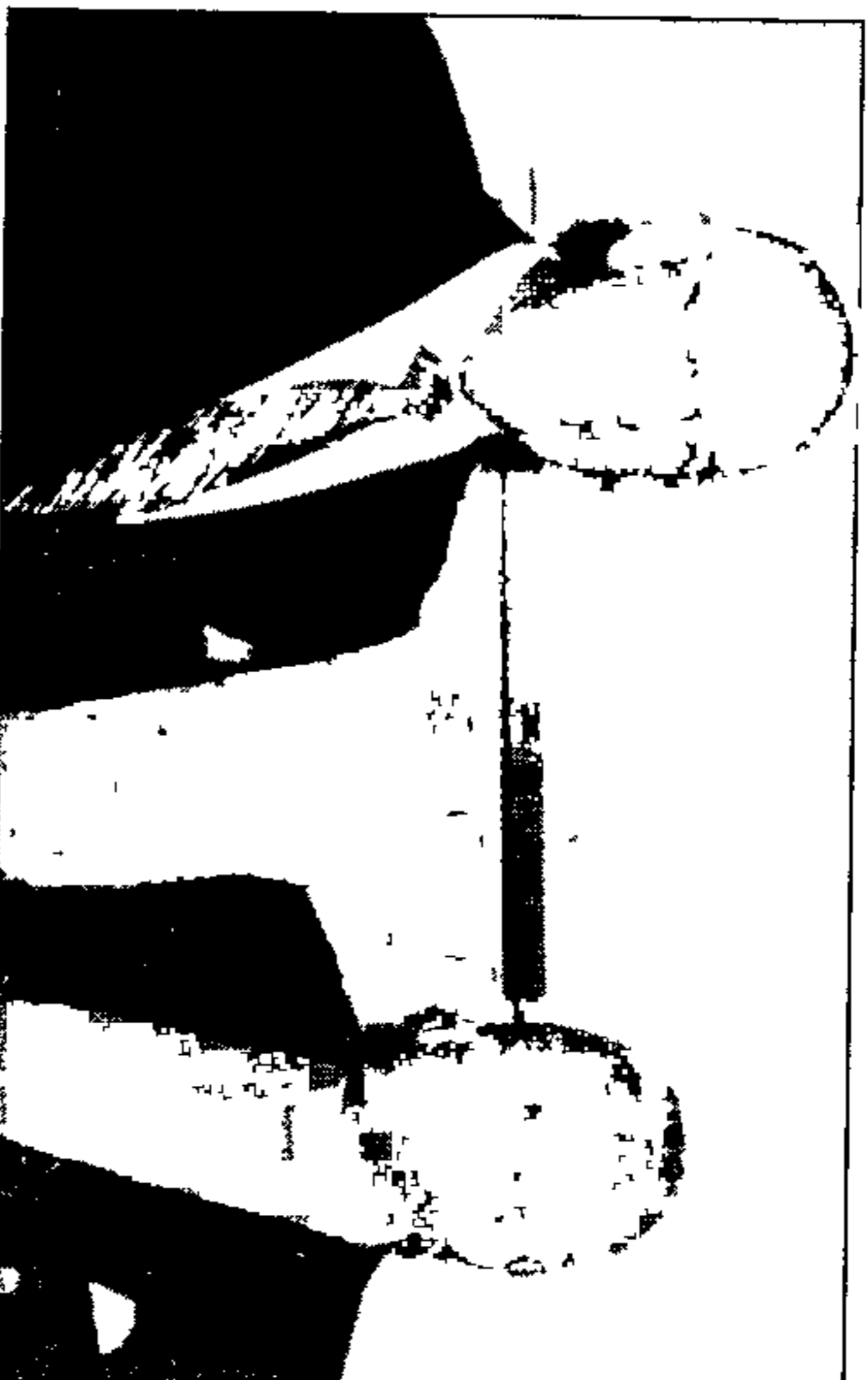
commissioner Johan van der Merwe, he maintained his silence at his Wilderness residence, Die Anker.

His secretary, Marlene Hartmann, said yesterday: "He has given no comment until today. He is very quiet, he has said nothing yet. He will react when he is ready."

But she said Botha still maintained he had nothing to apologise about. "If one looks at that man Thabo Mbeki, he stood up and said he had thrown bombs, but that he did it for his liberation struggle. In the same way, Mr Botha did what he did for his country, his people and his Lord."

Hartmann said Botha was of sound mind and health in spite of his 80-year-old age. "When he dictates letters, he does not even read from a piece of paper, he does it from his head — and he knows his Bible off by heart. He is a person who looks after himself."

Van der Merwe and his predecessor as police commissioner, Johan Coetzee, told the *M&G* this week that they may give the commission further details of state involvement in apartheid misdeeds "as the situation develops".



They may meet again: PW Botha and Desmond Tutu in happier days

Van der Merwe on Monday testified to the commission that the bombing of Khotso House had been an order from Adriaan Vlok, who had told him it had come from Botha. Van der Merwe was giving evidence in the amnesty application of five former police officers. Details also emerged of a top-secret state body, Trewits, formed in 1985 to select targets for "elimination".

Van der Merwe told the *M&G* his mission was not to expose erstwhile colleagues or politicians, but that he would not hide anything. "What it is about is the truth. There is no way that one can testify under oath and not tell the whole truth. Apart from the moral angle, it is also a serious offence."

"My men know what I know, and they know I know what they know. If one doesn't tell the truth, people will lose respect for you."

He said the politicians, similarly, throw details of the past. "All of them

know the truth, and they know others around them know it. For them it is a matter of conscience."

Asked whether there would be more revelations from his side implicating those above him, Van der Merwe said: "I don't want to expose anyone, as that will mean I'd make myself guilty of despicable behaviour. But if it comes to the truth, I will not hesitate to talk, no matter who is involved."

He confirmed he had talked to Botha on Tuesday, the day after he dropped his truth commission bombshell. He said he had told Botha "what it was all about", and that he would send him a copy of his statement. But he said he did not recommend to Botha to go to the commission. "I'd be the last person to recommend anything to Mr Botha — you know him. But I have no doubt that a person of his integrity will act according to his conscience."



# The Panopticon. Those

(252) MFG 25-31/10/96

Behind Johan van der Merwe's brief confession at the truth commission this week lies a last-ditch effort by the amnesty applicants to escape prosecution, writes **Eddie Koch**

**S**OME city hall staff had to drag in a metal table from the kitchen so that all the lawyers in the house could be properly accommodated. Long-awaited confessions from five security police officers were held up while a messenger went in search of a machine to photocopy reams of paperwork for them.

The shambolic situation at the start of the truth commission's hastily arranged amnesty hearings in a drab corner of the Johannesburg council building this week prompted cynics in the media room to predict the organisation would falter in its first real effort to extract information from security force officers about their role in past human rights abuses.

Then along came the former chief of police, Johan van der Merwe, who made some unexpected admissions about the bombing of Khotsso House and booby-trapped handgrenades and suddenly the Truth and Reconciliation Commission lit up with the prospect of a breakthrough, even though it was in a bumbling kind of way.

To be sure, long after the general made his confession and boiled out of the city hall, some of the sceptics in the press benches were still arguing,

and with good cause, that the truth body hadn't come up with anything really dramatic.

Van der Merwe, they pointed out, had only admitted to two very specific crimes and he had done this simply because he knew that it was a question of time before some energetic prosecutors in the attorney general's office would force a couple of his men to implicate him in court.

Why, they asked, did members of the amnesty committee not seize the opportunity to grill the general while they had him in the dock and try to squeeze out of him information about a whole range of other massacres and murders that the police have been implicated in, many of them in the early 1990s when Van der Merwe occupied the highest office in the police force?

Was it not possible that the former general, a trained lawyer and wily strategist, had stolen a march on the commission by admitting voluntarily to what the commission was bound to hear when the Transvaal Attorney General's next big third force trial starts, and then sliding out of the hearing before the committee had a chance to cross examine him?

The truth of the matter is that this week's hearing for the five police officers seeking amnesty for about 40 murders in the apartheid era was arranged with almost indecent haste by chairman Archbishop Desmond Tutu and his deputy, Alex Boraine, because both of them are fairly desperate to show that their organisation is not a toothless organisation where victims come to express public grief while their tormentors stay in the shadows.

Word is that the hearings were arranged with the police officers' lawyers even before their applications had been completed and processed by the commission. The commission's investigative unit had been preparing a subpoena for Van der Merwe and a long list of questions to grill him with but in the rush to get the show on the road all this preparatory work was apparently ignored.

Some members of the amnesty committee were evidently disgruntled because they were called away suddenly from their task of dealing with hundreds of other amnesty applications so they could take part in this high-profile hearing. They were not briefed or prepared to grab the opportunity the commission has long been waiting for and the consequences may well be worse than a couple of attorneys having to suffer the indignity of sitting at a rickety old kitchen table during the hearings.



PHOTOGRAPHS: SIDDIQUE DAVIDS

Unexpected admissions. But Johan van der Merwe only admitted to two specific crimes

## Ministry turns on former military commanders

# 'Arrogant' SADF (252) angers Kasrils

Stefaans Brümmer

DEPUTY Defence Minister Ronnie Kasrils this week joined in condemning the South African Defence Force's (SADF) submission to the Truth and Reconciliation Commission as "arrogant and disappointing" — but said there was very little the ministry can do to force military generals to reveal more

However, commission deputy chair Alex Boraine said if the generals of old failed to provide satisfactory answers to follow-up questions, the truth body would approach Kasrils and Defence Minister Joe Modise to ensure senior officers who served in the SADF and who still serve in the new South African National Defence Force (SANDF) are put under pressure to tell the truth

Major-General Deon Mortimer, former chief of staff logistics, presented the SADF submission to the truth commission on Monday. He said the submission, which attempted to give broad details of apartheid South Africa's security strategy, the SADF's perspective on the "revolutionary war" and defence strategy and operations, was facilitated by the SANDF.

But Mortimer said the SANDF could take no responsibility for the

SADF submission, as the SADF was defunct

Boraine immediately dismissed the 81-page submission as "breath-takingly one-sided and almost arrogant in that no responsibility at all was taken for any events. The defence force emerges as the knight on the white horse."

Kasrils this week told the *Mail & Guardian* he was "angry" and "extremely disappointed, to say the least, at the insensitivity and arrogance of the presentation." Kasrils said the defence ministry had facilitated the mechanism (a "nodal point" in the SANDF) to secure the co-operation of SADF elements with the truth commission.

But he said the ministry, like the SANDF, was a 1994 creation which had neither the knowledge nor the power to force the truth from old SADF personnel. "There is not much we can do except to make the right inputs in the right places."

Kasrils agreed many senior officers in the SANDF had been inherited from the SADF and former TVBC state forces, but said the ministry had to be "sensitive to the nature of the transition" — a process in which President Mandela had decided to appoint General George Meiring, also a senior officer in the former SADF,

as chief of the SANDF — to ensure stability.

Boraine said the submission would be carefully studied. "Where there are omissions and where we think it was not at all balanced, we will contact the head of the SANDF. If we don't get satisfaction there, we will go to Modise and Kasrils and get them to ensure those [personnel whom the SANDF inherited from the SADF] will come forward, although we realise they can't do everything."

"General Meiring himself must have some information and knowledge on what happened in the past. It is simply not good enough to say there was a raid and not say there were women, there were children, and that there were never any mistakes — and what about the much more sinister aspects?"

Boraine pointed out recent testimony by police officers has indicated deep military involvement in organised human rights abuses, and that the Civil Co-operation Bureau, also a military creation, had never been adequately exposed. "We will certainly be in touch with Meiring. If we have no satisfaction, we will go to the ministry," Boraine said subpeonas also remained an option.

Former police officers Jack Cronje and Roelof Venter this week told the truth commission, during their amnesty applications on multiple counts of murder, that SADF special forces and military intelligence representatives had served on a top-secret committee together with police representatives to select targets for "elimination".

# 'startling' confessions

Tutu and Boraine are of the opinion that it is important to have a few high-profile amnesty rulings so that perpetrators can be encouraged to come forward and confess all before the December cut-off date for applicants. If this pressure induces members of the amnesty committee to make an early ruling in favour of the current applicants it will snuff out the attorney general's criminal proceedings against the five and disarm the most potent weapon in the arsenal of the truth process.

Because, if we look beneath the rosy statements of conciliation suddenly being expressed by the five applicants, it is clear these self-confessed murderers came to the truth body at the 11th hour only because it was their last chance at staving off the prospect of being prosecuted by the same team that hounded Colonel Eugene de Kock to the edge of life sentence.

Despite the rhetoric from their lawyer — "we beg forgiveness, it is a time of reconciliation, we have full faith in the commission" — it is patently clear the police strategy is to use the truth commission, and also the undue haste by some of its leading members to hold a high-profile amnesty hearing, in order to undermine and complicate the state's case against the accused.

That is why their smart young lawyer is demanding that witnesses in the impending criminal case be called to reveal at the truth commission what they are going to say in court. And that is why Van der Merwe nipped in, made only the admissions that were absolutely necessary in the circumstances, and then scurried.

The real agents of truth, in this case, are the backroom boys in the Transvaal Attorney General's office hellbent on sending the killers to jail and if this licky-split hearing ends up quashing their efforts, the commission could end up defeating the



Seeking amnesty: Colonel Roelf Venter, Captain Wouter Mentz, Warrant Officer Paul van Vuuren, Brigadier Jack Cronje and Captain Jacques Hechter

ends of justice rather than fulfilling its mission to uncover the grim reality of the past.

Luckily for the truth body, though, the process is more complex and unpredictable. A team of six experienced lawyers, each of them representing the families of people who were murdered by the five amnesty applicants, is now sitting at the kitchen table in the city hall. They are armed with the experience required to interrogate these men and force from them details that may otherwise not have been forthcoming.

The amnesty hearings have also already created the first chunk in the armour that South African Defence Force officers have thrown around themselves since their victorious non-guilty verdict in the Magnus Malan murder trial.

Evidence by Brigadier Jack Cronje, one of the five policemen seeking amnesty in Johannesburg this week, indicates the military was more deeply involved in covert operations than it admitted in its official submission to the truth commission on Monday (see accompanying story).

Cronje revealed the existence of a top-secret "counter-revolutionary information target centre", known as Trewits, which had the job of targeting

anti-apartheid activists who needed to be "intimidated or eliminated". Military intelligence and the military's special forces had participated in this centre's monthly meetings.

Evidence about the 1986 murder of Dr Fabian Ribeiro and his wife, Florence, due to be given by Warrant Officer Paul van Vuuren, one of the amnesty applicants who participated in the killings, is also likely to show that members of the SADF's Civil Co-operation Bureau were involved.

Then there is the psychological impact of Van der Merwe's admissions this week. Even though he was economical about the dirty tricks in the spectrum that exists between the big bomb at Khotso House and the specific booby-trapped hand grenade attack on the East Rand, the former general's behaviour and announcement that he will apply for amnesty may well encourage more security force officers to come forward.

Thus it may well be that this was the week in which students of the truth commission will be able to say with hindsight that Boraine — even though he and his colleagues didn't exactly plan it properly — was right when he said the dam wall was about to crack.

TRUTH &amp; RECONCILIATION COMMISSION

# HALF THE FLOODGATES OPEN

(252) FM 25/10/96

**The Truth** & Reconciliation Commission this week toppled the first domino in its quest to expose perpetrators of apartheid crimes and their political masters

But a question mark still hangs over the commission's ability — or will — to extract information about excesses perpetrated by militants in the ANC and PAC

As former Police Commissioner Johan van der Merwe's subpoenaed testimony unfolded before the commission's Amnesty Committee in Johannesburg on Monday, it was apparent that the unravelling of apartheid-era murders and security force dirty tricks had finally begun

"The dam wall is breaking," said TRC deputy chairman Alex Boraine

Van der Merwe had implicated himself, his predecessor ex-Police Commissioner Johan Coetzee, former Law & Order Ministers Adnaan Vlok and Louis le Grange (deceased) and retired President P W Botha in several murderous deeds

Van der Merwe's testimony, and that of the five former security policemen seeking amnesty for involvement in up to 40 political murders, rendered meaningless a stolid, sanitised submission by the Defence Force to a commission hearing in Cape Town on the same day

The 80-page historical account, compiled by a team appointed by Defence chief General Georg Meiring and presented by retired chief-of-staff Maj-Gen Deon Mortimer, failed to mention any unlawful acts by the old Defence Force in support of apartheid. This led Boraine to berate the generals for a "breath-takingly one-sided" submission

But the Defence Force's stalling may be in vain. It seems only a matter of time before the military's involvement in apartheid dirty tricks starts to surface

Indeed, they were glimpsed in the Johannesburg amnesty hearing this week. Advocate Roelof du Plessis, representing the five former security policemen, said some of his clients would disclose joint security police and military involvement in the murders of Mamelodi doctor Fabian Ribeiro and his wife and KwaNdebele Cabinet Minister Piet Ntuli

The tempo of applications for amnesty is believed to be rising dramatically as more security officials realise that the game is up and disclosure is their only refuge from prosecution

In a joint statement read to the commission, the former security policemen — Brig Jack Cronje, Col Roelf Venter, Capt Wouter Mentz, Capt Jacques Hechter and Warrant Officer Paul van Vuuren — called on their former colleagues, superiors and political leaders to come clean



about the gross human rights violations they had committed

They said they "seriously doubt" the National Party's earlier submission to the TRC that NP leader F W de Klerk, the Cabinet or the State Security Council had ever authorised murders, assassinations, assaults or the like

Van der Merwe did not dispute the NP's claim. But he did claim that

□ In 1988, Vlok instructed him to bomb Khotso House, the SA Council of Churches' headquarters in Johannesburg, which had become the nerve centre of the ANC's clandestine activities inside SA. Vlok told him the order had come from President Botha personally, with an instruction to minimise casualties, and  
□ In the mid-Eighties, Le Grange approved a proposal Van der Merwe made

to Commissioner Coetzee that a consignment of booby-trapped handgrenades and a limpet mine be surreptitiously provided to East Rand militants who were planning to attack the homes of policemen. The "zero-fused" weapons were delivered as if from the ANC and several activists killed themselves in the attacks

Van der Merwe stressed that the handgrenades were provided only after the police learnt the militants would carry out the attacks, anyway

Van der Merwe spoke at length about the context of those attacks, pointing out that the ANC had after 1985 adopted a more aggressive military strategy — scrapping the distinction to avoid civilian casualties. As more non-military figures came under attack, more policemen and their families in townships were also attacked and killed — a trend which continued into the Nineties

Whereas 270 policemen were killed from 1980-1990, 267 were killed in 1993 alone. In 1984-1985, 70 people were necklaced, there were 328 in 1986 alone

The security forces were powerless to stop the wave of police killings legally as no-one was willing to testify

Vlok and Van der Merwe say they will apply for amnesty

The security men's testimony contrasts starkly with the dearth of willing confessors on the side of the anti-apartheid forces. The commission has already heard allegations from former MK combatants about atrocities in ANC military camps and a few brave accounts of mob rule by the "comrades" in the Eighties

So where are these intimidators — the consumer boycotters who forced old women to eat soap powder, the necklacers and midnight petrol-bombers? Who was behind the alleged ANC order to attack the East Rand policemen whom Van der Merwe spoke of?

The commission has yet to hear from them. Until it does, the impending flood of confessions from the apartheid dirty tricks brigade will be only half the truth ■

# Tutu objects to ANC stance on amnesty

## *Calls for 'a clear statement'*

JOHN YELD (252)  
ON THE TRUTH COMMISSION

ARG 25/10/96  
Truth Commission chairman Desmond Tutu has told President Mandela there is not much point in having a Truth and Reconciliation Commission if one side believes it can grant itself amnesty.

He called on the African National Congress to make "a clear statement" that its leaders and members will apply for amnesty for any acts for which they may be charged or sued.

If they did not do this, South Africa "might as well have chosen the course in other parts of the world of granting blanket amnesty", Archbishop Tutu said.

This follows an hour-long meeting with President Mandela last night to discuss a statement by Mpumalanga premier Mathews Phosa that some ANC leaders would

not apply for amnesty because they had acted in the course of a military struggle.

The two men also discussed a proposed change in the commission's cut-off date from December 15, 1993, to the date of President Mandela's inauguration, May 10, 1994.

President Mandela said the ANC's national executive committee may support Mr Phosa, but he also left open the possibility of the premier's view being rejected.

■ Last week, President Mandela dug his heels in over the amnesty cut-off date, with a firm rejection of any extension.

"As president, I don't see any possibility of extending the cut-off date," he said.

But Archbishop Tutu said the president had explained to him that he had simply been reflecting current ANC policy.

"I accept that he did not prejudge the issue before hearing our motivation.

"After our discussions, he said he would take the matter to Cabinet."

# Moment of truth as TRC prepares to send out subpoenas

(252)

Star 26/10/96

By ESTHER WAUGH  
and ADRIAN HADLAND

The net being cast around the perpetrators of apartheid era human rights abuses will close a little tighter next week as the Truth and Reconciliation Commission prepares to issue more than 50 subpoenas countrywide.

A commission spokesman told the *Saturday Star* yesterday that 40 subpoenas were being prepared in the wake of commission hearings in Kwa-Zulu Natal and the Free State, in which victims named alleged human rights abusers.

Eight have been served in the Western Cape while further subpoenas are expected to be issued in all other regions.

The vast majority of the subpoenas will be served on members or former members of the security forces, the SA Police Service in particular.

The family of murdered Durban academic Rick Turner asked the commission this week to subpoena at least 11 people - including former Durban murder and robbery squad members and policemen associated with the Bureau of State Security - who they thought could help solve the mystery of Turner's death in 1978.

Deputy commission chairman Alex Boraine confirmed that subpoenas were already on their way to six or seven of those named in the Turner hearing this week.

Former security policeman Colonel Gideon Nieuwoudt, one of those subpoenaed this week

in connection with the 1985 abduction of three Port Elizabeth activists, had not been given sufficient time to prepare for his appearance before the commission's amnesty committee on Monday, according to his lawyer, Sapa reports.

Port Elizabeth-based attorney Francois van der Merwe said yesterday he had requested the commission to postpone his client's appearance by at least a week so that he could study the testimony of former Vlakplaas operative Colonel Roelof Venter.

Venter implicated Nieuwoudt in the abduction of the three Port Elizabeth Black Civic Organisation activists from Port Elizabeth airport in May 1985 when he testified before the commission's amnesty committee earlier this week.

## Result

Venter is among five former security branch policemen who have applied for amnesty for more than 40 murders.

As a result of his testimony, the amnesty committee decided to subpoena Nieuwoudt and three other policemen also implicated in the disappearance of the three activists.

However, Van der Merwe said Nieuwoudt was only served with a subpoena on Thursday afternoon.

"We are of the opinion that the time given to my client to present himself in Johannesburg on Monday is not reasonable. We will be asking the committee to excuse Nieuwoudt from Mon-

day's proceedings. We are not saying that we will not attend the hearings, but my client needs time to prepare himself."

According to the legislation governing the commission, all interested parties should be informed of an amnesty hearing prior to its taking place.

Nieuwoudt arguably qualified as an interested party.

Commission chairman Archbishop Desmond Tutu, meanwhile, will appear before the Cabinet soon in a bid to persuade the Government to extend the cut-off date for amnesty applications, according to President Nelson Mandela.

Mandela, who met Tutu on Thursday to discuss the extension from December 6 1993 to May 10 1994, said that if the Cabinet agreed, Tutu would be invited to put his case.

Mandela and the Cabinet have previously indicated their opposition to the extension on the grounds that it would send the wrong signal to criminals. Several rightwingers and Pan Africanist Congress members who committed atrocities during the extension period will be eligible for amnesty if the date is moved.

Asked about Mpumalanga Premier Mathews Phosa's statement that Umkhonto weSizwe commanders would not apply for amnesty for attacks on legitimate military targets, Mandela said a decision for MK commanders not to lodge amnesty applications for such attacks would have to be taken by the ANC's national executive committee.



# Still playing a role ...

## *Amnesty hot on the case of the new SA*

ARC 26/10/96 (252)

PIETER MALAN  
STAFF REPORTER

**After years of playing a leading role in reporting on and making people aware of apartheid atrocities, Amnesty International is still playing its part as a human rights watchdog in South Africa**

But now the once-banned organisation, which recently opened its first full-time office in the country in Cape Town, is also reporting on the actions of the present government

Torture, providing amnesty to human rights abusers and South Africa's relations with countries with less-than-perfect human rights records are still high on the agenda

South African chairman Noel van Breda said although the chapter on South Africa in the organisation's annual report had become shorter over the years, with less reference to the serious abuses of the past, the organisation still took a keen interest in what was happening in the country

He described the organisation, established in 1961, as a worldwide voluntary movement working to prevent some of the gravest violations of fundamental human rights

Its main focus is on prisoners of conscience, ensuring fair and prompt trials for political prisoners, the abolishment of the death penalty, torture and other cruel treatment and extrajudicial executions and "disappearances"

Mr Van Breda said one of the South African branch's major focuses at the moment was foreign affairs policy

"We want South Africa to write a human rights charter into its foreign affairs policy"

He said this would mean that human rights were always on the agenda when talking to countries like Nigeria, Libya, Morocco, Cuba and Iran

"We are not saying the government should not talk to these countries, but they should protest human rights abuses when talking to them"

This, he believed, was not happening enough

***'We want SA to write a human rights charter into its foreign affairs policy'***

Earlier this year Amnesty International also revealed that South African companies were exporting electric shock batons that eventually land up in the hands of Chinese interrogators who used them to torture imprisoned Tibetan monks

The Cape Town office of the organisation also wrote to Western Cape police minister Gerald Morkel in June after allegations that detectives were still using torture as a means of getting admissions from suspected criminals

Other campaigns include opposition to the amnesty provisions of the Truth and Reconciliation Commission

"We believe that those guilty of human rights violations must be punished

These include the ANC's Robert MacBride who should be prohibited from holding public office, he said

Amnesty International's Cape Town office is open from Tuesday to Thursday 12pm to 2pm and on Saturdays from 9am until 1pm. Call them at 24-5776



Amnesty office: Noel van Breda in Amnesty International's recently opened Cape Town office

# Death of Joe's

# 'Kamnikaze' Kids

(262)

EP 27/10/96

townships ungovernable

"I convinced him and he said he would take us to other comrades at a mass meeting. I suggested that we needed potential leaders who would act swiftly like real commanders."

The other Vlakplaas operative got cold feet because his brother was a Cosas member, said Mamasela. "I was then assigned to go with Daniel Nkala, a specialist in the use of hand-grenades, to train the students."

They had driven to a disused mine, where Nkala had shown students how to handle F1 hand-grenades of Russian origin.

Veli Mazibuko - who later lost two fingers - was then given a grenade. When it exploded, the students were excited, said Mamasela.

"After seeing that the grenades worked," said Mamasela, "the students had confidence in us. We decided on a mission to hit 'targets'."

An appointment was made for a particular day in June 1985 when the so-called targets' houses would be attacked. The mission was to be carried out at midnight.

"We waited for them until 11 pm that night. Just as we were about to leave, we saw a bakkie flashing its headlights. We saw Veli driving," said Mamasela.

"We went to one house, where I gave them a box containing 18 booby-trapped hand-grenades. There were about six or eight guys."

□ Mamasela said the students had been "happy" after receiving the hand-grenades - and had looked forward to their "first ANC internal mission."

"In my heart, I was saying a little prayer because I knew what was going to happen - havoc."

"The students had been instructed to each pick his own target. It sounded logical because of its secrecy. No one suspected anything."

Mamasela said he and Nkala had left with Motsweni. "We had an SPM limpet mine weighing about 7,6 kilogrammes. It was also part of Operation Zero Zero. Once you pull the safety pin, it goes off."

According to Mamasela, just few minutes before midnight Motsweni had already chosen his target - an electrical transformer station supplying electricity to the township.

Motsweni was accompanied by Nkala, who carried an AK-47 - while Mamasela waited in the car.

"Motsweni was confident because there was a trained cadre with him," said Mamasela.

"After a few minutes there was a devastating explosion. I had never seen anything like that."

□ After listening to a radio news bulletin, De Kock congratulated them on the "world-class mission."

Then they had a party.

## The flaming red tongue of death . . .

By WALLY MBHELE

"IN A SPLIT second, there was a tremendous explosion that shook my car," Joe Mamasela says as he describes - in chilling detail - the explosion of a booby-trapped landmine that blew a university student, Congress Motsweni, to smithereens.

Motsweni was one of eight students from the East Rand townships of Duduza, Tsakane and KwaThema who were killed by booby-trapped hand-grenades and a landmine supplied by Mamasela in a plan devised by Eugene de Kock.

Like a horror story, Mamasela graphically describes that night.

"I saw thick, black smoke billowing into the sky. In the middle, I saw a red tongue of flame. I knew Motsweni must be dead."

"As I drove around a corner, I was surprised not to see my companion, Daniel Nkala. I feared for his life. Then I saw him

running to the car. I was relieved he was not dead."

Mamasela, now a state witness in the trial of former Vlakplaas policemen, says they drove away from the scene of the explosion "at neck-breaking speed" - with their AK-47 rifles and hand-grenades ready for any roadblock.

"The order had been clear: avoid arrest at all costs - even if it meant killing policemen or soldiers in our way."

The next morning at Vlakplaas, "we started monitoring radio news bulletins. At 7.30 in the morning we heard numerous bodies had been found scattered around the three townships."

"News reports at first put the death toll at three. With each news bulletin, it went up and up. When it reached six, De Kock was so excited that he rubbed his hands in jubilation."

"He said the operation was the first in the world where terrorists had blown themselves up. Then I saw I was dealing with an animal - a monster."

## Rigged bombs for youths

By CHARLES MOGALE

CITY Press can today disclose the events leading to the blowing up of eight youths in Duduza township on the East Rand by Vlakplaas operatives in June 1985.

The youths were given rigged hand-grenades to blow themselves up in what security police codenamed Operation Zero-Zero Hour.

Convicted killer Eugene de Kock, who masterminded the killings, called the massacre of the student leaders Operation One-arm Bandit as most of the victims lost an arm in the explosions.

The first indications of how the students were lured to their deaths came when former Vlakplaas operative Joe Mamasela gave evidence against De Kock in the Pretoria Supreme Court, detailing how he was instructed to infiltrate the Cosas members who were "causing havoc" on the East Rand.

De Kock is awaiting sentence on six convictions of murder and various other charges.

In June 1985, De Kock, who was then a captain and in command of Vlakplaas killer squads, ordered that Cosas leadership should be infiltrated because they were causing havoc in the townships of Duduza, KwaThema and Tsakane.

The hitsquad men were given a list of "troublemakers", the chief of whom was Turfloop University BSc student Congress Mtshweni of KwaThema.

With the aid of a local askari, the student leaders were located

and infiltrated.

Mamasela was instructed to remove Mtshweni from the township and accommodate him in a church in Potchefstroom to "protect" him from the security police.

In a matter of weeks, Mamasela and askari Daniel Nkala were running student politics in the area.

The Vlakplaas men submitted their report to the Springs security police, who decided to call in Brigadier Jack Cronjé, who in turn referred the matter to De Kock.

De Kock gave orders that the students be invited by the askaris for "military training" with F1 hand-grenades. Mtshweni was fetched from the church in Potchefstroom to join the rest of his comrades.

After the first training session, the students were instructed to return the following day to launch an operation in support of the then Unity in Action strategy of the liberation movement.

They were given rigged hand-grenades, and Mtshweni, as their leader and "most feared" was given an SPM limpet mine with a zero contact. All the grenades and the mine would explode as soon as the safety pins were removed.

Each was advised to choose a target to attack at exactly midnight, June 25, hence the code-name Operation Zero-Zero Hour.

At 11.30 pm, the students and the askaris advanced towards their targets.

As expected, the students blew themselves up, and the askaris escaped and withdrew to their base.

# kill Cosas students came from Cabinet'

By WALLY MBHELE

**CONVICTED self-confessed hit-squad killer Colonel Eugene de Kock promoted former Vlakplaas operative Joe Mamasela to police sergeant after the massacre of eight students with booby-trapped hand-grenades.**

The operation – allegedly ordered at the highest level of the former government – so excited De Kock that two other Vlakplaas operatives were each given a reward of R2 000 after a braai was held in celebration

De Kock – the mastermind behind the grisly operation – later described it as “the first in the world where terrorists blew themselves up”, City Press can reveal today

□ Details of the operation were disclosed to City Press this week by Mamasela, who told of how he had infiltrated East Rand Congress of South African Students (Cosas) activists – supplying them with booby-trapped hand-grenades before luring them to their death

Mamasela's revelations come in a week of high drama at the amnesty hearings in Johannesburg – in which former police commissioner General Johan van der Merwe for the first time admitted his role in past human rights violations

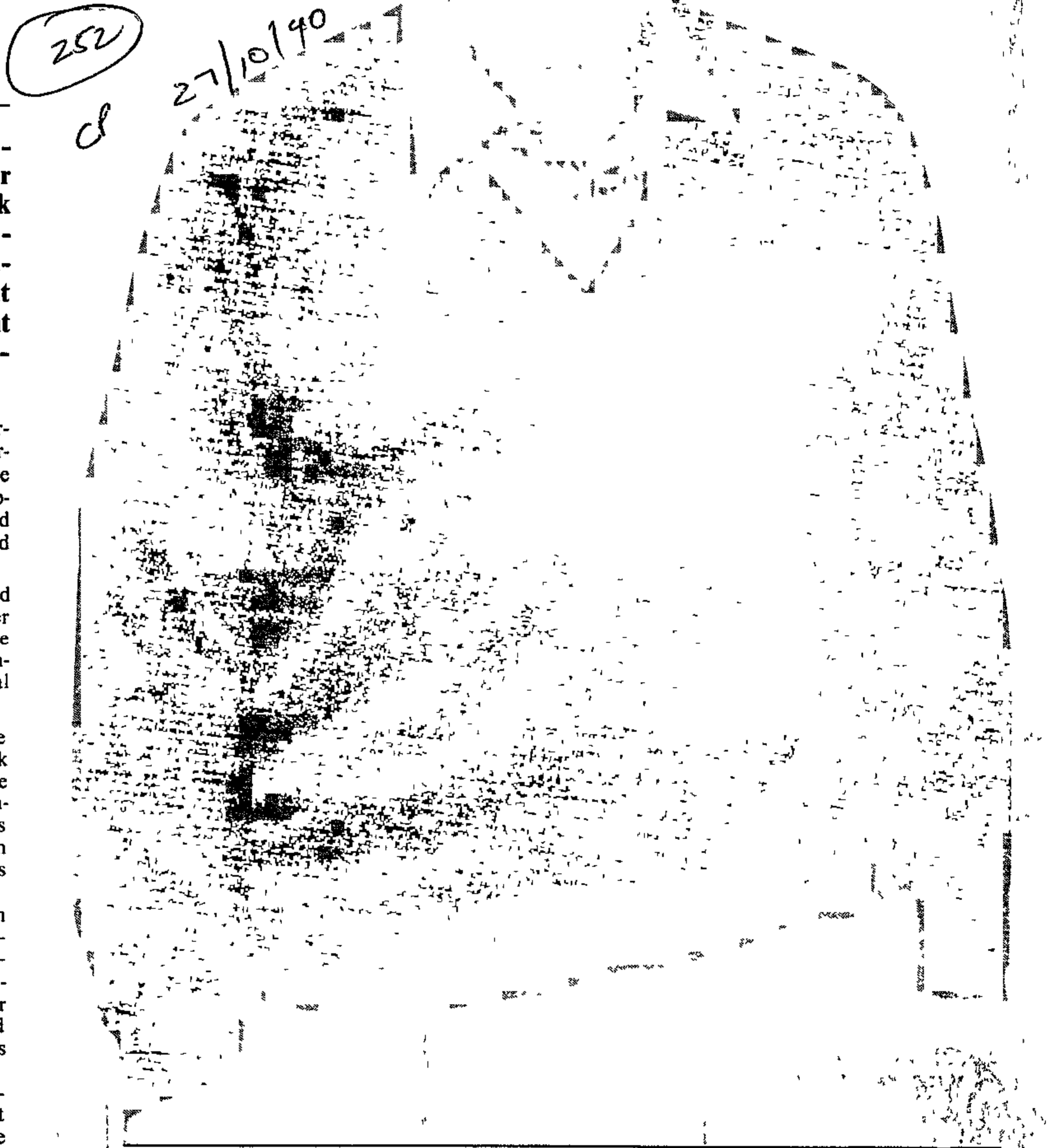
Revealing that he had personally ordered the killing of the East Rand students, Van der Merwe told a hushed Truth and Reconciliation Commission hearing that orders to kill students with booby-trapped grenades had been sanctioned at cabinet level

Van der Merwe also disclosed that former president PW Botha and former minister of law and order Adriaan Vlok had personally ordered the bombing of the South African Council of Churches headquarters, Khotso House

Giving details of how the eight student activists had been killed, Mamasela told City Press he had

been clear: avoid arrest at all costs – even if it meant killing policemen or soldiers in our way.

“I saw thick, black smoke billowing into the sky. In the middle, I saw a red tongue of flame. I knew Motsweni must be dead.”



'THE FIRST TIME TERRORISTS BLEW THEMSELVES UP' – Eugene de Kock 'gloated' about student massacre

received orders to blast the students from De Kock. The operation had been code-named Operation Zero Zero

“It was dubbed Zero Zero because it was to take place at midnight,” said Mamasela, who revealed that De Kock had driven from Durban to plan the operation

This was after a meeting in which Brigadier Jack Cronjé – now pleading for amnesty – had said

the decision to kill the students could not be his prerogative alone as Vlakplaas was under De Kock's command

Cronjé had been told by a former Springs security head (whose name Mamasela had forgotten) that all the troublemakers' home addresses and identities had been established

Mamasela and another Vlakplaas operative were then given a

list of “suspects” who were to be infiltrated. Chief among them was a University of the North student, Congress Motsweni.

“They went to show us Motsweni's home in Tsakane at night before we went by ourselves the following day,” said Mamasela.

He said they had introduced themselves to Motsweni as “graduates from exile who have been instructed to come and help in

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CP

27/10/96

**A judge who  
knows the pain  
of injustice**



**BITTER MEMORIES** Judge Ismail Mahomed wasn't always welcome in the Free State - where he now has to give the judiciary a new image

**THE APPOINTMENT** of Judge Ismail Mahomed as Chief Justice of South Africa did not come as a surprise to a country which had already been prepared for this eventuality

When President Nelson Mandela made public his nomination of Mahomed for the senior legal post two months ago, there was little doubt that his endorsement was all over bar the procedural formalities

By making his preference known in advance, Mandela has placed the incoming Chief Justice at the centre of what his admirers feel is an undeserved focus. Mahomed's performance will be placed under closer scrutiny than that of any of his predecessors

Many questions are going to be asked. In spite of his outstanding credentials, there are many among his professional colleagues who are hoping he will trip up - in order to "prove" that Mandela was wrong to have appointed him.

A number of them have expressed displeasure that Mandela nominated him. It was argued that the President was trying to manipulate the Judicial Service Commission, which had to recommend one of the two candidates.

It is also common knowledge that some members of the appellate division who are going to work closely with him had preferred Judge Hennie van Heerden and it is a matter of conjecture what his working relations will be with them.

Going to live in Bloemfontein, the seat of our judiciary, sits uneasily on Mahomed. By his own admission, returning to the Free State "revives fresh wounds and painful memories which I cannot and would not want

to obliterate"

And why should he? Mahomed, like other South Africans of Indian extraction, was barred by apartheid laws from staying overnight in this province. During his years at the Johannesburg Bar he was forced to go to the Appeal Court in Bloemfontein - but had to make sure he was out of town before nightfall, even if his case was not over.

In a press statement released soon after his appointment was announced, Mahomed recalls how "every meaningful public facility in the Free State was denied to me and I was compelled to skulk away across the provincial borders to avoid contravention of the law"

It is such indignities which are etched in his memory as he contemplates returning to a province which humiliated him for so long.

While the province holds bitter memories for Mahomed, his enormous workload is such that he may not have the privilege of mulling over the irony that from January 1 he will be one of the Free State's most respected citizens.

Mahomed has the unenviable task of restoring the legitimacy of the judiciary in the eyes of the majority of South Africans. It is a job that will tax even this gifted lawman.

Mahomed is aware of the enormity of the problem and the challenges that lie ahead. He says the restoration of legitimacy can help bring justice to the people and restore the moral fabric of society destroyed over the years by racism.

If there is anyone eminently suited for this Herculean task, it is the Fordsburg lawyer known for his sharp wit and great sense of humour.

2527 CP 27/10/96

By CARMEL RICKARD

IT IS IRONIC that the new chief justice, Ismail Mahomed, was officially named in a week of revelations proving the extent of police brutality and corruption under apartheid.

During his interview for the job, he said the new chief justice would come to office at a time filled with "the romance of having defeated evil".

As an advocate, Justice Mahomed tackled the security laws that provided the police with a screen behind which to kill, maim, defraud and torture at will.

But not all judges can say the same. Among the chief justices before him are those who strengthened the police's power over detainees through their legal interpretation. And the court he will lead includes judges who declined to "defeat evil" by protecting detainees from the police.

The scale of police corruption and brutality which emerged this week took many judges by surprise.

One said privately that at worst he had believed the force contained a few "rogue" policemen. He had had no idea of the scale of corruption, nor had he suspected "the rot had set in from cabinet level down".

But the judiciary has a long history of helping shape the law under which opponents of the government were detained without access to lawyers, family or even the court.

Liberal politicians, human-rights lawyers and anti-apartheid activists repeatedly warned against the inevitably corrupting result of security laws.

But the government steadily increased the police's detention powers and, as the late legal commentator Tony Matthews put it, "did its damndest to neutralise the role of the courts in relation to detention".

Many judges went the extra mile to ensure that detention policy was implemented. Two early cases illustrate the court's willingness to accept the parliamentary restrictions on its power and help ensure the purpose of detention was achieved.

The first, decided in 1964, involved a Constitutional Court member, Justice Albie Sachs. Then a detainee, he had requested access to books and writing material.



FEARLESS... Ismail Mahomed will go where few other chief justices have been. Picture: JOE SEFALE

# Putting justice back into SA's judiciary

ST 27/10/96

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It was an open question, but the Appeal Court ruled against him in a judgment which set the tone for similar decisions.

The then chief justice, J C Steyn, supported the judgment of Mr Justice Ngwenya-Thompson that the purpose of detention was to "make a detainee talk". This aim could be undermined if the detainee could relieve the "tedium" of detention.

A year later, Judge Steyn clarified his position. A detainee's wife had heard her husband was being unlawfully interrogated around the clock. The police denied this and the court had to consider whether to order that the detainee be brought to court to say what had happened.

The court again abdicated its role as protector, ruling that the purpose of detention would be frustrated if it intervened to help a detainee. Ordering a detainee to court would "result in an interruption of his detention and interrogation designed to induce him to speak".

Wits law professor John Dugard says the decisions gave the police a clear message: the highest court did not believe it was the judiciary's function to interfere with interrogation methods for detainees.

Emboldened, the government passed more oppressive detention laws which ensured detainees were kept in solitary confinement and allowed no outside contact, excluded the courts even further and handed the police yet more power. In the name of the national security crisis, the police could do what they liked with suspects.

This week's disclosures about police corruption will vindicate Justice Mahomed and others who fought to prove that security laws had led to the misuse of police powers and the reluctance of most judges to intervene on behalf of detainees.

Under apartheid, Justice Mahomed was first not offered and then refused an appointment to the South African Bench, but was snapped up to serve in several

neighbouring states.

One of his first major decisions after being permanently appointed to the Namibian Bench was whether to release an Irish national, Donald Acheson, who was widely believed to have murdered Namibian advocate Anton Lubovskii. By the time Justice Mahomed had to consider his bail application, Acheson had spent seven months in jail awaiting a trial which seemed unlikely to start because the state could not get its key witnesses extradited from South Africa.

The judge was faced with popular outrage against Acheson as the perceived murderer of a liberation hero. But he was also faced with the demands of a constitution that he protect the rights of personal liberty, human dignity, trial within a reasonable time and the presumption of innocence.

He considered the crime with which Acheson was charged and the likelihood that he might not stand trial. But he also considered Acheson's rights and the fact he had been in jail for months, waiting for a trial which might never start.

Against this background, Justice Mahomed had to decide whether Acheson should be released on bail, knowing this would be both unpopular and risky.

After weighing all the facts and possibilities, he made up his mind. "An accused person cannot be kept in detention pending his trial as a form of anticipatory punishment," he said, granting Acheson bail which was subject to strict conditions. However, Acheson could not raise money for bail and stayed in jail until charges against him were dropped.

It was to prevent a re-occurrence of the kind of police atrocity admitted to this week that South Africa's constitutional negotiators insisted on protection for detainees and suspected criminals in the Bill of Rights.

They have empowered the courts to make those guarantees a reality. But there is a catch, these powers must protect even those as unpopular now as detainees and political activists were under apartheid.

The new chief justice has shown that he is prepared to do that.

# ANC clears up position on amnesty

BD 28/10/96 (252)

Wyndham Hartley  
and Stephen Laufer

THE ANC moved swiftly yesterday to defuse a potential conflict with the truth commission over remarks by Mpumalanga premier and party legal adviser Mathews Phosa which appeared to be dismissive of the amnesty process when applied to former Umkhonto we Sizwe guerrillas.

Commission chairman Archbishop Desmond Tutu's response that parties could not grant themselves amnesty had been based on misleading reports of what Phosa had said, the party said yesterday.

The reports had left out a crucial part of his statement making it clear that those responsible for legitimate acts of war would apply for amnesty if their actions had led to human rights

violations, the party said.

Tutu had earlier challenged the ANC to repudiate Phosa's reported statement that ANC members would not apply for amnesty for acts committed during the armed struggle.

He told President Nelson Mandela last week that if one side awarded themselves amnesty there was no point in having a truth commission.

The exchange came in a meeting between Tutu and Mandela during which the commission chairman was motivating for the December 1993 cut-off date for political crimes to be moved to May 1994 and for perpetrators to be given a further three months to apply for amnesty.

Tutu said he did not accept Phosa's statement that ANC members need not apply for amnesty for military actions because it was a similar argu-

ment to that being used by former defence minister Magnus Malan to avoid testifying before the truth commission.

He said that if SA did that it might as well have granted a general amnesty instead of establishing the commission.

Tutu explained that Mandela had given him the assurance that the commission recommendation that the cut-off dates be extended would receive objective consideration.

Mandela explained that his rejection of any change in the dates was simply a statement of ANC policy. He also gave an undertaking that he would arrange for Tutu to address the Cabinet on the matter.

The Freedom Front and the PAC have all motivated for the December 1993 cut-off to be moved to the date of Mandela's inauguration, May 10 1994.



# TRC sees truth as healing

(252) *Louise van 29/10/96*

By Suzanne Daley

**T**ELLING THE TRUTH about past atrocities is the way for a brutalised society to bind up its wounds, the theory goes

Now South Africa has seen glimpses of the best this technique can offer. An army general admitting he was the one who gave the order to fire on unarmed demonstrators at Bisho in 1992 and a police captain who helped kill 13 women and children asking the victim's families to "consider forgiving him"

But are such moments enough to heal the nation? In trying to put the past to rest, South Africa has fashioned itself the biggest, most expensive and most powerful "truth commission" ever devised

In exchange for confessions about atrocities under 40 years of apartheid rule, it plans to offer amnesty

## Gambling on truth

It is gambling on truth as medicine for its society, rather than justice in the sense of seeing people tried, convicted and sent to prison. This approach has been tried in other countries in recent years and it has a following. The believers say that truth is at least half of justice

And truth commissions, experts say, are faster, cheaper and in the end may offer more detail about what happened and more catharsis for victims than war crimes tribunals like those of Bosnia and Rwanda

But efficiency isn't really the point. Truth commissions arise from political necessity. Two of the first countries to create them were Argentina in 1983, and Chile in 1990. As those countries struggled to restore peace and democracy after periods of brutal repression by the military, the generals still had some authority

## Commission unearths more details about what happened than tribunals

Jail sentences, the theory went, might have been resisted, plunging the countries back into chaos. Instead, both settled for gathering facts and publishing historical records to at least acknowledge the suffering. Broad amnesties were also granted

South Africa, too, had little choice. Providing for amnesty was part of the negotiated settlement that allowed the country to make a peaceful transition from a white supremacist government to the first non-racial elections, in 1994. Without this concession, the struggle for black liberation might have continued far longer, with even more loss of life

Still, South Africa's effort is far more ambitious than Argentina's or Chile's or any other country's so far. It is the first to have subpoena power and the first to give the truth commission itself the power to offer amnesty case-by-case. This is a weapon whose power was demonstrated last week, when the former chief of South Africa's police force admitted ordering at least two acts of terror

General Johann van der Merwe's confession was the result of a system working exactly as it had been envisioned. With prosecutors hot on their heels, five mid-level police officers ran to the Truth and Reconciliation Commission. As part of their plea for amnesty, they intended to name Vander Merwe as the man who gave the orders

So, along came Van der Merwe and confessed. Then he named the two Cabinet level officials who gave him orders. The veil of secrecy around the top levels of the former government was lifting, and commission officials

were openly delighted

The hearing that followed offered scenes of extraordinary callousness. A police colonel, for example, described his role in the disappearance of three well-known activists

He and his men held a braai while the prisoners, their torture sessions over, sat nearby with hoods over their heads, able to smell the food and hear the chatter. They were shot afterwards, the colonel assumed

"Look at them up there," said Russell Ally, who works for the commission. "They are scared and they are telling us everything. The courts could not achieve this"

Indeed. A truth commission is not bound by rules of evidence, so there can be far freer testimony as to what happened and to whom. Victims do not have to fear rigorous cross examinations. And perpetrators may actually be eager to make sure that all their crimes have been aired, so that nothing is left for prosecutors to pursue

## More inclusive

"In many ways, a truth commission can be far more inclusive," said Richard Goldstone, a South African judge who stepped down recently as prosecutor in the Balkan and Rwanda war crimes tribunals

But even avid proponents of truth commissions acknowledge that they are a complex and contradictory business. They are supposed to heal, but in producing truth they unearth traumas

How, for example, can someone hearing the coldness of the braai incident be expected to forgive? What does a society have to be made of in order to turn such bitter narratives toward heal-



Johann van der Merwe . . . went to the TRC Amnesty Committee before he could be named by others



Brian Mitchell .. admitted to the shooting of 13 people outside Pietermaritzburg

ing rather than revenge?

In fact, different societies have very different attitudes about this. In Argentina, a commission documented the military's "Dirty War" against the Left in the 1970s. Today, most of the officers involved have been pardoned, coup attempts seem to have ended, and most citizens accept that the "Dirty War" is in the past

But other countries appear to have moved past a period of violence and human rights abuses without either tribunals or truth commissions. Mozambique, Namibia and Zimbabwe are examples

"Some countries don't equate reconciliation with dredging up what happened," said Priscilla Hayner, who is writing a book on truth commissions and recently visited Mozambique. "There, reconciliation has been about letting go"

Clearly, searching out who did what and offering forgiveness may be far more of a balm for some lands than others. South Africa remains a society deeply divided - not by law any more,

but still by language, wealth, custom and religion

How victims react to the truth has varied greatly

When the army general confessed last month that he had given the order to fire on demonstrators at Bisho, he said he was sorry and the audience applauded. "It was an incredible moment," said Bishop Desmond Tutu, who heads the truth commission

## Just keep quiet

"I said we should just keep quiet a bit and we put our heads down for a minute"

But two weeks later, when the police captain admitted his role in the shooting of 13 people in a hut near Maritzburg, and with a steady gaze turned to the victims' family to ask forgiveness, the reaction was different. There was a low grumble from about 30 villagers. What had been done in Maritzburg could never be healed by any amnesty - *New York Times News Service*

# Brigadier enraged by failure of plots to kill ANC activist-priest

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(252) Stan 29/10/96

A former security police captain told the TRC that he and Warrant Officer Paul van Vuuren had been given this order

BY ROBERT BRAND

As a security police chief in 1988, Basie Smit twice ordered the elimination of a Catholic priest and activist who is now a deputy minister and was furious when both plots failed, the Truth and Reconciliation Commission (TRC) heard yesterday

Policemen testifying in an amnesty hearing before the TRC's amnesty committee also implicated Military Intelligence agents in the kidnapping and torture of Smangaliso Mkhathshwa

Jacques Hechter, who was a security police captain, told the committee that Smit had personally ordered him and Warrant Officer Paul van Vuuren to kill Mkhathshwa in 1988 by forcing an overdose of Mandrax tablets down his throat

This order followed a failed attempt to assassinate Mkhathshwa with a specially-made sniper's rifle in Durban, also on Smit's orders as relayed to them by Captain Flip Loots, Hechter said.

Smit was then a brigadier in charge of the Northern Transvaal security branch, where Hechter and Van Vuuren were stationed. Hechter and Van Vuuren are among five former security policemen who are applying for amnesty for at least 40 murders committed during the 1980s

Hechter said Mkhathshwa was identified as a target for elimination because he had become "a thorn in our flesh" as a result of his mobilisation of youths in Soshanguve, where he was a priest



Smangaliso Mkhathshwa ... the intended target



We did it ... former security policeman Paul van Vuuren

Two special rifles - a 308 and a 22, both fitted with silencers and telescopes and supplied with subsonic cartridges - were made for the operation by the security branch's technical division.

The division "knew the rifles were intended for eliminations", Hechter said

They waited for Mkhathshwa at the airport in Durban, where they hid in a minibus with curtained windows. But the plot failed be-

cause several people around Mkhathshwa, including a woman who walked right in front of him, prevented a clear shot

Some months later, Hechter said, Smit called them into his office and ordered them to "plant" Mandrax tablets on Mkhathshwa and to "force a bunch of tablets down his throat" so that he would die of an overdose

They considered this method of elimination too difficult and ignored Smit's orders, Hechter and Van Vuuren said

They did not trust Smit because of his role in placing rogue cops Jack le Grange and Robert van der Merwe behind bars, and were unwilling to risk their necks for him, they said. When they later told Smit they had not proceeded with the operation, "there was an explosion in his office", Van Vuuren said

As a result, Van Vuuren was made a gardener and driver, while Hechter was transferred to the police's security clearance division.

Hechter and Van Vuuren also told the committee about a failed attempt to kill trade unionist Jerry Thibedi - now the Speaker of the North West legislature - in 1987 by hurling a homemade bomb through a window of a house in which Thibedi was supposed to be hiding

They had made a bomb, by stuffing an explosive into an empty coffee-tin and furnishing it with a five-second fuse. This bomb virtually destroyed the Soshanguve house, but Thibedi, his wife and his child emerged with only minor injuries

# ANC agents shocked to death then blown up

JOHN YELD  
ON THE TRUTH COMMISSION

Johannesburg - Security police tortured an African National Congress double agent and two of his colleagues with a yellow portable generator and later shocked all three to death after allowing one of them to sing *Nkosi Sikelel' iAfrika*, the Truth Commission's amnesty committee heard here today.

While the man sang, the body of one of his already dead colleagues was covered with an ANC flag by self-confessed Viakplaas hit squad Askar'i Joe Mamasela, the committee heard.

The bodies of the three were later blown up with a landmine so they could not be recognised and to make it look as though they were "terrorists" who had blown themselves up by mistake.

Former Pretoria security policeman Warrant Officer Paul Jansen van Vuuren, who told the amnesty committee he was a member of the security branch's "hit squad" for that area, testified that two of the men were left bound and gagged while they went to fetch the third man.

They didn't want to do it but had to to ensure that they didn't again kill innocent women and children," Mr Van Vuuren said "It was also necessary because we were in a war situation with the ANC."

He is one of five former security police men who are applying for amnesty for 40 murders, bombings and assassinations.

Mr Van Vuuren said the incident involving the three deaths happened in 1986 or 1987. He and Captain Jacques Hechter, who is one of the five applying for amnesty - became suspicious of one of their informers, a Mr Jackson Maake, and decided to interrogate him.

They took him to a rural area north of Pretoria and tortured him with a portable generator Mr Maake then confessed to being a double agent and implicated an Andrew Makupe of Mamelodi.

The policemen immediately drove to Mamelodi, abducted Mr Makupe, and brought him to the same place. The two men were left bound and gagged overnight.

The following day, Mr Makupe was tortured with the generator and quickly revealed all the facts, Mr Van Vuuren

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said He in turn implicated a Harold Sefola who lived in Witbank

The policemen drove to Witbank, abducted Mr Sefola and returned to the site "We had to force him to talk by shocking him with the generator. Mamasela then took a knife and pushed it up Sefola's nose, whereupon he produced more information. He also pleaded for his life.

"Thereafter, Mamasela and I untied him. He asked if he could say something. I said, 'yes'. He asked if he could sing *Nkosi Sikelel' iAfrika*."

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with mine

# Smit 'ordered the murder of churchman'

Stephen Laufer

FORMER SAP deputy commissioner Basie Smit had ordered the murder of anti-apartheid churchman Father Smangaliso Mkhathshwa, who is the present deputy education minister, and military intelligence (MI) had tortured him, the truth commission's amnesty hearings were told in Johannesburg yesterday.

The testimony implicating Smit and MI by amnesty applicants Capt Jaques Hechter and W/O Paul van Vuuren is a further blow to attempts by leading SAP generals and the SADF to blame the dirty war against anti-apartheid activists on rogue security force elements. Hechter and Van Vuuren have

applied for amnesty for their role in trying to shoot Mkhathshwa and later to force a Mandrax overdose on him.

The men told the committee they had been ordered by Col Flip Loots to shoot Mkhathshwa because he was a leading activist in Soshanguve who had organised school boycotts and other anti-government actions. Loots had told them the instruction came from Smit, then a brigadier heading the Pretoria security branch.

Acting on a tip from an informer that Mkhathshwa would fly to Durban, Hechter and Van Vuuren went there intending to kill him at the airport.

Van Vuuren was to fire the shot, but they were unable to get a clear line of fire. Smit — a former narcotics detec-

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tive — had then summoned them to his office and told them to stuff enough Mandrax down Mkhathshwa's throat to kill him. Tablets should be scattered to make it look as though he was a dealer and had committed suicide.

Hechter said he objected vehemently to the plan because it displayed Smit's lack of understanding of operational limitations, and a blazing row had ensued. Smit had transferred him to the section which chose new security police recruits. Van Vuuren had been made Smit's driver, a job which also entailed doing gardening at his house.

Asked whether he would oppose amnesty for the two, Mkhathshwa said

Continued on Page 2

## Murder

Continued from Page 1

he had experienced very mixed feelings last week when Hechter had stood to shake his hand during a break. "The last time I saw him he was holding a gun to my head," he said, referring to an incident in Soshanguve.

Earlier the amnesty committee heard testimony by Van Vuuren and Hechter about the bombing of a

Mabopane house in an attempt to kill Cosatu activist Jerry Thibedi, currently speaker of the Northwest legislature. Van Vuuren claimed they believed the house was a hideout, but the committee heard later it had been the Thibedi family home for some time, and that his wife, daughter and sister had also been injured in the blast.

Four former security policemen named last week in an amnesty application relating to the disappearance of the Pebco Three were told they would be questioned later by the committee.

# Cash crisis threatens the courts

## *Omar's budget plea*

(252) A R G 29/10/96

CLIVE SAWYER  
POLITICAL CORRESPONDENT

**Justice Minister Dullah Omar today warned he had too little money to run the criminal justice system – and he is to ask the Treasury for more.**

The justice system got only one percent of the national Budget, leaving him unable to appoint additional prosecutors, he said.

"For our society, too little money has been set aside for our criminal justice system," he told an African National Congress media briefing.

Not all the money in the justice budget went to courts and prosecutors, because it acted as a conduit for funding other organisations such as the Truth Commission and the Human Rights Commission.

Mr Omar and Safety and Security Minister Sidney Mufamadi are to approach the Treasury jointly for an increase in funding.

Mr Omar said he understood the Government was committed to reducing its R30-billion deficit.

But unless spending on the criminal justice system increased in the next year, the Reconstruction and Development Pro-

gramme would be imperilled. "I am happy to see the president and Cabinet recognise that, but I would like to see it translated into spending," he said.

Johnny de Lange, head of the ANC study group on justice, said the possibility was being investigated of setting up a dedicated fund to allow the system to respond quickly to problems.

The justice ministry and parliamentary justice committees have processed six anti-crime bills this year, including measures to combat money-laundering and to allow confiscation of the proceeds of crime.

Further anti-crime legislation is in the pipeline for next year. Also under way is rationalisation of the Justice Department, to be completed by the end of next year.

Part of this process involves decentralisation of management of magistrates' courts, with control devolved from Pretoria to "clusters" of 40 courts, which will each be under a chief magistrate.

Mr Omar pointed out the transformation of the face of the courts, with black chief magistrates now serving in Port Elizabeth, Durban, Johannesburg, Bloemfontein and Verulam.

# Cleric shakes hands with man who tried to kill him

(252) ARG 29/10/96  
 The last time Roman Catholic priest Smangoliso Mkhathshwa saw former security police captain Jacques Hechter, the policeman had hate in his eyes and was pointing a firearm at his forehead.

But at the amnesty hearings, where Captain Hechter and four colleagues are seeking immunity from prosecution for more than 40 murders, bombings and assassinations, the former arch-rivals looked into each other's eyes again after nearly a decade - and this time they shook hands.

"For me, it was a very strange feeling," Father Mkhathshwa, now Deputy Minister of Education, told the amnesty committee yesterday.

In dramatic scenes which the architects of the Truth Commission's founding act must have been hoping would materialise during unfolding testimony, perpetrators and victims of gross human rights abuses came face to face and candidly acknowledged their respective deeds and suffering.

Captain Hechter and former security police colleague Paul Jansen van Vuuren told of their attempt to assassinate Father Mkhathshwa using a silenced rifle specially manufactured for the job.

They refused to carry out an order to make a second attempt on his life by forcing him to take an overdose of Mandrax.

The two also testified they had made a powerful bomb in a coffee tin and thrown it through the window of the Bophuthatswana home of Jerry Thibedi, then Cosatu organiser and now Speaker of the North-West provincial legislature.

Father Mkhathshwa, who was a parish priest at Soshanguve, outside Pretoria, at the time of the assassination attempt, and Mr Thibedi both responded from the witness stand to the policemen's testimony.

Father Mkhathshwa said he had not been aware of the attempt on his life outside Durban airport, when he had been saved by a woman in his party walking between him and Warrant Officer Van Vuuren, who was aiming the rifle from inside a minibus with tinted windows.

"I heard this information practically for the first time today when I read their affidavits," he told the amnesty committee. "My God and my ancestors are very powerful indeed," he added.

It had also been because of the support of his community that he had escaped death at the hands of the security police, Father Mkhathshwa said.

"Last week when I came into this hall and saw these five gentlemen for the first time and when Hechter stood up and stretched out his hand, I had ambivalent feelings and was sceptical," he said.

The last time he had seen Captain Hechter, the policeman, who appeared to have hated him "with a passion", had been pointing a gun at his forehead after forcing his way in by breaking down doors.

"That was my first response. But as a Christian and because of the policy of the government of national unity which places emphasis on reconciliation, immediately my second feeling was, 'Put out your hand and shake hands' - and so I did with all five (amnesty applicants).

"For me it was a very strange feeling."

# Officer tells of free access to an arsenal

# 'Special rifles ordered for assassination of priest'

## Try again, police told after first failure

ARg 29/10/96

The security police officer who blew up a Cosatu organiser's house and attempted to assassinate a Catholic priest with a silenced rifle had unlimited access to captured "terrorist" weapons at the police quartermaster's stores at Silverton.

Former captain Jacques Hechter told the amnesty committee in an affidavit that he had primarily used AK-47 assault rifles and ammunition in his covert operations.

"Explosives were obtained from the explosives division of the SA Police because I was a trained explosives expert," he said.

"It was never revealed to these people what these weapons were going to be used for, but they knew that I was allowed and had unlimited access to any weapon or medium," he said.

He talked about the two specially manufactured rifles ordered from the police's technical division for the planned assassination of the priest, Father Smangaliso Mkhatsywa.

Captain Hechter said the technicians who prepared the weapons had known they were to be used for "elimination", but it had not been necessary to tell them "the target and the date".

Asked why they had also used bombs, Captain Hechter said these had been a "tremendous intimidatory factor".

"If it (a bomb) didn't kill the person concerned, others could make the deduction that 'Look, the ANC was playing with explosives and they blew themselves up'."

Security police ordered two specially manufactured rifles with silencers and subsonic ammunition to assassinate a priest who was "a thorn in their flesh", the amnesty committee heard.

Smangaliso Mkhatsywa, now the Deputy Minister of Education, survived the attempt at Durban airport because a woman in his party walked between him and the gunman hiding in a minibus with tinted windows, the committee heard yesterday.

Former security policemen Jacques Hechter and Paul Jansen van Vuuren also told the committee that the then head of the security police, Brigadier (later General) Basie Smit, had ordered them to make a second assassination attempt.

Brigadier Smit had wanted them to kill Father Mkhatsywa by planting Mandrax tablets on him and forcing some of these down his throat to make it look as though he had died of an overdose.

The former policemen said they had refused to carry out this instruction as it was impractical. Also, they did not trust Brigadier Smit who had recently been transferred to the security branch from the narcotics division.

"I told him I didn't want to be further involved, I didn't want to play. He was unbelievably cross," Captain Hechter said.



### ON THE TRUTH COMMISSION

Reports from Johannesburg

Brigadier Smit had been so angry that he had transferred both men from the covert ops section of the security police. Warrant Officer Van Vuuren had been made Brigadier Smit's driver and "dog-body", and had been regularly ordered to supervise work in the general's garden.

Captain Hechter, who told the amnesty committee his memory was extremely weak and that a psychologist had diagnosed post-traumatic stress as the cause, said the decision to "eliminate" Father Mkhatsywa had been taken "at a high level" in either 1986 or 1987.

Two rifles, a .308, which used the same ammunition as a standard R1 rifle, and a .22 had been specially constructed by the technical division for the assassination.

The weapons had been fitted with silencers, telescopic sights and subsonic ammunition to reduce the noise.

The 22 was to have been used for a close-up shot and the 308 if a longer shot was required.

"We didn't know how far it (the target) would be." They also had an AK-47 assault rifle. The policemen had travelled from Pretoria to Durban in a minibus with curtains and tinted windows and had waited at the airport where they had been told Father Mkhatsywa would be arriving.

Warrant Officer Van Vuuren, who had grown up on a farm, was the marksman. "I was ready to shoot him with the 308," Warrant Officer Van Vuuren testified.

"However, there were people in front of him and between us I was aiming the whole time but could not shoot."

They had then decided to shoot Father Mkhatsywa through the window of his vehicle with the AK-47 rifle.

"We drove in our minibus to where he was picked up and followed," Warrant Officer Van Vuuren said. "At the (parking) point he went through, but there was a vehicle in front of us. By the time we were through, his (Father Mkhatsywa's) vehicle was gone." They had decided to try to find the priest, but had chosen the wrong route from the airport and missed him.



# Security police torturers confess to killing activists

By ROBERT BRAND

Security policemen, acting on orders "from the top", tortured to death at least five anti-apartheid activists in what was described before the Truth and Reconciliation Commission as "a war without rules" during the late 1980s

Two activists were electrocuted with a portable generator while a third, himself about to die, sang *Nkosi Sikelel' iAfrika*, former members of the Northern Transvaal security branch said in Johannesburg yesterday

Jacques Hechter, then a captain, said the order to eliminate "the worst activist elements in the

Star 30/10/96  
ANC" was given to him personally by Brigadier Johan Viktor, then second in command of the security police's counter-insurgency branch. Viktor is now retired.

Hechter, former Warrant Officer Paul van Vuuren and three other former security policemen are applying for amnesty for at least 40 murders

Testimony yesterday centred on the torture of Jackson Maake, Andrew Makupe and Harold Sefola in 1987, who, the applicants claim, were ANC members

Hechter claimed to be suffering from memory loss, but he accepted that he must have given the order to kill as he was the "hit

squad's" commanding officer

Van Vuuren said Maake was taken to a deserted field at Pietersburg, north of Pretoria, where he was tortured with electric shocks until he named Makupe as a fellow cell member

The shocks were administered by Van Vuuren and Sergeant Joe Mamasela, while Hechter took notes and asked questions

Makupe was "picked up" in Mamelodi, taken to the field and given the same treatment until he named Sefola as their leader

Sefola was kidnapped from Witbank. He started talking after "about five to 10" shocks and after Mamasela had stuck a knife

up his nose, Van Vuuren said

To force further disclosures from Sefola, they administered a shock to Maake "for about six to eight seconds" after which his "body went stiff and his eyes closed", Van Vuuren said

While Sefola sang *Nkosi*, they electrocuted Makupe. Sefola was electrocuted too

The bodies were blown to pieces by a landmine on a deserted road in Bophuthatswana

Van Vuuren said he could recall at least two other activists he had personally tortured to death

► Reports picture

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# De Kock testimony opens can of worms

By Alan Morris

THE trial of Colonel Eugene de Kock, the ex-commander of the notorious Vlakplaas unit, is drawing to a dramatic close

De Kock has been found guilty of at least six murders. In his closing testimony, he has made a number of startling allegations about the nefarious activities of the apartheid regime's security forces and their bosses

Some of these confirmed what anti-apartheid activists and organisations have always suspected. There was an organised third force which had the full co-operation of the power structure headed by then president PW Botha

## Cross border raids

He claimed that Botha knew about the cross-border raids into Lesotho and Botswana in 1985, in which 21 people were killed

Botha also knew about the plan to bomb the Congress of South African Trade Union headquarters, Cosatu House, in 1988

Adriaan Vlok, the minister of law and order at the time, also knew about the Cosatu House plan - as well as the bombing of Khoiso House, the headquarters of the South African Council of Churches and a range of other anti-apartheid organisations

After Khoiso House was blown up, Vlok attended a celebratory party at Vlakplaas, where he congratulated the



Eugene de Kock ... will his revelations lead to the arrest of generals and politicians who gave the orders? Only time will tell.

unit and said the war against the ANC would go on for another thousand years

De Kock named several generals involved in Vlakplaas activities, including former police commissioners General Johann van der Merwe, Johan Coetzee and Jac Buchner

Buchner was Kwazulu commissioner of police at the height of Inkatha's bloody war against anti-apartheid forces aligned with the United Democratic Front

De Kock claims Vlakplaas supplied

massive amounts of arms to Inkatha to wage war against anti-apartheid activists

Key members of this operation were Philip Powell, now an Inkatha Freedom Party senator, and prominent IFP members Themba Khoza and Humphrey Ndlovu

De Kock claims the weapons delivered to the IFP included landmines, fragmentation bombs, AK-47s, missiles, specially made shotguns and huge amounts of ammunition

He admitted that his unit was

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Source: *South African*

30/10/96

involved in poisoning Frank Chikane, former secretary general of the South African Council of Churches

Chikane became extremely ill during a trip to the United States, but managed to pull through

## Toxic substance

It was subsequently discovered that his clothes had been sprayed with an extremely toxic substance while his suitcase was in transit

De Kock claimed that General Bantu Holomisa, recently expelled from the ANC, was paid by military intelligence while in the Transkei defence force

Holomisa vehemently denied these allegations

Probably the most dramatic claim made by de Kock was that "super-spy" Craig Williamson was the mastermind behind the assassination of the Swedish Prime Minister Olaf Palme in February 1986

Palme, one of the severest critics of the apartheid regime and an avid supporter of the ANC, was gunned down in a Stockholm street while walking home from the cinema with his wife

His assassin has never been found. Since De Kock's revelation, Dirk Coetzee, De Kock's predecessor at Vlakplaas, has claimed that Anthony White, a close associate of Williamson, pulled the trigger

Coetzee alleged that White, an ex-Selous Scout, who joined the South

African security forces after leaving Zimbabwe, (he was allegedly involved in two attempts to assassinate Joshua Nkomo) was acting under instructions of Williamson

Swedish authorities are taking De Kock's revelations seriously and a transcript of his testimony was to be sent to the special police unit still investigating Palme's murder

Swedish investigators recently came to South Africa to follow up leads

Another remarkable claim was that Winnie Mandela's ex-driver and bodyguard, Johan Magota, was a Vlakplaas operative

## Mandela's sex slave

De Kock says he killed Magota after he became Mandela's "sex-slave". Mandela has vehemently denied these allegations

Some of De Kock's allegations remain questionable and unsubstantiated. It is clear, however, that he and his unit were involved in hundreds of atrocities

It is also evident that many of the top National Party politicians must have known some of the details

The big question is whether De Kock's revelations will lead to further arrests of the bigger fish, probably among those generals and politicians who gave the Vlakplaas operatives the freedom to kill at will - *Africa Information Afrique*

# Priest faces his persecutors

252 Lawrence 30/10/96

By Claire Keeton  
Feature Writer

It's not easy to shake the hand of a person whose finger was itching to pull the trigger of a gun pointed at me the last time I saw him," said Deputy Education Minister the Reverend Smangaliso Mkhatsiswa - after shaking the hand of former policeman Captain Jacques Hechter. Mkhatsiswa was shocked when Hechter walked over to him during the amnesty hearings of the Truth and Reconciliation Commission (TRC) in Johannesburg and put out his hand.

But he did not turn away from him and has even agreed to meet Hechter to discuss reparations for the Soshanguve community in "the spirit of reconciliation."

"I don't want Hechter to come to my parish and say what a wonderful guy I am. I want him to tell the truth. I tried to get rid of and discredit your leader of many years."

## Reconciliatory nature

"The reconciliation between him and me could be an example for the rest of the nation," Mkhatsiswa said, supporting the reconciliatory nature of the commission.

He does not speak of reconciliation as a neutral observer but as a religious man who was deeply involved in the struggle against apartheid and therefore an obvious target for the security police.

Ironically, the fact that Mkhatsiswa is a well-read theologian underlined his status as a dangerous man.

Hechter referred to Mkhatsiswa's books, which included a small Bible and Marxist literature, as a sign that he supported terrorists.

This inspiring Catholic priest survived at least three assassinations

## Revelations on how the minister survived assassination attempts

attempts on his life, abduction, torture, imprisonment and banning.

Notorious police hitman Joe Mamasela told Mkhatsiswa while describing a failed assassination attempt "God must be on your side."

Mkhatsiswa's testimony on Monday marked the end of a landmark day in the commission's history.

For the first time during the TRC's amnesty committee hearings the perpetrators of violence and their victims sat face to face in a formal chamber of the City Hall.

Both Mkhatsiswa and North West community leader Jerry Thibedi listened to Hechter and his subordinate, Warrant Officer Paul van Vuuren, describe how they had tried to murder them.

"It is painful hearing so and so confess that they themselves attempted to kill us. It was nothing new but the method was new," Mkhatsiswa told *Sowetan* in an interview.

He heard details about plots to "eliminate" and discredit him of which he had no prior knowledge.

The methods revealed by Hechter and Van Vuuren were typical of the way the police death squads operated in the 1980s, using tactics which would direct the blame on to the victim instead of the security police.

The attack on Thibedi's life was planned to make it look as if he had accidentally blown himself up.

In fact, Hechter and Van Vuuren had manufactured a bomb in a sealed coffee tin and thrown it inside the house where Thibedi, his wife, sister and daughter (then seven) were sleeping.

Moreover, the team, including Mamasela, had armed themselves with AK-47 rifles, weapons usually associated with the liberation movements.

"The AKs were arms of communist origin and they wouldn't implicate us if it was necessary to shoot," Van Vuuren said.

He testified about the attempted murder because Hechter suffers from temporary memory loss and could not remember anything about that night, October 22 1987.

"It has taken me nine solid years to know who did this. It's the most emotional day of my life. I find it very difficult to accept that their final decision was to wipe me and my entire family out," Thibedi said.

Hechter disclosed another example of the dirty tricks used by the security police. He said that his superior, Brigadier Basie Smut, ordered him to kidnap Mkhatsiswa, then force mandrax tablets down his throat and plant drugs on him to make it look like he had died from an overdose.

## Backfire

Hechter said Smut was angry (and subsequently transferred him) when he refused to execute the plan since it was logistically difficult and could backfire.

But he had not hesitated to organise an earlier assassination attempt on Mkhatsiswa which failed.

Hechter arranged to have police rifles fitted with silencers so that they could shoot Mkhatsiswa at the Durban airport.

But when he got off the plane a woman walked alongside him and Van Vuuren could not get a clear shot at the minister.

"I would like to thank that mystery woman," Mkhatsiswa said, having no idea who she was since Hechter could not remember the date of that murder attempt, which had been sometime between 1986 and 1987.



Father Smangaliso Mkhatsiswa ... came face to face with the men who tried to murder him.

PIC LEN KUMALO

The hit squad decided to follow Mkhatsiswa from the airport to see if they "could not eliminate him on the road with an AK-47" but they were delayed at a toll road exit.

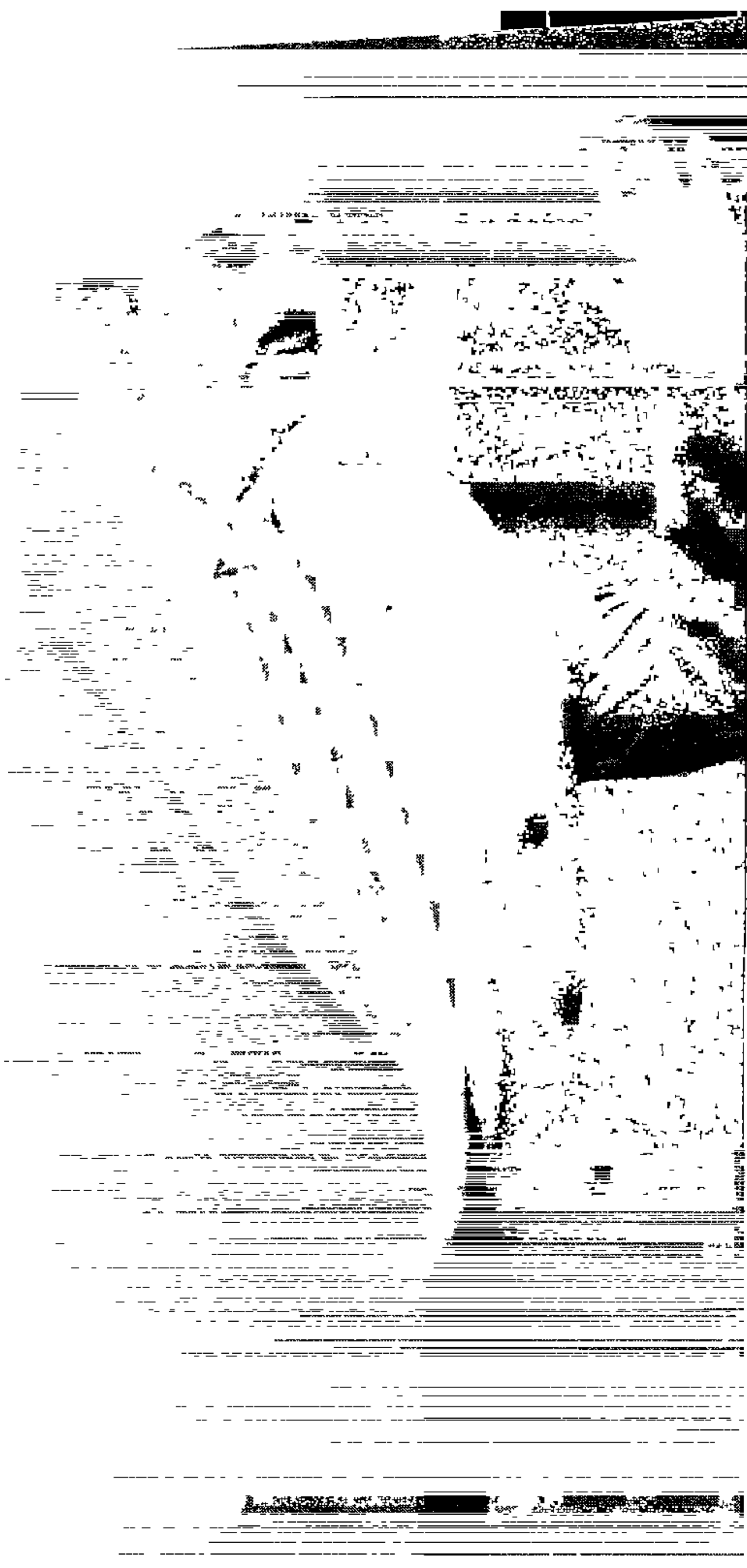
Mkhatsiswa then vanished and the road diverged in three directions so they did not know where he had gone, forcing them to abandon the attempt.

Mamasela told Mkhatsiswa, at a coincidental meeting at Shell House, that on another occasion, he led a team of gunmen to his church.

Mkhatsiswa said "When I saw Mamasela my blood froze. Then he told me a technical problem forced them to abort an assassination attempt."

Mkhatsiswa said "On the one hand I feel like I owe my life to them. But that does not mean I am grateful their operations did not always succeed. I feel angry about a society which reduced otherwise decent, normal people into killing machines."

Mkhatsiswa said he found it hard to believe Hechter, dressed in a suit and leaning on a crutch, was the same "tough no-nonsense cop" that had physically threatened him many times. "I cannot associate Hechter today with when I last saw him. I can hardly recognise this country. I could never have imagined today."



Officer Paul van Vuuren takes the oath before testifying at yesterday's sitting of the Truth and Reconciliation Commission.

# ANC men 'shocked to death'

*Sowetan 30/10/96* (252)

By Mzimasi Ngudle

**T**HE Truth and Reconciliation Commission heard yesterday how junior policemen, on their own and without specific instructions, had tortured three African National Congress activists with electric shocks until they died.

In their amnesty applications in Johannesburg, they said only Captain Jacques Hechter was a senior policeman when he and Warrant-Officer Paul van Vuuren decided to kill three ANC activists in 1987.

## Electric shocks

Van Vuuren said he and Hechter were implementing Brigadier Johann Victor's and Brigadier Jack Cronje's orders under the state of emergency when they killed Mr Andrew Makupe, Mr Jackson Maake and Mr Harold Sefola with electric shocks near Peinaarsrivier in Pretoria in 1987.

Van Vuuren said they had interrogated the three, after Captain Flip Loots had warned them to be careful with Maake, whom he suspected to be a double agent. Van Vuuren was directly accountable to Hechter who in turn was accountable to Loots.

However, Van Vuuren said it was Hechter and himself who had decided

to kill the activists to protect police informers and to carry out a general instruction to eliminate ANC activists.

Hechter, who claimed he had lost his memory, said he agreed and accepted everything Van Vuuren told the commission. "If the decision had been made, it would have been mine and not his. I would have given the instruction that they be killed."

Through her lawyer, Mr Brian Currin, Mrs Elizabeth Maake said her son had never left the country for military training. This contradicted Van Vuuren's testimony that Maake was a police informer who had returned home after receiving three months' training in Botswana.

"Maake's mother says her son never left the country and had never been absent from home for three months. She says Maake was a Standard 8 pupil attending school," Currin said in cross-examination.

"He was an informer of the security branch. We took him to the Botswana border and organised him a car and a driver's licence when he came back. We had a file on him which was destroyed with all other files," Van Vuuren said.

Van Vuuren, who yesterday positively identified Maake in a photograph supplied by Currin, said he,

Hechter and former Vlakplaas operative Joe Mamasela interrogated Maake to force him to talk.

They used a 220-volt portable generator to apply electric shocks to him for at least an hour.

"He told us about Mr Andrew Makupe, an ANC activist in Mamelodi," Van Vuuren said, adding that he, Hechter, Mamasela, constables Hendrik Bokaba and Dan Silahla immediately went to Mamelodi to fetch Makupe.

They left the two in a hut overnight with their hands and feet tied. "We tortured Makupe the same way. He told us Sefola decided which targets should be attacked."

## Leading terrorist

"I learnt from his file at police headquarters that Sefola was an ANC activist and a leading terrorist."

"Thereafter, Mamasela, Hechter and I went to fetch Sefola in Witbank. Mamasela, who posed as an ANC terrorist, came back with Sefola and we drove back to Peinaarsrivier."

"Mamasela pushed a knife into Sefola's nose to force him to talk. He was a very strong man who believed strongly in what he was doing. He said the ANC would govern one day. I did not believe it then."

# Alexandra residents recall deaths of loved ones during 'six-day war'

By **DAISY JONES**

An Alexandra woman has told the Truth and Reconciliation Commission she hated whites so much after witnessing her 12-year-old son's death at the hands of white policemen that it made her "want to poison white men's children".

Margaret Madalana's last born, Morgan, was shot and his head was repeatedly smashed against a wall on February 17 1986.

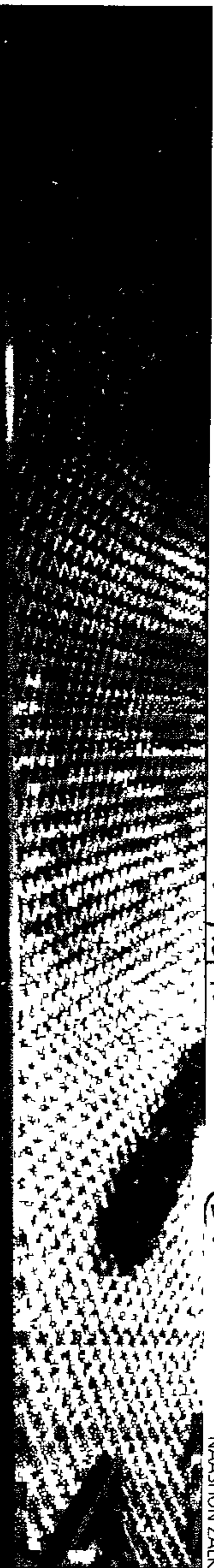
Madalana bitterly told the Commission at the Alexsan Kopano Centre in Alexandra yesterday that white students had protested against apartheid, but "they were not teargassed or killed".

Madalana was one of eight witnesses who testified about events in Alexandra between February 15 and 21 1986, the period of the so-called "six-day war".

According to Bennet Lekalala, who provided an overview of events, a police attack on mourners after the funeral of Michael Dirandinywe on February 14 had sparked the incident - characterised by death and destruction - which left at least 29 students dead.

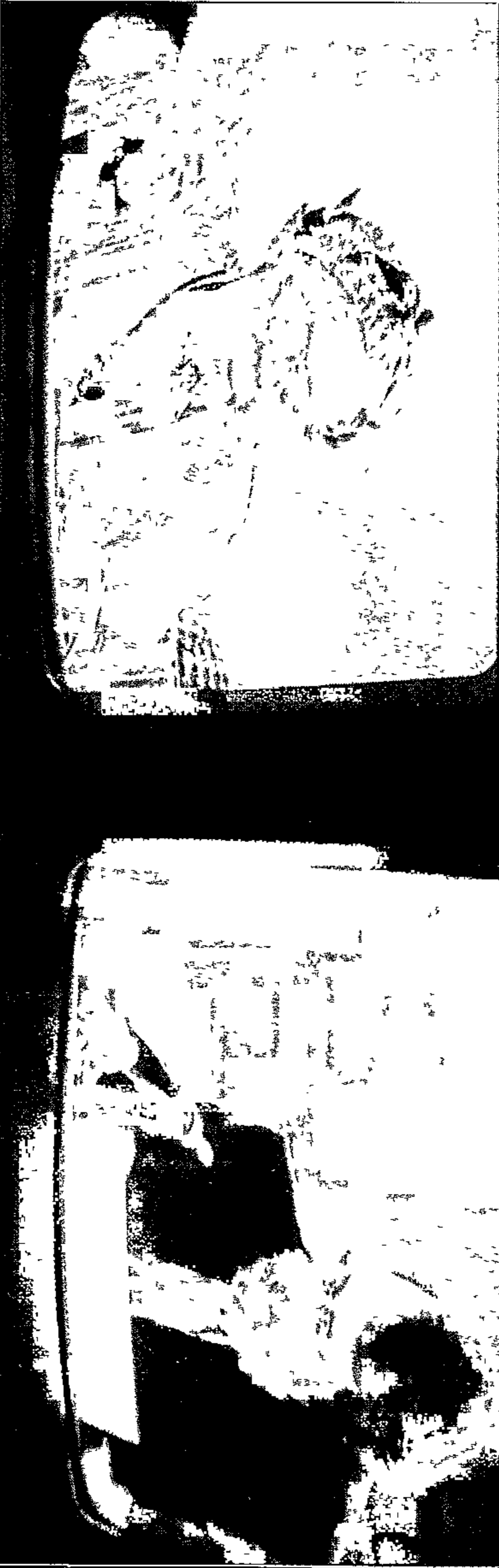
He said events which led to the death of Dirandinywe followed the "six-day war" presented "a movement from a minimal outrage to overt rebellion".

Reuben Mosaka, a 17-year-old student, was shot dead by the security forces at a funeral during the period, his mother, Hilda, told the Commission.



*Alexandra 30/10/92 (2/92)*

NAASHON ZALK



Electronic evidence ... television monitors bring the Truth and Reconciliation Commission's hearing to journalists in the media room at the Alexsan Kopano Centre in Alexandra yesterday. Margaret Madalana (left) testifies while committee member Hugh Lewin listens.

not to go because he "couldn't see clearly and he couldn't run"

Mosaka was buried at a mass funeral for 17 youths who had been gunned down by the security forces, Mohlomi said

On February 17, Martha Smiles' husband Jerry was shot dead by members of the SADF on his way back from work

Nkosana Mngadi was shot in the leg by SAP members in camouflage clothing who opened fire on a bakkie in which he and three others were travelling

Mngadi's leg was amputated, his friend Whitey Masego was killed, and the driver of the vehicle was shot in the foot

And Daisy Mashigo was shot four times in the arm when she went outside her house, fearing for the lives of her children

The following day, February 18, Dorah Mkhale lost her son, Jabulani, who had been on his way to work. He was shot in the head by an SAP member, Mkhale said

Obed Bapela, who is now a member of the Gauteng legislature, told the commission "approximately 40 lives were lost in Alex at the time (of the 'six-day war')"

The Alexandra hearings continue today

## Omar backs Phosa on amnesty

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Star 30/10/96

Cape Town - Justice Minister Dullah Omar said yesterday he agreed with the "general approach" of Mpumalanga Premier Mathews Phosa on amnesty for members of the ANC

Phosa said last week there was no need for those involved in the 1983 Church Street bombing in Pretoria to apply for amnesty because it was an act of war.

Truth Commission chairman Desmond Tutu said afterwards there was no point in having a Truth and Reconciliation Commission if one side believed it could grant itself amnesty

Omar told a media briefing that Phosa had said the ANC had been en-

gaged in a just struggle for liberation. This was something that no one could change. The premier had also said apartheid, like Nazism, had been a crime against humanity.

Omar said it had to be recognised that there was a morality and a "general ethic in the total situation"

However, Phosa had made it clear that his statement did not exclude the need for people to apply for amnesty.

The advice the ANC had given its members was that they should cooperate with the commission and, where necessary, apply for amnesty.

The ANC would support their applications, Omar said - Sapa

# Policeman tells amnesty committee he belonged to police hit squad

Stephen Lauffer

FORMER police W/O Paul van Vuuren has for the first time confirmed the existence of police death commandos operating independently of the Vlakplaas "killing unit", saying he belonged to "a security police hit squad" in the former northern Transvaal.

Van Vuuren testified before the truth commission yesterday in support of his application for amnesty in the electrocution in July 1987 of three men the police believed to be ANC activists.

The three-man northern Transvaal security police hit squad had included himself, Capt Jacques Hechter and Sgt Joe Mamasela. They had committed the murders, Van Vuuren said.

The first to die had been Jackson Maake from Mamelodi, whom Van Vuuren said had been a police informer sent out of the country by the authorities to infiltrate Umkhonto we Sizwe (MK) while undergoing military training. On his return, he had begun turning up at the security police regional headquarters, although informers had

been instructed to keep away in order not to give themselves away.

Suspicious that he might have become a double agent and be acting for the ANC, Hechter and Van Vuuren took Maake to a remote area 70km from Pretoria owned by Pretoria Portland Cement Having grown up in the area, Van Vuuren knew access would be easy without the knowledge of the owners, and that a 220V water pump generator could be used for torture after being shocked "three or four times", Maake admitted to being a double

agent and said he worked with Andrew Makupe of Mamelodi. Makupe was abducted and taken to the farm, where he named Harold Sefola of Witbank as the cell leader after being tortured.

In Witbank that night, Mamasela — an Askari who was an ANC activist before being turned and becoming a policeman — won Sefola's confidence and convinced him to leave his house. On the highway outside the town he was bundled into a security branch vehicle and driven to the farm. Sefola had also begun talking after

## Hit squad (252)

Continued from Page 1

BD 20/10/96  
fola. After Maake died, Mamasela covered his body with an ANC flag. Sefola had told them to kill him too, that Umkhonto we Sizwe and the security police were the footfalls of the politicians, that apartheid could not survive, and that the ANC would govern one day. They had then electrocuted him.

"I never believed him that the ANC would come to power," Van Vuuren said. Family members of the three activists sobbed audibly.

To cover their tracks, the security branch killers took the bodies to a road in Bophuthatswana, where

they blew them up with a land mine.

Hechter, who has previously told the amnesty committee that he has been diagnosed as suffering from "voluntary memory loss" which prevents him from remembering certain incidents, said he had no independent memory of the death of the three activists. As in some other cases, he accepted his complicity and was asking for amnesty because he trusted Van Vuuren who said he had participated in killing the men.

Contradicting the evidence of the policemen, Maake's mother Elizabeth had never left the country for training, and had never been away from home until he disappeared in July 1987. "I don't forgive them," she said.

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BD 30/10/96

## Squad

shock torture, but the security policemen had wanted more information. Mamasela had pressed a knife up Sefola's nose, and he had given more information. Unted, he had asked whether he could say something, and when he was told he could, he sang Nkosi Sikelel' iAfrika.

While Hechter took notes of the proceedings, Mamasela and Van Vuuren shocked first Maake and then Makupe to death in an effort to intimidate Sefola.

Continued on Page 2

# Ribeiros 'shot by Angolans flown in by SADF'

(252) ARG 30/10/96

**JOHN YELD**  
ON THE TRUTH COMMISSION

**Johannesburg - Pretoria doctor and anti-apartheid activist Fabian Ribeiro and his wife Florence were shot dead by two Angolans flown from Namibia by the South African Defence Force's special forces unit, the Truth Commission heard today.**

Former security policeman and Vlakplaas commander Jack Cronje told the commission's amnesty committee that the operation was probably managed by the secretive organisation Trewits

This was a joint security forces initiative known by its Afrikaans acronym for Counter Insurgency Target Identification Centre, which drew up priority lists of people to assassinate in and outside South Africa

Brigadier Cronje said that the SADF's head of special forces at the time, Joop Jou-

bert, and the then police commissioner, Johann Coetzee, had tried to cover up the investigation into the Ribeiro killings in Mamelodi in 1986

He said he had been contacted by Charl Naude of the SADF's special forces and asked for the security police docket on the Ribeiro

He was told by Commandant Naude that Dr Ribeiro had been identified as a possible "target"

When he asked why he wanted the security police's file, Commandant Naude replied that he wanted to verify information as he had to put in a report to General Joubert

"I knew as soon as he used the word 'target' that it was a Trewits operation," Brigadier Cronje said

No mention had been made of Mrs Ribeiro

Brigadier Cronje also said that he had instructed one of his officers, Jacques

Hechter, to make the file available

Captain Hechter had later told him that the SADF's special forces, through Commandant Naude and one of his men, Noel Robey, had asked him (Captain Hechter) to help them plan the elimination of Dr Ribeiro

"Captain Hechter kept me informed of their plans. I was aware of the operation and because I assumed it was a Trewits operation, I didn't interfere. Afterwards I learned from Captain Hechter that two black Angolans who had been flown in by the special forces from somewhere in South-West (Namibia) had shot Dr and Mrs Ribeiro," Brigadier Cronje said

He said he had then learned that Brigadier (later General) Basie Smit of the detective branch had established that Noel Robey had picked up the two Angolans after the operation, using a LandRover that was registered in his (Robey's) name but which belonged to the SADF



ASSASSINS 'FLOWN IN BY SPECIAL FORCES'

# 'SADF murdered Ribeiro',

(252) CT3110196

**JOHANNESBURG:** Two black Angolans were specially flown in to kill Dr Fabian Ribeiro and his wife, says a former security policeman.

SADF operatives murdered Mamelodi activist Dr Fabian Ribeiro and his wife Florence in 1986, and then police commissioner General Johann Coetzee was persuaded by top military generals to obstruct the police investigation into the killings, Brigadier Jack Cronje told the Truth and Reconciliation Commission's amnesty committee yesterday.

Cronje, a former security policeman who is applying for amnesty for his involvement in a number of murders, said the Ribeiro killings were carried out by two black Angolans flown in for the operation by Special Forces, a component of the SADF.

In his testimony, Cronje implicated Special Forces commander Major-General Joep Joubert, SADF chief of staff Lieutenant-General Ian Gleeson and Civil Co-operation Bureau commander Colonel Joe Verster in the cover-up of the crime. Cronje said he was approached in 1986 by a Commandant Charl Naude of Special Forces, who wanted information on Ribeiro. Cronje was then commander of the Northern Transvaal security branch, based in Pretoria. Naude told him Special Forces



**MURDERED:** The Ribeiros on their wedding day

PICTURE: THE STAR

had identified Ribeiro as a target. Cronje said it was immediately clear to him that Naude was working on an operation ordered by Trewits, the secret police and military unit that identified targets for "elimination".

He gave Naude access to his files on Ribeiro, and let one of his subordinates, Captain Jacques Hechter, assist Special Forces in planning the operation. Hechter had told him the operation would involve murdering Dr Ribeiro, he said.

The Special Forces members involved in the planning were

Naude and Mr Noel Robey, a member of the CCB, which was a covert component of Special Forces.

Cronje said after the murder Hechter had told him two "black Angolans" had been flown in from then South West Africa by Special Forces to shoot the Ribeiros. They had been removed from the scene afterwards by Robey in a white Landrover belonging to the SADF but registered in Robey's name.

Brigadier (later General) Basie Smit, then head of the detective branch in Pretoria, had been assigned to investigate the murders

and quickly established that the murderers had been transported from the scene in a vehicle belonging to the SADF, Cronje said.

After the murder, Gen Joubert had called him to a meeting where CCB commander Verster had also been present, Cronje said. Joubert had asked him if he could obstruct Smit's investigation. He had promised to "do what I could".

Two days later, Cronje had been called to a meeting with commissioner Coetzee and Brigadier Willem Schoon, head of the security police's C-unit, including Vlakplaat. At the meeting it emerged that the Ribeiro killings had been discussed at an earlier meeting between Coetzee, Joubert and Gleeson, Cronje said. After asking him (Cronje) what he knew about the murder, Coetzee had ordered Smit off the investigation and appointed Brigadier Daantjie van Wyk as the investigating officer.

A subsequent preliminary inquest cleared Robey of complicity. At the Harms Commission in 1990, both Joubert and Verster denied any knowledge of the Ribeiro murders. Harms found, however, that a balance of probabilities pointed to the involvement of the CCB in the murders.

Further testimony before the amnesty committee on the Ribeiro killings was postponed until all those implicated in the murders had been notified — Own Correspondent

## Omar tables legislation in effort to speed up criminal trials

By **PATRICK BULGER**  
Parliamentary Correspondent

Cape Town - New measures to speed up and simplify criminal trials are being proposed in legislation tabled in Parliament by Justice Minister Dullah Omar.

The Criminal Procedure Amendment Bill is one of six anti-

*Arwa 31/10/96*  
crime bills to emerge from Parliament during this session.

The bill details several measures to speed up South Africa's clogged criminal justice system. A magistrate who decides a trial is being unreasonably held up may order the trial proceed. Magistrates may also take steps to prevent "aimless, protracted and irrelevant

*(252)*  
cross-examination" by asking the examiner to disclose the relevancy of a line of questioning.

There is also a proposal to make better use of the admission of guilt system.

Another measure also provides that all confessions be admitted only where they have been attested to by a magistrate.

# Angolans hired to kill Ribeiros

By Mzimasi Ngudle

*Journalist*  
3/10/96

SECRET counter-insurgency unit  
 listed, former South African  
 Force special forces to carry  
 out the 1986 cold-blooded murder of  
 human rights activist Dr Fabian  
 Ribeiro and his wife Florence.

Testifying before the Truth and  
 Reconciliation Commission's annu-  
 lity committee in Johannesburg yes-  
 terday, former security policeman  
 and amnesty applicant Brigadier Jack  
 Cronje said Trevis - a police  
 counter-insurgency unit which tar-  
 geted activists for elimination - must  
 have ordered the assassinations.

Cronje said he learnt the Ribeiros  
 were shot by two Angolans under the  
 command of the former Selous  
 Scouts agent and member of the  
 DF special forces Noel Robey.

Cronje said the two Angolans  
 were flown in from Namibia and  
 were later removed from the scene in  
 a Land Rover driven by Robey.

TRC chairman Archbishop  
 Desmond Tutu listened attentively as  
 Cronje mentioned more military and  
 police generals who were involved in  
 apartheid crimes.

Cronje said former Kwazulu-  
 Natal police commissioner General  
 Pieter Buchner, General Johan Victor  
 and the late General Bob Buakes  
 were successive commanders of  
 the units in which the special forces,  
 the former National Intelligence  
 Agency and the police were all repre-

sented.  
 Cronje said Hechter assisted the  
 special forces with the operation to  
 kill Ribeiro, but the security branch  
 was not directly involved.

"I later learnt that the order to  
 eliminate Ribeiro came from Trevis,  
 law and order minister Adrian Vlok  
 and/or the State Security Council

### Special forces

Subsequently I learnt that Ribeiro  
 and his wife were shot by two black  
 men under the command of Noel  
 Robey. Cronje said former ADF  
 special forces commander and CCB  
 chairman, Major General "Loop"  
 Joubert called him and he hired to the  
 head office of the special force

Joubert, former CCB managing  
 director Joe Verster, special forces  
 member and CCB operative Clive  
 Naudé were present at the meeting.

Joubert said that Brigadier B. Smit  
 had established that the Land Rover  
 driven by Robey was wired  
 by the SANDF, he said.

Meanwhile, Mrs Elizabeth Setola  
 and Mrs Job Makupe, mother and  
 wives of Jackson, Harold and  
 Andrew (three African National  
 Congress activists who were tortu-  
 red to death with electric shocks  
 in 1987), yesterday opposed  
 amnesty applications of former  
 security policemen Captain Jacques  
 Hechter and Warrant Officer Paul  
 van Vuuren.



Chris Ribeiro, whose parents Dr Fabian and Florence Ribeiro were  
 shot dead by South African Defence Force agents, says his family  
 has briefed lawyers to oppose an application for amnesty by those  
 who planned or committed the murders.

# 'I tortured about 40 activists'

(252) Sowetan 31/10/96

By Claire Keeton  
Feature Writer

**P**AUL VAN VUUREN tortured so many people when he worked for the Northern Transvaal security branch between 1985 and 1989 that he can't remember them all

"It is difficult to give an exact number possibly about forty cases," he told the amnesty committee of the Truth and Reconciliation Commission in Johannesburg this week.

But Van Vuuren remembers that he tortured about at least five men to death, including Harold Sefola, Andrew Makupe and Jackson Maake.

The former warrant officer didn't act on his own. He usually executed illegal operations with his former captain, Jacques Hechter and notorious askari, Joe Mamasela.

## Police informants

They were based in the corner of a top floor office above the old police museum in Pretoria. Most of the 200 security policemen on that floor were 'handlers' of police informants.

Every morning Hechter, Van Vuuren and Mamasela held meetings with their commanding officer Captain Phillip (Flip) Loots. Loots would write down important information in his diary to discuss with those higher up the chain of command.

Hechter, Van Vuuren and three other former security policemen have applied to the TRC for amnesty for at least 40 murders. Loots is not one of the five but he is attending the commission hearings in Johannesburg.

The former policemen sit next to each other at the hearings, looking more like businessmen than murderers in their conservative suits, although they still have characteristic police moustaches.

Van Vuuren said his team concentrated on ways to combat the African National Congress and "Black Power". If their testimony to the

Maake's mother wants to see the place where the police killed her son



Mrs Elizabeth Jackson .. her son Jackson Maake was tortured to death by Paul van Vuuren.

TRC's amnesty committee over the past week is anything to go by, the torture and murder of influential activists was routine.

The former security policemen said in their amnesty applications that they were following orders by their superiors - former Brigadiers Johan Viktor, Jack Cronje and Basie Smit - to neutralise the liberation movements at any cost.

Viktor, now a retired general, was then second in command of the security police's counter-insurgency branch. Hechter said Viktor personally gave him orders "to eliminate the worst activist elements in the ANC".

Van Vuuren said "It was not lawful to kill but it was a means to an end". However, he admitted under cross-examination by his victims' lawyer that he was not above the law.

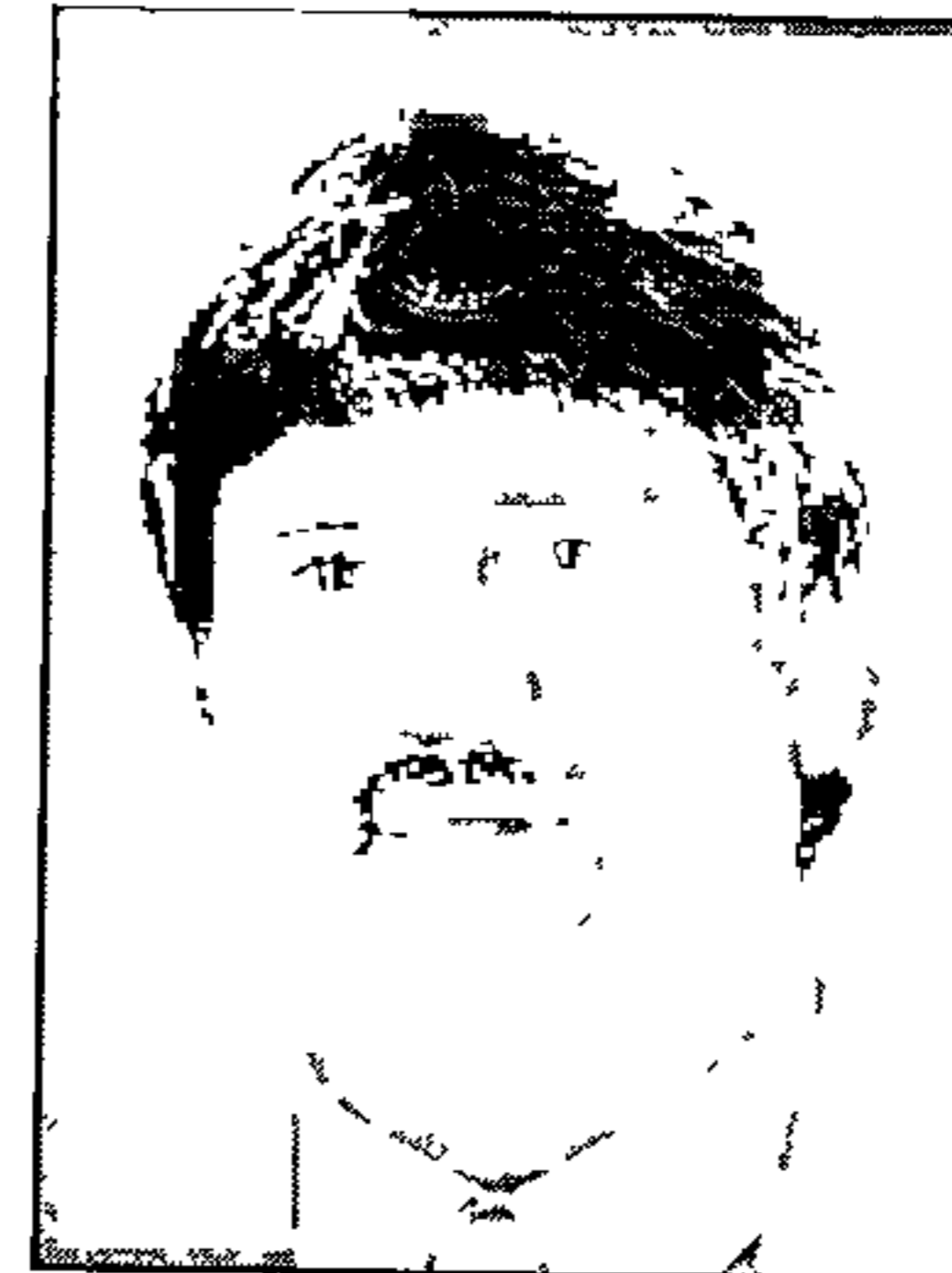
But he defended his position, saying "As the total onslaught became more and more serious, we were under instructions from the top to do everything in our power to eliminate activists, even if we had to kill them".

## National security

Van Vuuren emphasised that his actions were never repudiated and he was never taken to court for the crimes he had committed in the name of national security.

"We were tasked to carry out clandestine operations. At the time I was proud of what I did. If the National Party was still in power, none of this would have come out," Van Vuuren said.

It seems that his team operated as a tight unit and worked together closely plotting assassinations, creating bombs



Killer cop .. Paul van Vuuren admits torturing to death at least five people PICS LEN KUMALO

and hunting down activists.

Hechter claimed he suffered from a temporary memory loss which had affected his ability to remember the atrocities he committed. But he said "I support Van Vuuren's testimony completely. I believe in him personally and he has never given me any reason to doubt him".

Hechter is willing to accept Van Vuuren's word that he took part in the murders of Maake, Makupe and Sefola, though he cannot remember them. He remembers the guinea fowl and farm gate near the scene of the triple murders but not the "terrible deed".

It became clear during Van Vuuren's cross-examination that the decision to kill the activists was taken during their interrogation and not ordered directly by any higher authority prior to their abduction.

Hechter accepted responsibility. "It would not have happened had I not made the decision to kill them. Van Vuuren might have thought it was appropriate to take that course of action but he could not make that decision, and did not. It was solely

my decision".

The trust the unit had in one another was highlighted by their suspicion of Smit, an outside appointment. "He came from a different unit and we did not entirely trust him," said Van Vuuren.

He gave another example of how the Northern Transvaal branch closed ranks to protect themselves when he told the commission that they could not let the Eastern Transvaal branch know they had murdered Sefola, Makupe and Maake - even though Sefola was under their surveillance.

Van Vuuren said they did not want the Witbank security police to know but they had acted 'outside our region because we thought it was necessary'.

He claimed that Maake was a police informer and in 1987, they suspected he had turned double agent for the ANC. The police team took him to a deserted field at Pienaarsriver and tortured him with electric shocks until he was forced to confess.

Following this the policemen picked up Makupe, a member of Maake's ANC cell, led by Harold Sefola.

Makupe was tortured the same way, with wires attached to his body and electric current applied from a portable generator.

## Last wish

Mamasela led a team to kidnap Sefola and he stuck a knife up his nose to make him talk, in addition to electric shocks.

The hit squad killed Maake first and Sefola requested to sing Nkosi Sikelel' iAfrika as a last wish.

While he was singing, the policemen killed Makupe and electrocuted Sefola. All three bodies were placed on top of a landmine on a deserted road in North West and blown to pieces.

"I don't forgive them," said Maake's mother Elizabeth Jackson. "What I want is for them to show me the place where they killed my son".

# Amnesty won't free De Kock, says Borraine as long sentence hailed

## 'This will warn others to own up or face trial'

ARJIS CORRESPONDENT

Pretoria - Convicted hit squad leader Eugene de Kock will serve time in jail even if his amnesty application with the Truth and Reconciliation Commission is successful.

TRC deputy chairman Alex Borraine says De Kock - who has started serving two life sentences - will not be granted amnesty on all his convictions.

There are charges on which he was convicted which fall outside the term of reference of the commission.

These included fraud, possession of arms and arms smuggling convictions, a TRC spokesman said.

De Kock is expected to apply for amnesty soon, and his attorney has already contacted the TRC.

"The commission has heard from Colonel De Kock's attorneys and no doubt he will be making an application for amnesty in due course," Dr Borraine said.

The hefty sentences handed down by the Pretoria Supreme Court to the former Vlakplaas commander were widely welcomed yesterday.

Dr Borraine said the sentence should serve as a warning to others involved in human rights violations.

"For those who were involved in instances of gross human violations this should come as a very tough warning that there are only two real alternatives facing them. If the offences had a political context they can either face charges in a court of law or approach the amnesty committee of the TRC."

"However, none of them should hesitate because the deadline for amnesty applications is December 14 this year."

The African National Congress said although the sentence could not substitute for the valuable lives lost, it nonetheless fit-



Jailed for life: Eugene de Kock

ted the long list of crimes committed by De Kock.

"The ANC expresses its wish that the verdict and sentence would serve as one of those historic deterrents against those who may now or in the future contemplate committing crimes against humanity."

But the party also blamed the former government for many of De Kock's crimes, saying "The National Party government bears the primary responsibility for acts committed in defence of the repugnant system of apartheid."

"We insist the activities of such units were not the work of rogue elements within the security establishment but part of an overall strategy to undermine the ANC and the broad liberation movement."

"Now is the time for NP leader F W de Klerk to come clean in the spirit of recon-

ciliation and peace by taking the nation into his confidence and confess the sins of successive National Party governments."

This view was echoed by TRC chairman Desmond Tutu, who said De Kock should not be the fall guy for those in higher authority.

"If we are going to heal the country then the whole truth must come out. That means those who had ultimate responsibility and who had final authority," he said.

In its reaction, the NP said the sentence was hardly surprising in view of the crimes of which he was found guilty.

"The law has taken its course. He has received a hefty sentence which I think everyone expected," said justice spokesman Sheila Camerer.

The mother of ANC lawyer Bheki Mlangeni, one of De Kock's victims, had mixed feelings after the 21-month trial.

Catherine Mlangeni said although she was happy De Kock would be unable to see his family, she felt he should have been sentenced to death, "like he killed my son".

De Kock was named in testimony by his predecessor at Vlakplaas, Captain Dirk Coetzee, as the man who killed Mlangeni with a parcel bomb sent to his home in Soweto in 1991.

De Kock had sent a tape recorder with earphones packed with explosives to Coetzee in Lusaka, but it was sent back to Mlangeni, who was Coetzee's lawyer and who was named as the sender.

Mrs Mlangeni said her family was still suffering as a result of De Kock's actions.

Lawyers for Human Rights praised Mr Justice Willem van der Merwe. "We are happy with the life sentences. It will be very interesting to see how it progresses from here," spokeswoman Laura Pollecut said.

"We would like to see some civil claims by the victims against De Kock, who has

ARJIS 31/10/96

millions of rands tied up in foreign accounts. We think it would be good if they could be frozen and an inquiry be made into where the money came from."

Dirk Coetzee, himself a former Vlakplaas commander, was also happy with the punishment meted out. "I think justice seems to have been done. After all, he pleaded not guilty and denied everything until he found himself in a corner."

"It should be a lesson to all those Eugene de Kocks out there to come out on their own, come clean and let's get the past behind us. Otherwise we'll come after you."

The Pan Africanist Congress welcomed the heavy prison sentence.

It said De Kock's sentence was fair, but an injustice continued against Azanian People's Liberation Army members who remained in prison for anti-apartheid crimes.

"De Kock was a perpetrator of the crime of apartheid, which the United Nations declared a crime against humanity," said PAC deputy president Motosoko Pheko.

"The PAC was concerned that a distinction was not made between the perpetrators of apartheid crimes and the victims of such crimes."

Justice and reconciliation would be seen in South Africa only when imprisoned Apla members were released.

Other comments on the sentence:

■ I would not like to comment - former law and order minister Adriaan Vlok

■ It was in the hands of the court and you can't dispute it - former police chief General Johan van der Merwe

■ I think in this case justice took its course - spokesman for Justice Minister Dullah Omar

■ If he only got five years for trying to kill me, obviously my life is dirt cheap - Dirk Coetzee

# 'Those who confess should be brought to trial'

## National survey reveals sharp racial contrast in views on commission

(252) ARS 311019b

HUGH ROBERTSON  
POLITICAL EDITOR

Nearly two-thirds of all South Africans believe those who are making confessions to the Truth and Reconciliation Commission should be brought to trial, a national opinion survey has found.

The survey was conducted by Research Surveys of Cape Town and is regarded as the most comprehensive sampling yet undertaken of national attitudes to the commission.

It was conducted in the latter half of the year among 2 700 respondents to provide a national weighted average representative of men and women, blacks and whites and urban and rural residents.

Among the principal findings was the fact that a large majority of all South Africans believe the commission is being fair to all concerned and that whites and blacks differ markedly in their overall attitudes to the work of the commission so far.

When asked whether those who have confessed to apartheid-era crimes should be brought to trial, 65 percent of all respondents said they should be, with only 16 percent believing they should not. A sharp difference on the issue was noted between black and white respondents.

Among urban and rural blacks, 57 percent felt confessors should be tried, compared with 48 percent of whites. Nineteen percent of all respondents were undecided.

Among whites, 31 percent felt confessors should not face prosecution while only 14 percent of blacks felt the same way.

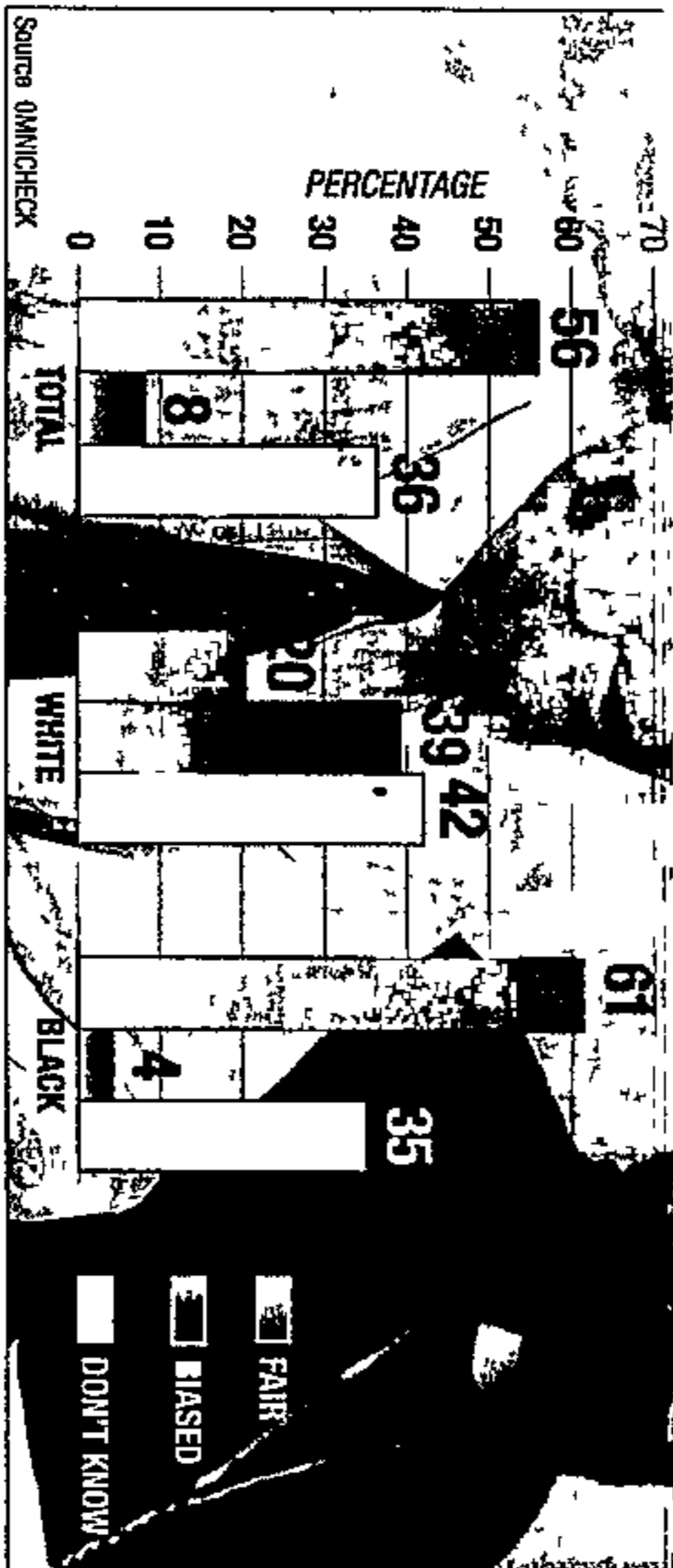
Africans were evenly split on the issue of trials, with 38 percent believing confessors should face prosecution, 38 percent believing they should not and 24 percent undecided.

On the issue of awarding amnesty to those who have confessed to their crimes, overall 48 percent of respondents supported eventual amnesty but almost a third - 28 percent - felt there should be no amnesty at all and 24 percent were undecided.

According to 56 percent of all respondents, the Truth Commission is being fair - only eight percent said to be a surprisingly low percentage, claimed it was biased. A high 36 percent were unsure.

Again, a sharp difference in attitude between white and black respondents was recorded. Only 20 percent of whites believed the commis-

### An overall figure shows that only 8% of respondents believe the Truth Commission to be biased



son to be fair, but 61 percent of blacks felt it was biased, but only four percent of whites felt the same way, with 42 percent of whites being unsure and 35 percent of blacks being unsure.

Of the respondents who felt the commission was biased, 35 percent felt it favoured the African National Congress.

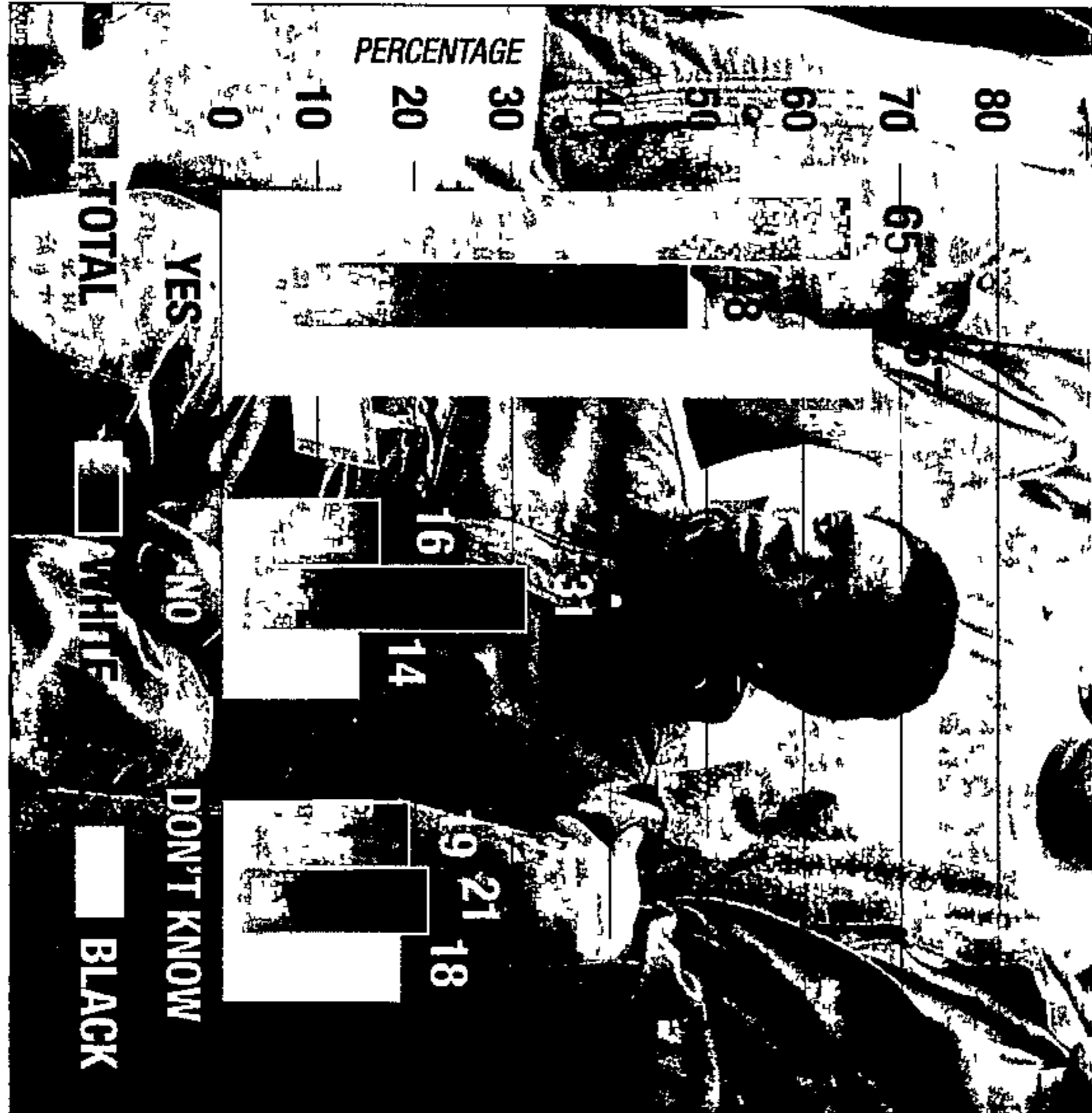
The sharpest racial contrast was revealed by the finding that 37 percent of whites felt the commission favoured the black population, while not a single black respondent felt it did.

Of the black respondents, 27 percent felt that perpetrators of illegal action under apartheid were not being punished adequately, while only one percent of whites agreed.

Frequent complaints from political spokesmen about the commission drew surprisingly little popular support.

Only five percent of all respondents felt the commission's work "just brings up the past", and the same low percentage felt that "it exposed the sins of the previous government only".

### Overall 65% of respondents felt confessors should be brought to trial



## 'Traffic police told not to help injured'

Johannesburg - The police riot unit stopped the Alexandra traffic department from helping the injured during the height of violence in the township in the early 1990s, the Truth and Reconciliation Commission has heard.

Traffic officer Patrick Jaca told the commission's human rights violations committee in Alexandra yesterday that traffic officers often used their patrol vehicles as ambulances to ferry injured people to clinics or hospitals.

Mr Jaca said they were ordered by the riot unit to stop doing this.

"We were 13 officers with six patrol cars. We always helped people injured during the violence, but the police did not like it. They told us not to remove the injured from the scene of attacks any longer," he said. - Sapa

# SADF man derailed Ribeiro probe, commission is to

Stephen Laufer

A SUCCESSFUL intervention by the second-most senior SADF officer, Lt Gen Ian Gleeson, led to a 1986 police cover-up of the killing of Mamelodi doctor Fabian Ribeiro and his wife Florence by SADF special forces, the truth commission heard yesterday.

Later, counsel for several victims said the commission's amnesty committee would be asked to subpoena former state president PW Botha to establish what he had known of the murders as head of the state security council at the time.

The request for a police cover-up was made in a meeting between Gleeson, special forces chief Maj Gen Joep Joubert and SAP commissioner Johan Coetzee. It came a day after Joubert asked Gleeson to sabotage then Brig Basie Smit's investigation into the double murder, retired SAP brigadier Jack Cronje said. A former northern Transvaal security police and Vlakplaas commander, Cronje is applying for amnesty in connection with the Ribeiro and other killings.

Gleeson was defence force chief of staff at the time and de facto number two to Gen Jannie Geldenhuys.

Joubert's request to sabotage Smit's investigation came at a meeting attended by Col Joe Verster, at one time head of the Civil Co-operation Bureau (CCB), Cmdt Charl Naude, also understood to have been a senior CCB op-

BD 31/10/96 (252)  
erative, and SAP Capt Jaques Hechter, who, with Cronje, is applying for amnesty. Joubert also once headed the CCB.

Smit — who was in charge of a team of northern Transvaal detectives investigating the murders — had established that a Land Rover seen at the Ribeiro home at the time of the killings belonged to the defence force. The vehicle had been registered in the name of and driven by Noel Robey Joubert told the Harms commission Robey had been a CCB agent at the time.

Gleeson's intervention had been successful, Cronje said, because the investigation had been taken from Smit and given to Brig Daantjie van Wyk. In 1987, a preparatory investigation led to charges against Robey being dropped due to lack of evidence.

Cronje said his involvement began when he was contacted by Naude, who told him Fabian Ribeiro had been "identified as a possible target" and the SADF wanted access to SAP information on him. "The moment he mentioned the word target, I knew that Trewits was meant." Trewits was the top-secret organisation in which the police, military and intelligence services co-ordinated and prioritised state hit lists. Cronje has said it reported to the state security council.

He had seconded Hechter to help plan the operation against Ribeiro,

Continued on Page 2

## Ribeiro (252)

Continued from Page 1

BD 31/10/96  
Cronje said. As a result, he knew that the SADF's special forces had flown two black Angolans to Pretoria. They had killed the Ribeiros while under Robey's command.

Ribeiro had been a leading activist recruiting young men for military training by the ANC and he had given medical assistance to anti-apartheid activists. Cronje said he did not know who had given the order to kill Ribeiro.

No further testimony was given in the matter after truth commissioners established that the former SADF of-

ficers named had not been informed in advance that they were to be implicated. The hearing will resume when they have been contacted.

Earlier, the amnesty committee was told by the relatives of three men electrocuted by Hechter and W/O Paul van Vuuren that they opposed the granting of amnesty.

"The people who had the pain should be the ones to forgive, not the government," said Lizzy Sefola, the widow of ANC activist Harold Sefola, who died singing Nkosi Sikelel' Afrika. "These people never came to ask us forgiveness, the government is doing it on their behalf. If a person is to be forgiven, they must first understand how we feel."

# Bomb 'specially made to fit under minister's car'

JOHN YELD  
ON THE TRUTH COMMISSION

(252)  
ARG 31/10/196

Johannesburg - A bomb manufactured by the Defence's Force's special forces unit was attached under the car of KwaNdebele cabinet minister Piet Ntuli by the Pretoria security police "hit squad" in 1986, the Truth Commission heard here today.

The bomb was detonated and killed Mr Ntuli as he drove away from an evening meeting at the home of the then chief minister of KwaNdebele

Former Vlakplaas commander Jack Cronje, one of five former security policemen seeking amnesty from the commission for 40 murders, bombings and assassinations, told the amnesty committee he and two colleagues planted the bomb

Brigadier Cronje testified that Mr Ntuli, the KwaNdebele minister of Home Affairs, was the leader of the Mbokotho political group which supported the KwaNdebele government's efforts to gain independence

The move to independence was fiercely resisted by the KwaNdebele people and Mbokotho was involved in various murders, incitement, arson, serious assaults, intimidation, theft, illegal possession of weapons and consumer boycotts in its efforts to force people to support the homeland government

In the subsequent Parsons Commission of Inquiry into violence in KwaNdebele, the Mbokotho were described as a right-wing vigilante group

But Brigadier Cronje said he had been "convinced in his heart" that Mr Ntuli had been a double agent and that while pretending to be a supporter of KwaNdebele independence and of the South African apartheid government, he had been working for the African National Congress

This was partly because the activities of Mbokotho helped the policy of the ANC which was to destabilise KwaNdebele

Brigadier Cronje said Mr Ntuli's activities had been discussed on various occasions by the Joint Information Centre - a combined intelligence organisation of the South African security forces

He had recommended several times that Mr Ntuli be detained under security legislation but this had been vetoed by then

South African Minister of Constitutional Affairs, Chris Heunis

This was because detaining Mr Ntuli, ostensibly a strong supporter of the South African government, would have made South Africa the laughing stock of the world, Brigadier Cronje said.

He could no longer remember exactly where the final decision to murder Mr Ntuli was taken, but it could have been by the security forces' secret organisation Trewits (an Afrikaans acronym for the Counter Revolutionary Target Identification Centre) and confirmed by the State Security Council or directly by the council

Brigadier Cronje said a specially manufactured bomb was obtained from Joe Verster of the Defence Force's special forces unit, which later became the Civilian Cooperation Bureau (CCB)

"Special preparations were made, including how the bomb should be constructed so that it would fit under a Toyota Cressida," Brigadier Cronje said

He, Jacques Hechter (another of the five applying for amnesty) and Jaap van Jaarsveld collected the bomb and drove to KwaNdebele

After waiting the whole day for an opportunity to place it under Mr Ntuli's car, they drove into the ministerial compound that night while Mr Ntuli was at a meeting

"Hechter climbed under Ntuli's Cressida and attached the bomb. While he was busy, the minister of police came out of the chief minister's house. I walked across to greet him and we had a conversation

"After the bomb had been planted, we drove back to the open veld," Brigadier Cronje said

The timing mechanism of the bomb was set so that it would detonate while Mr Ntuli was driving on a deserted section of the road he normally used

The bomb exploded as planned and Mr Ntuli was killed

Brigadier Cronje said although he had been accused by the KwaNdebele government of killing Mr Ntuli, he had never been questioned by General Schutte, chief of the police detective unit, who was investigating the case

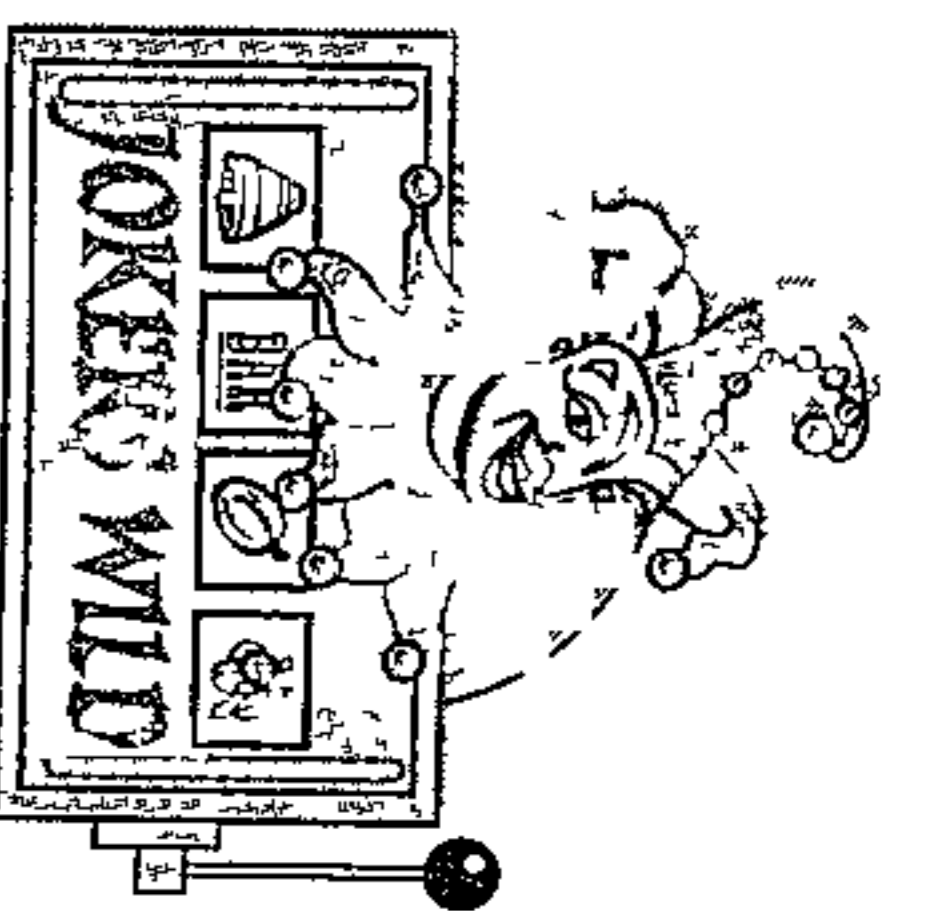
Brigadier Cronje said he had also not been called to testify at the inquest





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**Murdered ...** Dr Fabian Ribeiro and his wife Florence were gunned down in their home in 1986.

# Top military and police behind Ribeiro murders and coverup, TRC told

BY ROBERT BRAUN  
*(252) Star 31/10/96*

VADF operatives murdered famed anti-apartheid activist Dr Fabian Ribeiro and his wife Florence in 1986, and then police commander Johann Coetzee was persuaded by top military generals to obstruct the police investigation into the killings, it emerged yesterday. A TRC report said that after the murder, Hechter had told him two "black Angolense" had been flown in from the then South-West Africa by special forces to shoot the Ribeiros.

They had been removed from the scene afterwards by Robey in a white Land Rover, which belonged to the SADF but was registered in Robey's name. Brigadier (later General) Basie Smut, then head of the detective branch in Pretoria, was assigned to investigate the murders and quickly established that the murderers had been transported from the vehicle in a vehicle registered to VADF.



Moell ... nam

# NO way out for De Kock

Cold-blooded killer given two life sentences and 212 years, told he does not qualify for parole or full amnesty

BY NORMAN CHANDLER  
 and Own Correspondent

**E**ugene de Kock will stay in jail even if his amnesty application to the Truth and Reconciliation Commission is successful.

TRC deputy chairman Dr Alex Boraine says De Kock - who has started serving two life sentences and the 212 years he was sentenced to yesterday - will not be granted amnesty on all his convictions. There are charges on which he was convicted which fall outside the term of reference of the Commission.

These included the fraud and possession and smuggling of arms convictions, a TRC spokesman said.

De Kock is expected to apply for amnesty soon and his attorney has contacted the TRC.

Mr Justice Willem van der Merwe said that no one sentenced to more than 100 years could get parole.

The life sentences, to run con-

**“ It fills a person with revulsion ”**

currently, are for the murder of Winnie Mandela's driver/bodyguard Tlisoiso Laballo and for conspiring to murder Knigensdorp security guard Japie Ma-ponya.

He also received 20 years each for the murders of Kiona Cabeha,

*(252) Star 31/10/96*

FRANCOIS SMIT

was taking part in a full-scale war. His values had become unpaired but he believed his values were also strengthened by others who had given him orders - "the system had given him a choice and had helped him in his aims", the judge said.

He criticised the State for calling particular witnesses, saying there was an impression that those who took the witness box were being offered amnesty or being made aware they would be immune from prosecution.

"Can it not be said that other people will be investigated as well? Some could go scot-free and it is a possibility that must be taken into consideration."

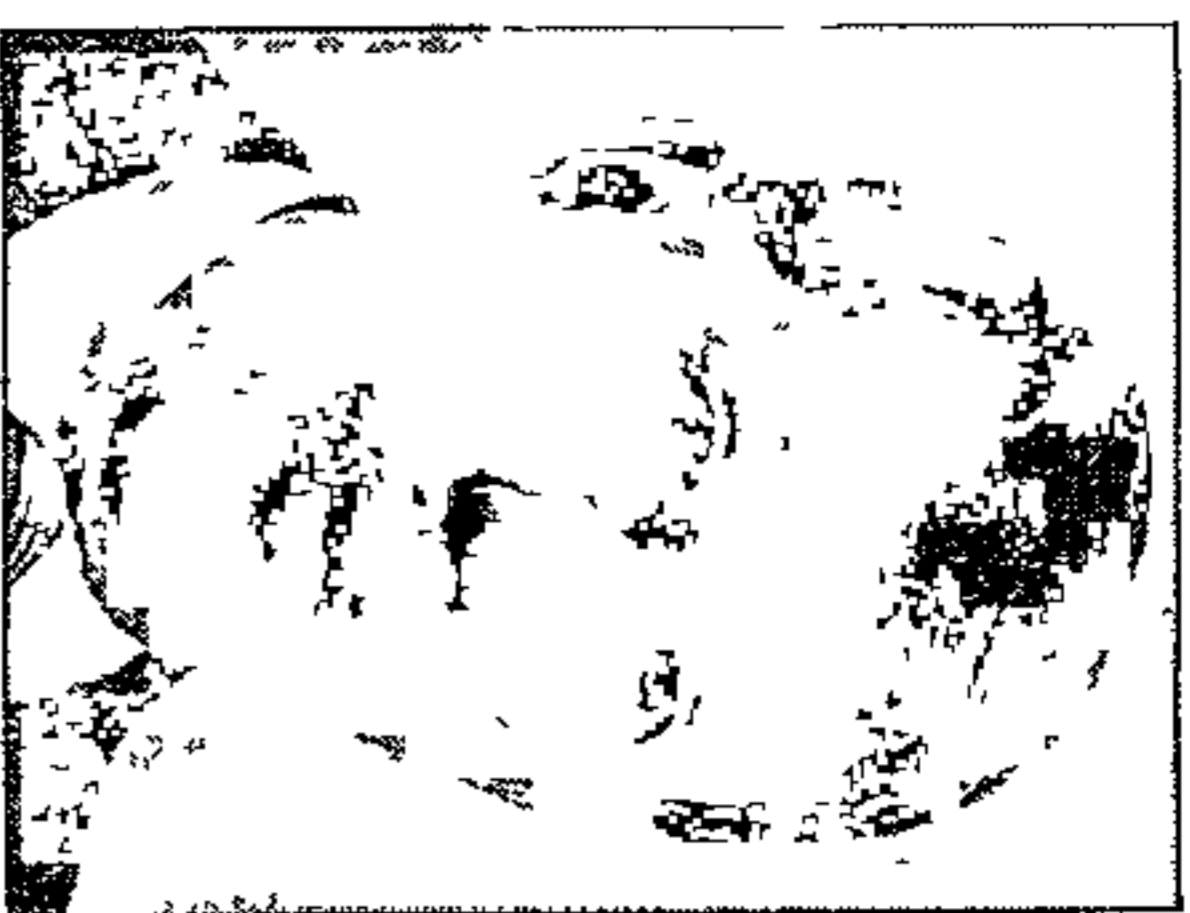
The activities of the C-10 unit had resulted in people who were not guilty being eliminated - "even members of the police, the askaris, were victims".

"In certain instances, some members of the unit were the ex-cutioners while others were ordered to file false expense claims." The judge found it reprehensi-

**“ Others may be probed as well ”**

ble that people who were to be killed were "kept waiting until they were executed". The judge said earlier in his judgment - in which he quoted Roman scholar Cicero as well as numerous South African judges -

Special Forces... in his test... ADP chief of staff Lieutenant... Colonel Joe Verstler in the cover... of the crime... Cronje said... reached in... 1986 by a Com... randant Charl... laude of Spe... al Forces... who wanted... formation on... r-Ribeiro... Cronje was... hen comman... der of the... Northern... ransvaal secu... rity branch... ased in Preto... ia



Johan Coetzee ... implicated.

Naudé told Special Forces had identified Ribeiro as a target. Cronje said it was immediate-ly clear to him that Naudé was working on an operation ordered by Hewitt, the secret police and military unit which identified targets for "elimination". He gave Naudé access to his files on Ribeiro, and allowed one of his subordinates, Captain Jacques Hechter, to assist Special Forces in planning the operation. Hechter had told him the operation would involve murdering Dr Ribeiro, he said.

The Special Forces members involved in the planning were Naudé and Noel Robey, a member of the CCB. The CCB was a covert component of Special Forces, which resorted under the

After... where... Verstler had also... Cronje said... Jobert had asked him if he... could obstruct Smut's investiga... tion. He had promised to "do... what I could".

Two days later, Cronje was called to a meeting with commis-sioner Coetzee and Brigadier William Schoon, then head of the security police's C-unit, including Viak-plas.

At the meet-ing it emerged that the Ribeiro killings had been discussed at an earlier meeting between Coetzee, Jobert and Gleeson, Cronje said.

After asking him (Cronje) what he knew about the murder, Coetzee ordered Smut to be taken off the investigation and appointed Brigadier Dantjie van Wyk as the investigating officer.

A preliminary inquest then cleared Robey of any complicity. At the Harms Commission in 1990, both Jobert and Verstler denied any knowledge of the Ribeiro murders.

Harms found, however, that a balance of probabilities pointed to the involvement of the CCB in the murders.

Further testimony was postponed until all those implicated had been notified.

## Hani's killers seek amnesty

Staff Reporter

Clive Derby-Lewis and Janus Walusz, the convicted killers of SACP secretary-general Chris Hanu, have applied for amnesty to the Truth and Reconciliation Commission.

A commission spokesman confirmed today that the two had handed in an application "about two months ago".

The spokesman could not say when their application would be heard, but pointed out that the commission has received about 2 700 applications of which only

1 000 had been processed so far

While it is unlikely that the application will be heard before next year, the commission is bound by law to give priority to applica-tions from people in prison.

Derby-Lewis and Walusz were sentenced to death in 1994 for killing Hanu outside his Dawn Park, Boksburg, home.

Praded charges and illegal pos-session of arms and ammunition brought sentences running from two years to 10 years.

Leballo's murder had been cold-blooded with no respect shown for human life or bodies," the judge said in the Pretoria Supreme Court. He called De Kock a "chilling and calculating" killer.

De Kock (47) showed no emo-tion as he sat writing down the details of his sentence as the judge read out each charge and the ap-plicable sentences. The judge had earlier spent three hours detailing evidence given during the 21-month trial and quoting legal

principles and previous judg-ments with regard to life impris-onment, rehabilitation, retribution and the rights of the community.

De Kock was a commander of the police's C-10 counter-insur-gency unit based at Vaalkop and served with police units in the former Rhodesia and South-West Africa. His actions, the judge said, had occurred during a period of time "to which we will never re-turn", a reference to evidence that he had been a victim of the

## After 10 years, The Star's investigation is confirmed

By EDWIN NAIDU

A month before the 10th anniver-sary of the deaths of Mamelodi activists Dr Fabian Ribeiro and his wife Florence, details of the iden-tities of their killers have finally surfaced to complete the missing pieces in the sad puzzle.

The 10-year-old mystery be-gan in a trail of blood on Decem-ber 1 1986 when the several writ-nesses, including the couple's son, Chris, who was standing with friends in the street outside the house, heard gunshots ring out at the Ribeiro's home in Mamelodi. They all rushed in, in time to see the masked gunman speed off.

News of the double deaths split into the columns of various local and international news-papers and magazines. Questions about the identity of the killers were consistently raised.

The Star reported accounts of the double shooting with infor-mation provided by the witness-es. The report was accompanied

## Killing witnesses tell of 'white' link

The report was accompanied by a graphic which detailed where Chris was standing in the street when the four masked gun-men began shooting, how they es-caped and the intersection at which they switched vehicles.

The Star began its own invest-igation after its reporters were given the number plates of the ve-hicles the gunman allegedly used.

Through the licensing depart-ment, the newspaper traced one of the vehicles to Civil Co-opera-tion Bureau (CCB) operative Noel Robey, who had been one of the chief suspects.

At the time, the Government's Bureau for Information said two unknown men fired several shots at the couple, killing them.

Later, in a preparatory trial, magistrate J M Pretorius cleared Robey of any involvement.

In 1990 the Harms Commis-sion, looking into alleged CCB ac-tivities, referred the Ribeiro inves-tigation to the attorney-general, fuelling optimism that the case would finally be solved, but it never went to court.

Members of the community who were affected have a different out-look towards these actions than others may have. Those members of the community would like to see correct sentences so that all can live normal lives.

The crimes took place in "a particular milieu" (and) "I have not been asked to find if the of-fences were political. I was asked to find out what was the back-ground to the crimes.

The accused had believed he

apartheid era and would never have committed the crimes had this not been the case.

But the judge added "The ac-tions leave one with a chilling feeling. It fits a person with re-valuation. With this sentencing, a warning must be given that such action cannot be tolerated."

He told the court that it ap-peared the idea of actions against apartheid enemies "was to open a schism between members of the community. I must find that

## THE SENTENCES

- Murder of Tisetso Leballo - life (25 years)
- Conspiracy to murder Japie Maponya - life (25 years)
- Murder of Khona Gabela - 20 years
- Murder of Lawrence Jacey Nyalande - 20 years
- Murder of Glenack Masilo Mahla - 20 years
- Murder of Oscar Nkoliso Ntshoacha - 20 years
- Illegal possession of weapons - 5 years
- Fraud - total of 48 years
- Conspiracy to murder Brian Elliot Ngqulunga - 20 years
- Defeating the end of justice in respect of death of Johannes Sweet Sambo - 6 years
- Murder of Goodwill Sikhakhane - 20 years
- Conspiracy to murder Dirk Coetzee - 5 years
- Manslaughter of Breki Mlangeni - 10 years
- Robbery - 2 years
- Abduction with intent to seriously injure - 4 years
- Conspiracy to the manslaughter of Phemelo Moses Ntshelang - 12 years
- Total: Two life sentences plus 212 years

A person sentenced to life (25 years) may qualify for parole after serving two-thirds of his sentence, or upon reaching the age of 65. Anyone who has been sentenced to a term longer than 100 years does not qualify for parole under any circumstances.

was fighting an enemy - a com-munist enemy of the folk and fa-therland. The enemy he believed, was already inside the country".

All the crimes had been well planned and carried out, with at-tempts made to ensure that no traces were left to link the crimes with the police.

De Kock had been emotionally desensitised as a result of a strict upbringing in a Christian home in which he was taught to hide his true emotions, and believed that he

## COMMENT

### The knight of the generals

He rode ever onward into war, to a thousand battlefields, first in Rhodesia, then Namibia, Angola and finally South Africa, his tinted glasses the impenetrable visor of this crusader on a Casspir, a knight in shining Armour, protector of The Faith, peerless executioner of apartheid.

And, oh, how the generals and the Nat Frankensteins loved their monster.

They flocked to Vaalkop to pay homage, to shake his hand, to pin yet another medal on the most decorated policeman in the history of South Africa, and to toast their latest bloody victory.

Well they might, for wasn't Eugene de Kock keeping white civilisation, and themselves, safe? And so, from the comfort of their round tables, they plotted and ordered and condoned and encouraged as their killing machine went out again and again and again to slay the barbarians.

Came the unthinkable - the battles won, but the war lost - and they disowned their hero. Betrayed, he changed his quest to vengeance and spat out names and deeds as he tried to justify a tale so vile it is beyond comprehension.

- The Editor

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CHIEF JUSTICE

(262)

**RIGHT MAN FOR THE JOB**

PM 1/11/96

It's no surprise that Judge Ismail Mahomed has been appointed SA's first black Chief Justice. It is not only a politically-correct appointment, Judge Mahomed is eminently qualified for the job.

The FM argued that if Judge Mahomed (64) was appointed, the controversy surrounding the nomination process should not detract from the achievement — he was the right man at the right time.

The selection of judges should be divorced from politics, but it has proved impossible for the appointment of SA's first post-apartheid Chief Justice to be an apolitical one. Not because the President has the casting vote, but because a country torn apart by crime cannot afford to turn down a qualified candidate whose appointment symbolises a break with an old, despised order that was upheld by the courts and the law.

Judge Mahomed told the Judicial Services Commission (JSC) he had been persuaded to accept nomination as his appointment might signal that the judiciary was changing.

Responding to his appointment, Judge Mahomed said restoring the law's legitimacy for all South Africans was the most urgent challenge for the judiciary.

"I hope I will be able to contribute to the urgent need to salvage the image of the law so that it in fact is, and is properly perceived to be, a friend and protector of the people instead of an instrument of racial, gender or political oppression."

The only other candidate, Senior Appellate Division judge Hennie van Heerden, downplayed the role of the Chief Justice at his public interview. He would be involved in no more than 40 out of 200 appeals a year and outside his chairmanship of the JSC, "there is nothing really

much he can do."

He may be right but reports suggest only one member of the JSC voted for him — the current Chief Justice, Michael Corbett, who refuses to comment.

President Nelson Mandela's public backing for Judge Mahomed at the outset resulted in most appellate judges rallying behind Judge Van Heerden. The National Association for Democratic Lawyers backed Judge Mahomed. Members from each side called on the opposing candidate to step down. Both judges told the JSC that they considered the way the process had unfolded as unfortunate.

But in the end, it was cut and dried. Judge Mahomed was ahead on points after the public interviews. The President made the appointment after consulting Cabinet and the JSC and personally inter-

viewing both candidates. The Cabinet discussion was not controversial and the appointment was in line with the JSC's recommendation.

Judge Mahomed's appointment is not without irony. He became SA's first black senior counsel in 1974 but refused a judicial post until 1991, saying he could not enforce laws that were against his conscience.

Judge Van Heerden is likely to be offered the post

of Deputy Chief Justice and has pledged Judge Mahomed "every possible assistance."

Among those who have welcomed Judge Mahomed's appointment are the Johannesburg Bar Council and the National Party who said he was "an outstanding jurist with the ability, credibility and record on the bench to make a great success of the job."

On January 1 1997 Judge Mahomed will give up the deputy presidency of the Constitutional Court, where he enjoyed "the best two years of my life." It is likely that he will have to vacate his position as Chief Justice of Namibia. ■



**Ismail Mahomed**

# poisoned, blown up

(252) Star 1/11/96

Brigadier stuns amnesty hearing with account of how a police and military hit squad lured activists to their deaths

## Ten young 'comrades'

They thought they were going to Botswana for military training by the ANC. But the 10 young Mamelodi activists were being led to their execution by a combined security police and military hit squad.

The story of the Nietverdiend 10 was told to a stunned Truth and Reconciliation Commission amnesty hearing yesterday by one of the executioners, Brigadier Jack Cronje, former commander of the Northern Transvaal security branch.

Cronje, together with four of his former colleagues, is applying for amnesty for his role in this and other apartheid-era crimes including at least 40 murders.

A deathly silence descended as attorney Brian Curran read out the names and ages to Cronje, who claimed he did not know the identities of his victims: Abraham Makulane (17), Samuel Masilela (16), Siphosibo Sibanyoni (15), Jeremia Ntuli (17), Thomas Phiri (22), Jeremia Magagule (16), Morris Nkabinde (19), Matthews Lerutla (15), Steven Makena (18) and Elliot Sathage (20).

The 10 youths, who were described at the hearing as politically active "comrades" but only two of whom had ever been detained for political offences, were killed in 1986 in an elaborate trap set by Special Forces. Commandant Charl Naude, Cronje said.

Special Forces, a component of the South African Army which included the covert Civil Co-operation Bureau, was accused by Cronje of involvement in the murder of Mamelodi activist Fabian Ribeiro and his wife Florence.

Undercover security policeman Joe Mamasela, pretending to be a top member of Umkhonto we Sizwe, infiltrated "a group of young activists in Mamelodi", Cronje said. When the youths asked



By Robert Brand

him to help them to get to Botswana for military training, he reported this to Cronje.

A meeting was held with Naude at a Special Forces base, where the operation was planned.

### 66 Minibus journey to death 99

Mamasela took the youths in a minibus to Zeerust.

Cronje and Captain Jacques Hechter followed close behind.

At Zeerust they made contact with Mamasela and ordered him to take the young activists to a deserted road near the border post at Nietverdiend (which means, not deserved).

On the way, he gave them beer to make them drunk.

At the pre-arranged meeting point Special Forces operatives and Naude were waiting.

"The occupants (of the minibus) were taken out one by one. They were quite drunk. They were held down and injected with something by the members of Special Forces. Then they were loaded back into the minibus."

Cronje said he did not know what the injected substance was, but assumed it was meant to kill them to eliminate any possibility that one or more could survive the subsequent ordeal.

"The minibus was pushed down an embankment into a wall and was then loaded with explosives and blown up."

It was meant to look as if the youths had been entering the country with a bomb, crashed their vehicle and blown themselves up, he said.

Cronje said Major-General Johan Viktor, of the security police counter-insurgency unit, had telephoned him after the operation to congratulate him.

The incident was investigated by the Bophuthatswana police, but the investigation proved inconclusive and the identities of the victims could not be established.

Cronje said they had no option but to murder the youths to prevent them from returning to the country as highly trained terrorists.

They could not be prosecuted without exposing Mamasela as an undercover operative, he said.

The hearing continues today. Relatives of the victims are expected to testify.

► More reports

# ANC man who went to his death singing

**Policemen now before the truth commission shocked Harold Sefolo to death. His widow spoke to Stefaans Brummer**

It was 1965 in Witbank, and Lizzie liked Harold for his looks and his humility. They got married on April 27, a date not lost on Lizzie for its later historical value. But by the time that date rung in a democratic South Africa almost three decades later, her husband was long gone — a victim of the forces that would have stopped April 27.

This week former security policeman Paul van Vuuren told the Truth and Reconciliation Commission how he had not believed Harold Sefolo when Sefolo told him the African National Congress would rule one day.

But then Sefolo, whom Van Vuuren believed to be an ANC guerrilla, asked whether he could sing Nkosi Sikelel' iAfrika. Sefolo sang before Van Vuuren and security branch colleagues Jacques Hechter and Joe Mamasela shocked him to death with a water pump generator.

Lizzie Sefolo can imagine why her husband sang. "He did that. He just

took off with whatever was in him at the time ... He wanted to show them his power."

Sefolo's bravery, while two comrades were being given the treatment he would shortly receive, has made for some of the most poignant testimony yet put before the commission. Lizzie Sefolo caused her own stir when she told the commission's amnesty committee, which is considering applications from Hechter, Van Vuuren and three others, that she doubted the commission was a means to reconciliation. "We're still feeling the pain. These people never came to us to ask for forgiveness. The government is doing this on our behalf. . . It is people who should forgive each other, not the government."

But, she told the *Mail & Guardian* later, it was a relief to hear the truth about how her husband, Jackson Maake and Andrew Makupe died in 1987.

Lizzie Sefolo met Harold Sefolo, a window dresser at a Witbank clothing

store and an orphan who didn't complete his schooling as there was no one to support him, in 1965. "He was 26 and I was 24, working for an optician. . . He was a good-looking man and humble," she said.

Four years later the couple got a house in Pretoria's Mamelodi township. About four months before his death, Sefolo started his own business, a cafe, in Witbank. When Mamasela abducted him from there, Lizzie Sefolo had been completely unaware of any police interest in her husband. She reported his disappearance to the police in Mamelodi.

But she heard nothing until January this year, when she read in a newspaper article (presumably on the confessions of Joe Mamasela) that her husband had been a victim of the police. "All the time, we were looking for him. You can imagine how much we spent going up and down for the whole eight years."

Van Vuuren told the commission Maake had been a police informer, but that he was suspected of being a double agent. He was taken to a remote

spot outside Pretoria and shocked until he owned up to spying for the ANC. He also implicated Makupe, who, in turn, was abducted and tortured, and he implicated Sefolo as another member of the cell. So Mamasela was dispatched to pick him up in Witbank. After all three had been shocked to death, their bodies were blown up in Bophuthatswana.

Lizzie Sefolo said her husband had been a strong ANC supporter, but she doubted he had been involved in armed activities, as Van Vuuren claimed. He did travel to Swaziland and Lesotho from time to time as chair of a dancing club, but she did not know if he had been in touch with Umkhonto weSizwe there.

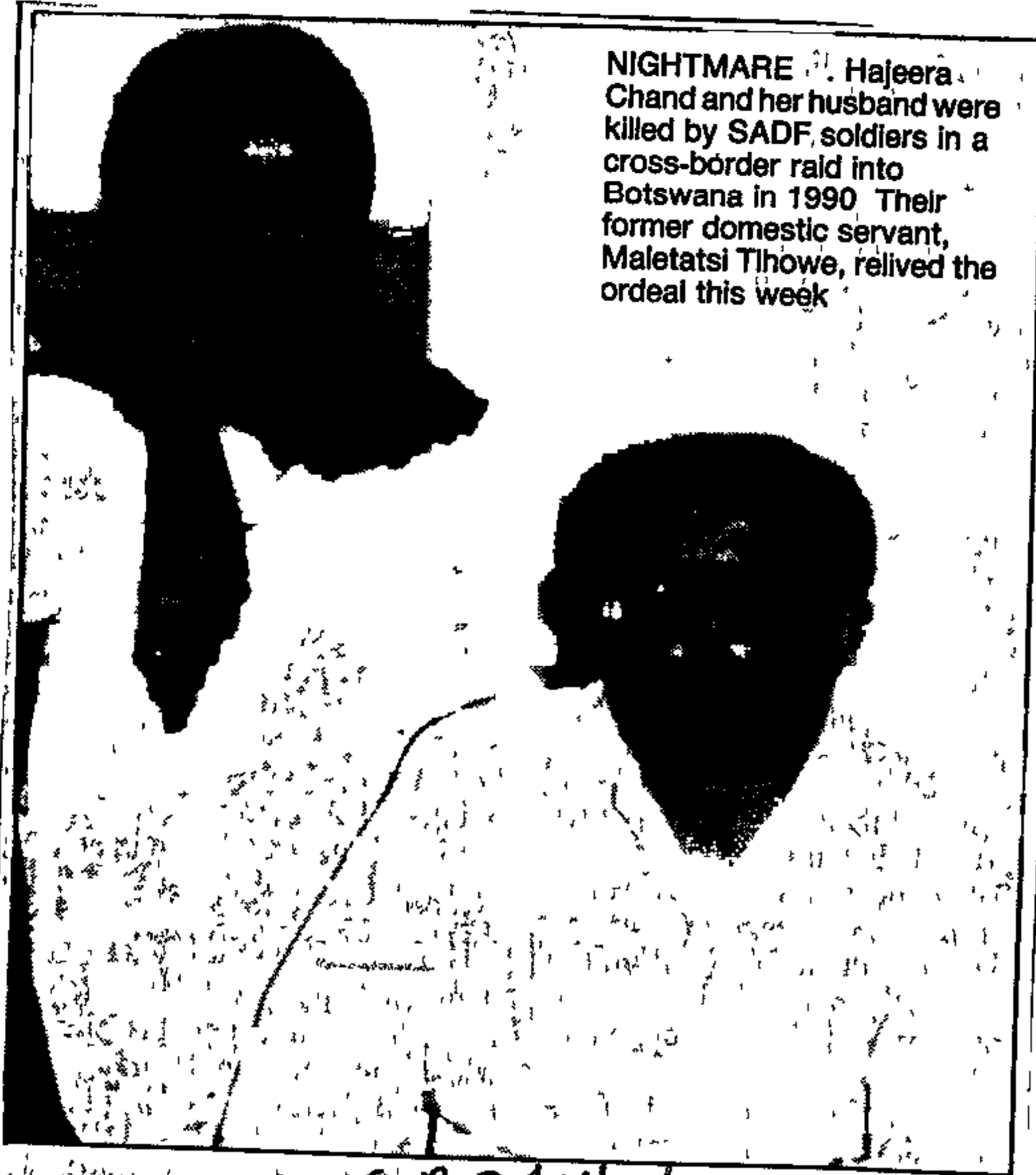
"There's much I don't know. I only know he was supporting the ANC. . . But I don't think he was involved in killing. . . He used to like people and he was kind to everybody. He didn't want anybody to suffer."

"If they could have shot him, it would have been better. The treatment they gave to them, it hurts. He didn't deserve such a punishment."

Lizzie Sefolo would like the government to erect a small tombstone for her husband, Maake and Makupe at the spot they died. It is too late for burials, but at least the children and grandchildren could know this is where the men died. And she fears her own six children will, like her orphan father, be deprived of further education. She never remarried and can hardly support them on her shop assistant's wage. That is where the truth commission may help.

● Dennis Neer, Eastern Cape MEC for Safety and Security, is being sued for defamation by a former security policeman after giving evidence about torture he endured during detention. Luke Conway, current police commander of internal security in Port Elizabeth, is claiming R150 000 in damages from Neer in the Eastern Cape Supreme Court on grounds that the MEC falsely claimed the police officer had tortured him in the 1980s.

The Freedom of Expression Institute recently warned the truth commission that witnesses before it did not enjoy sufficient legal protection.



**NIGHTMARE** Hajeera Chand and her husband were killed by SADF soldiers in a cross-border raid into Botswana in 1990. Their former domestic servant, Maletatsi Tlhowe, relived the ordeal this week.

CP 3/11/96  
**Batswana lining up to seek redress from TRC**

By **BENISON MAKELE**

**GENERAL KRAPPIES** Engelbrecht's testimony before the Truth And Reconciliation Commission (TRC) last week will never be known - nor will the names of the foot-soldiers who carried out his orders.

The public will also not hear complete details of how the operations were carried out, by whom, or the reasons behind the actions.

City Press this week visited Botswana and found a nation keen to know who had committed the dastardly deeds against them and determined to seek redress for human rights violations.

Batswana had previously thought that the TRC was meant for South Africans only.

Testimony at the Eugene De Kock trial implicated several police and army generals - including Generals Johan van der Merwe, Basie Smit and Engelbrecht - in local and cross-border human rights violations, resulting in them being subpoenaed by the TRC.

Thuso Bogatsu, spokesman for Ditshwanelo, a human rights organisation in Botswana,

told City Press they would make the commission's intentions known to citizens whose rights had been violated during former South African Defence Force raids into Botswana once they got the green light from their government and the South African High Commissioner in Gaborone, Oupa Mokou.

Mokou told City Press that his office had been inundated by Batswana asking how they could seek redress even before the start of the TRC's public hearings in South Africa.

City Press has learned that the TRC's investigators recently asked the Botswana President's office to facilitate the TRC's work in Botswana.

Hundreds of Batswana - ranging from soldiers, policemen and civilians - were wounded or killed and their properties destroyed by rampaging killers during SADF raids into Botswana at the height of the "total onslaught" era.

During the Harms Commission hearings in the 1980s, all evidence about cross-border operations was kept secret.

**By BENISON MAKELE**

**The night of horror will not end . . .**

into smotherens

The attackers had pumped five bullets into watchman Matheakwena Pule's forehead and shot his guard dog before entering the yard.

Tlhowe this week spoke about the day she had run naked to a neighbour's house.

"As Mima-Chand (Chand's wife Hajeera) screamed for help, I jumped through the window. I was cut by the breaking glass. I ran to the high fence and jumped over to safety."

Had the night not been pitch-dark, they would have seen her and shot her - as they did with one of the Chand sons who had tried to flee, Tlhowe said. She now leads a lonely life.

**MALETATSATI TLHOWE** - the domestic worker who narrowly escaped an SADF raid which wiped out the Chand family of Sikwane, Botswana, in April 1990 - still sleeps uneasily at night.

Tlhowe, who had worked for the Chands a long time, escaped through a window and over a high fence as the killers were beating the elderly Chand couple during an interrogation.

The killers later shot them and three of their children - two of whom were deaf and dumb - in the head. They piled their bodies on top of each other and mortar-bombed them.

# Truth trickle becomes a



The truth commission's Alex Boraine said the confessions would start. Last week, the perpetrators began to tell their stories. In the latest in our guest writer series, poet **Antjie Krog** listens to the different voices

**F**OR six months the Truth Commission has listened to the voices of victims. The first narrative, focused and clear, cut into the country. It cut through class, language, persuasion — penetrating even the most frigid earhole of stone. And it continues. Somewhere, in some dusty, suburban hall this week, the tale keeps on being plaited.

Because she is sitting behind a microphone, dressed in beret or *kopdoek* and her Sunday best, authenticity and integrity are sustained. Everybody recognises her. But when her face distorts behind her rough hand, we know nobody knows her.

So we have never known it. Yet something was amiss. We pricked up our ears. Waiting for the Other. The Counter. The Perpetrator. More and more we wanted the second narrative. And it had better be good. It had better be powerful. It had better display integrity. And it had better bring acute personal detail, tears and bewilderment.

There can be no story without the balance of the antagonist. The ear and the heart simply cannot hold head above a one-way flood. The victims' hearings became less reported, less read, fewer hearings were scheduled. Why would one want the truth if the truth has turned its back? Why would one confess before commissioners with as little power as oneself?

Now and then, the muffled sound of a perpetrator in a court interdict or press release was heard. At the political submissions, no politician rose to the occasion. No single personal emotive moment was presented. When FW de Klerk said "I stand here before you today" — he was not standing, he was sitting

Last week the second narrative broke loose — unfocused, splintered in intention and grades of desperation. It was white. And it was male.

The human rights hearings had a definite starting point, the unforgettable wail of Nomondo Calata in East London. The uncontrollable muscle in the jaw of Brian Mitchell, who was involved in the Trust Feed Massacre, was for me the beginning of the perpetrator narrative.

When Judge Arthur Wilson asked him "Would you say you suffered a lot?" the only answer Mitchell could muster was the frantically quivering jaw muscle.

Three man voices were heard last Monday: the army generals, the police generals and Eugene de Kock.

I phoned the army headquarters: "May I please interview General Georg Meiring?"

"About what?"

"About his submission, Monday."

"The general speaks to no one. He stands by his submission. He has nothing more to say."

"But I want to know why Meiring is not presenting the submission of the old SADF?"

I'm told to get lost in the *ons-is-nog-steeds-baas-aldink-jy-nie-so-nie* tone.

Monday morning the military squad marches in for Operation Shut-up and Deny. (Not to be confused

with Operation Stratkom, Veikom and Komkom, Operation Skaap, Operation Paal and Pikkadel, Pebble and Porcelain.) And one has actually forgotten how they look: the clipped *snorretjies*, the shifty eyes, the arrogant circumnavigation of questions.

When General Deon Mortimer opened his mouth, a chill ran down my spine. I had forgotten the worst: the brutal Afrikaner accent and the unflinching tone. The relish with



The victim narrative: Mabel Makope, widow of Andrew Makope, who was killed by the security police, weeps as she tells her story at the truth commission. PHOTOGRAPH: SIDDIQUE DAVIDS

which he pronounced the words "ban" and "banning", the blatant use of the word "terrorist", the cold-blooded smugness and excessiveness of the statistics: "Mozambique 23 May 1983. Operation Skerwe took place, using 12 Impalas and two Mirage F1 AZs, to attack known ANC facilities in the Matola suburb of Maputo in retaliation for the car bomb detonation outside Air Force Headquarters, Pretoria, on 20 May. Two ANC houses and a headquarter were attacked."

No press conference, no interview. And it was this, more than anything else, that changed the tone of the commission. Boraine leaned so far forward that only his head and neck were visible above the table when he slashed their submission to their face.

The Reverend Khoza Mgojo stammered in anger: "You reel off these statistics, as if it's nothing. People, human beings *died* there. People

whose families we've been listening to for the past six months."

The commission seemed to say before we are through with you, you will regard a statistic as human.

**T**hat same day in Johannesburg, former police general Johan van der Merwe walked in. He looked surprisingly well and confident. Such was not the case last year when he came to Parliament to make a submission to the Justice Committee on the Truth and Reconciliation Act. Without his uniform and cap he seemed shrunken. Collapsed he sat, his skin colour an unhealthy yellow. He blinked his eyes continuously and sometimes his mouth nibbled like that of an old man.

Before the Justice Committee, his case was put by an English-speaking advocate from KwaZulu-Natal. Flashy-suited and golden-ringed, the advocate made it clear that this was not the type of case he normally took, but

The advocate told the committee: "On the plane the general and I talked about the submission. And after a long, long time, he said, barely audibly: 'I started my career with so much idealism, so many dreams I've put into it all I've had, but because of the politicians I sit today wrapped in shame. Today I am not only old, I am also disgraced because of politics.'"

He might not have said much at the amnesty hearing, but he identified with his underlings — something which no powerful person from the previous regime had done yet. He also spelled out the difference between politician and soldier: the one makes the decision, the other carries it out. The better you carry it out, the better a soldier you are.

Come Monday night, come *Prunel* Evul.

Shot one men on the beach. Some naked, some swimming, some playing in the sand. Only De Kock brooding among them.



# flood

(52)

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The perpetrator narrative: Ex-policemen Jack Cronje and Jacques Hechter applied for amnesty  
PHOTOGRAPHS SIDDIQUE DAVIDS

MG+

1-7-11/96

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dressed from head to toe, his clothes like a shell. The man who refused in court to cede any death to someone else. Jealously he held vigil that not a dot of his atrocities get lost

Shot two the confession of Jacques Pauw Bheki Mlangeni was killed by rigged earphones originally meant for Dirk Coetzee, who identified the package and asked Pauw to warn Mlangeni, which Pauw did not do.

Like Coetzee, the man who made him famous, Pauw also preferred to confess publicly and dramatically. He chose to let the obvious moment for confession pass by — the moment after he had interviewed the distraught and weeping Sepati Mlangeni. The moment he was alone with her.

Why was this the obvious moment? Pauw, then, would have stepped out of his own safe framework, out of the story as dictated by him, out of the powerful realm of media and history. Pauw would have been at the mercy of Sepati Mlangeni — as her husband was at his — to forgive or condemn. It would have shown Pauw vulnerable — as vulnerable as millions of black people were under a racist government.

Or are things simpler than that? People perhaps find it easier to ask forgiveness from Archbishop Desmond Tutu or the whole television-watching South Africa than from an ordinary black woman in her house.

But then, too, the fear of rejection may be worse than the guilt.

Unexpected overtones accompanied the second narrative this week at the book launch of *Reconciliation Through Truth* by Kader Asmal, Louise Asmal and Ronald Suresh Roberts.

The book states very precisely the truth commission won't be able to fulfil its implicit mandate to create a new moral order if it does not make a distinction between those who fought against and those who defended apartheid.

This is an old debate, but the writers give a new dimension. They spell out that, unlike the commissioners' claim, there is no



Former police general Johan van der Merwe: I identified with his underlings

imperative in the legislation not to make any distinction between the perpetrators and the victims of the two sides.

It is not a question of bad apples on both sides, said Kader Asmal, it is a question of a bad tree and a good tree. The book asks if the truth commission cannot distinguish between right and wrong, how can it weave a new moral fabric?

The night of the launch also provided an opportunity to hear Deputy President Thabo Mbeki's thinking on reconciliation — an issue he seldom dwells on.

"Apartheid forced the individual to abdicate his or her personal morality," he said. "And if you think I say this because I am very intelligent... I am only quoting the book."

He speaks. "The only thing that will heal this country is large doses of truth — and the truth is that apartheid was a form of genocide and a crime against humanity. You, Kader, I, Sam... oh, I see you have not invited the ministers with which you are not on a good footing to the stage — people like Sydney and Essop."

After which Asmal nervously laughs and says: "They were late." But it was obvious from the well-formulated speech that the days of visiting Betsie Verwoerd and drinking tea with Afrikaner tannies are over.

The days of bending backwards from the coccygeal region to accommodate, to grit teeth in tolerance until the fillings fly, is over. Reconciliation will only be possible if the whites say apartheid was evil and we were responsible for it. Resisting it was justified — even if excesses occurred within this framework.

Mbeki said that if this acknowledgement is not forthcoming, reconciliation is no longer on the agenda.

Although this political line is timeous, it also keeps the acknowledgement within the black and white realm and gives no guidance on how the individual could move forward.

The human rights violations hearings have forced the truth commission to formulate the same issue differently — a way which takes it out of the colour-code, making it user-friendly to all South Africans as a future guideline.

The human rights of black people were violated by whites, but also by blacks instigated by whites. So the truth commission was forced to say: South Africa's shameful apartheid past has made people lose their humanity. It dehumanised people to such an extent that they treated fellow human beings worse than animals. And this must change forever.

Both lines try to drive the change.

While the debate flourishes around ANC amnesty, some vibrations stir the Waters of the Wilderness. As the Crocodile flounders, he bares his last remaining teeth. His last line of defence is his secretary, Mrs Hartman. "Mr Botha is deeply religious," she tells a journalist. "He knows his Bible. He will speak when the time is right."

She also said: "Mr Botha walks around with a big smile on his face. He says he expected it all to happen. After all, people said bad things about Hitler too afterwards."

Poet Antjie Krog has won the Herzog Prize and the CNA Award for her poetry. She reports on the truth commission for SABC radio.

# Mimbus murders could fail amnesty requirement of

Stephen Lauffer

A COMBINED SAP and SADF operation to lure a group of 10 Mamelodi youths into a trap and murder them by injection and explosion in 1986 may become the first case to fail the proportionality test governing amnesty by the truth commission, it emerged in Johannesburg yesterday.

Former Vlakplaas and northern Transvaal security police commander Brig Jack Cronje and former Capt Jacques Hechter are applying for amnesty for the murder of the youths, two of whom their families said were only 15 years' old at the time. The others were aged between 16 and 22.

Intense questioning by amnesty committee members, counsel for the commission and families of the dead raised grave doubts about whether the action taken against the youths stood in proportion to their minor status as activists. Doubts were also expressed as to whether there would not have been other ways of dealing with their willingness to go for guerrilla training.

Committee member Judge Andrew Wilson asked Cronje repeatedly whether it would not have been possible to arrest the youths and charge them rather than murder them. Responding to Cronje's statement that the youths had been lured into a combi by Sgt Joe Mamasela on the pretext that they would be taken to Botswana for military training, Wilson said, "so once again, anyone dealing with Mamasela was sentenced to death".

Cronje told the amnesty committee that Mamasela, an askari who posed as a senior Unkhonto we Sizwe (MK) member, had recruited the youths En route to the Netwerdent border post near Zeerust, Mamasela had given them a lot of beer just before the front a second combi with four masked SADF special forces soldiers had waited on a deserted track. Cronje, Hechter, western Transvaal security police head Col Loots, Zeerust branch commander Capt Rudi Crause and special forces Cndt Charl Naudé had followed in a third combi.

The special forces soldiers pulled

## Amnesty

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tswana to suggest an accident. Explosives had been placed in the vehicle and detonated, leaving only charred remains. The aim was to create the impression that MK guerrillas returning to SA had blown themselves up.

Responding to cross examination, Cronje said charging the youths with attempting to go for military training would have been impossible as there were no witnesses and he did not want to destroy Mamasela's cover by making him appear in court.

Wilson asked whether it would not have been possible to record their conversations in the combi and use the tape as evidence. "The police had many methods of gaining information — telephone taps, tape recorders, mail intercepts — why did you not use them?"

The murders had been excessive in retaliation and disproportional in relation to what the youths had done prior to their elimination, counsel for the families, Brian Curran, said.

"If they had returned as trained terrorists, I would have been unable to stop them committing acts against the

population," Cronje said.

"They were not on their way for training — you took them," committee chairman Judge Hassan Mall responded. He challenged the fact that Cronje's information that the youths wanted to go for training had come from a single source — Mamasela. Cronje said Mamasela — who has frequently claimed that he was viciously tortured before agreeing to become an askari — had always been a police agent. "We sent him out of the country for training (by MK), he was never really an ANC member, he was a double agent."

The committee also heard an application by Cronje and Hechter for amnesty relating to their involvement in the July 1986 assassination of Kwa-Ndebele home affairs minister Piet Ntuli. With Capt Chris Kendall and Capt Deon Gouws and a W/O Posthuizen they had attached a custom-made bomb, acquired from special forces Col Joe Verster, later Civil Cooperation Bureau head, to Ntuli's car.

Separately, it was confirmed that the convicted killers of SACP general secretary Chris Ham had applied for amnesty. Clive Derby Lewis and Janus Walusz had submitted their applications two months ago, truth commission spokesman John Allen said.

the drunken youths from the combi, pressed them to the ground and injected them while the officers looked on. Cronje said he did not know which chemicals had been used as special forces had supplied them. He was unsure whether the doses had been lethal or whether the subsequent explosion had killed the youths.

After being drugged the youths were loaded back into the combi, which was driven off the road in Bophutha-

Continued on Page 2

Proportionality

the committee which would make the decision once it had studied the outcome of the evaluation

Iscor PR manager Carol Ferguson holds an A Vanderbijlpark plant today. Iscor plans to qualify week by an unlimited number of volunteers Th

# ANC slammed for amnesty call

By Tim Cohen

11/11/96 (252)

CAPE TOWN — The NP has accused the ANC of "muddled thinking with a mixed agenda" for suggesting that its members need not apply for amnesty for crimes performed in the fight against apartheid.

of Constitutional Court Judge Richard Goldstone's comment this week that there could be no collective guilt for criminal acts

NP justice spokesman Sheila Camerer was responding to Mpumalanga premier Mathews Phosa's statement that for ANC members to have to apply for amnesty would be like Moses asking for amnesty for leading the Israelites out of Egypt

Individuals who had committed criminal acts, for whatever political cause, had to face the consequences, Camerer said. The morality of the political cause might be relevant in the decision to grant amnesty, but it did not apply to whether applications should be made

She said the ANC had rejected the notion of collective amnesty when the Freedom Front requested it during the process of negotiating the truth commission legislation.

In response, ANC sources said Phosa was vocalising a frustration within the party about the position of MK cadres compared with that of former members of the SADF

Camerer called on the ANC to make a statement of support for the truth commission's approach to amnesty

Former SADF members who had engaged in cross-border raids would not be liable for their criminal acts as these would be considered legal in terms of the law at the time, but members of MK would be liable for conviction for comparable acts.

She said the ANC should be mindful

# TRC seeks meeting with killer Askari Mamasela

TONI YOUNGHUSBAND  
STAFF REPORTER

Truth Commission investigators are to request an urgent meeting with former Vlakplaas Askari Joe Mamasela after revelations by former colleagues of his involvement in murder and torture.

Mr Mamasela is under the protection of Transvaal Attorney-General Jan D'Oliviera, who intends to use him as his chief State witness in criminal trials against former security force operatives.

Earlier this year, the TRC agreed not to subpoena Mr Mamasela to testify before it after discussions with Mr D'Oliviera, who felt this might jeopardise the State's case.

However, testimony at the amnesty application by five of Mr Mamasela's Vlakplaas colleagues in Johannesburg last week had been "so brutal" that the TRC had to reconsider its position, sources said.

Dumisa Ntsebeza, the commission's head of investigations, said that rather than reneging on the earlier agreement and subpoenaing Mr Mamasela, the TRC would request an urgent private meeting.

"I hope that during our discussions I can persuade him to make a statement to us which can then be entered in to the record as evidence," said Mr Ntsebeza.

He said the TRC couldn't wait "for ever" for Mr D'Oliviera to bring his case to court.

"We would look very stupid if we sat around not questioning him (Mamasela) in the light of all he knows," he said.

Mr Mamasela and amnesty applicants Captain Jacques Hechter and Warrant Officer Paul van Vuuren operated as a security police hit squad in the Northern Transvaal during the mid-1980s - a period they referred to as "war without rules".

Warrant Officer Van Vuuren and Captain Hechter and colleagues Brigadier

ARG 2/11/96 (252)  
Jack Cronje, Colonel Roelof Venter and Captain Wouter Mentz appeared before the TRC's amnesty committee in Johannesburg last week in connection with more than 40 murders.

Warrant Officer Van Vuuren and Brigadier Cronje told how they and Mr Mamasela were involved in the torture and electrocution of three alleged ANC activists, how they blew up nine KwaNdebele youths near the Botswana border, and their participation in the attempted assassination of ANC activist, Jerry Thibedi.

Warrant Officer Van Vuuren said high-profile or particularly effective activists had usually been eliminated because their detention in terms of security legislation would have given momentum to the freedom struggle.

"The security police and the country could not again afford to have a Nelson Mandela," he said.

## Truth Commission 'wants to enslave Afrikaner'

ARC 2/10/96

(252)

**Johannesburg – The Truth and Reconciliation Commission is trying to pronounce the Afrikaner guilty before the rest of the world and to enslave its future generations, the Conservative Party has said.**

Reacting to an African National Congress statement that it would resist an amnesty application by the killers of SA Communist Party leader Chris Han, Con-

servative Party leader Ferdi Hartzenberg said the ANC was showing contempt for the amnesty process

Mr Hartzenberg said the obvious lack of equal justice within the TRC was evident by it doing everything to have people like former President P W Botha appear before the commission. The ANC, on the other hand, said its own people did not have to appear before the TRC – Sapa

# Removing the thorn in flesh

By WALLY MBHELE

**ONE OF THE puzzles which left Truth and Reconciliation Commission judges scratching their heads at the Amnesty Hearings this week was why former KwaNdebele cabinet minister Piet Ntuli was killed.**

While Brigadier Jack Cronjé claimed Ntuli was helping the ANC to destabilise the area, the ANC supposedly considered Ntuli "an enemy to be killed".

In this regard, the apartheid hit-squads, led by Brigadier Jack Cronjé, helped the ANC.

Ntuli died in July 1986 after a bomb was planted underneath his car while he was attending a meeting in an operation that was jointly undertaken by the police and army hit-squads.

The ANC then issued a statement congratulating Umkhonto we Sizwe for the elimination "of a puppet" — unaware that the man was killed by apartheid forces.

"Ntuli was a thorn in the flesh of the government. His case was discussed at a meeting of the Joint In-

formation Centre. the State Security Council then took a decision. "I made recommendations that he be detained, but several times I was told that that could not be done as former Minister of Constitutional Development, Chris Heunis, was against detentions," Cronjé said.

Cronjé told how "particular preparations" were made and how Ntuli's Toyota Cressida was put under surveillance. This was done in co-operation with the Special Forces.

"We waited the whole day in Siyabuswa to see if we could not plant a bomb under Ntuli's car. There was a meeting in the chief minister's place and we watched from the veld across from it.

"When it became dark, Captains Hechter and Kendall and I drove towards the ministerial complex where Ntuli's car was parked.

"I then sent Kendall to the chief minister to tell him that I would like to have a short talk with him. While Kendall had gone to call the chief minister, Hechter sneaked under Ntuli's Cressida and placed a bomb there," he said.

Ntuli, according to Cronjé, was a leader of Mbokodo — an organisation that waged violent and ruthless campaigns to obtain independence for the former homeland.

While there was no love lost between Mbokodo and ANC-aligned organisations such as the United Democratic Front, Cronjé saw it the other way round.

"Mbokodo became Ntuli's political force. They drove around, hitting both students and teachers at schools with sjamboks. They operated exactly the same as the ANC.

"It became entirely impossible to give independence to KwaNdebele because of their activities. So, they worked entirely against the purposes of the former SA government.

"It was not possible to arrest or detain him because South Africa would have become the laughing stock of the world. Eliminating him then became the only possible route to take," said Cronjé.

"While Ntuli was placed there by the government, his actions were of such a nature that independence ob-

"It would also make us pay attention only to the ANC and the UDF. His actions, in an unwitting manner, were what the ANC wanted to achieve," Cronjé told the TRC.

While the public of KwaNdebele regarded Ntuli as the SA government's puppet, the police hit-squad also regarded him as an "enemy" because he pretended to be pro-apartheid.

"Mbokodo was founded to work with the government, but once they started working, they seemed to have been hijacked," said Cronjé.

A bomb designed to "destroy everything" was then fitted underneath Ntuli's car. It was designed by the Special Forces.

Captain Van Staden handed it to Captain Hechter — also applying for amnesty — who put it under Ntuli's car. "We even knew the speed at which he was driving his car," according to Cronjé.

Hechter told the hearing that "the specially-built bomb" weighed about four kilograms.

After Ntuli's car was blown apart, the hit-squad team heard from the police radio about the explosion and returned to the scene.

The KwaNdebele police commissioner, a brigadier Van Niekerk also arrived at the scene.

# Stick to core values

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**T**HE DEBATE about restoring capital punishment is the result of the escalation in crime and violence. However, this debate should be seen within the context of recent history.

The last execution in South Africa took place in November 1989. The ANC was elected as governing party in 1994 on a programme favouring the abolition of the death penalty. Interpreting the interim constitution, the Constitutional Court in 1995 found the death penalty to be in violation of various provisions of the constitution. Some judges found it violated the right to life, others regarded it as an infringement of the right to dignity. The president of the court concentrated on one section which outlaws cruel and inhuman punishment.

Restoring the death penalty would mean the final constitution would have to be amended. It would necessitate a political about-turn by the ANC, and would mean the Constitutional Court was unequivocally overruled.

The interim constitution has seen South Africa enter into constitutionalism, a state in which the constitution is the supreme law. Such a principle does not take root overnight, and should be cultivated with care. The authority of the constitution, the Constitutional Court and of the principle of constitutionalism will suffer a severe setback if the first contro-

**BRINGING** back the death penalty would undermine constitutionalism in South Africa, argues **FRANS VILJOEN** of the Centre for Human Rights, University of Pretoria.

versial judgement of the Constitutional Court is overturned.

The death penalty is the extreme of human punishment.

Those arguing for its restoration carry the burden of arguing its re-introduction. The argument must show that the death sentence is a more effective deterrent than other forms of punishment – something that cannot be done, because of inconclusive scientific evidence. Retentionists must show that any penological aim other than retribution will be served. In short, they must show that reinstating the death sentence will make a difference to the problem of crime. They should convince us that the real problems of insufficient policing, overburdened prosecution services and early releases from prison will be rectified by having capital punishment in place. They should convince us that reintroducing the death sentence is of greater importance than the underlying socio-economic causes of crime.

If they fail, and my view is that

they inevitably must, the true nature of the call for restoration is revealed. It is a slogan intended to score political points. It is a dishonest attempt to deflect attention from the real causes underlying the rise in crime. It is an attempt to appease people by invoking the basest of human emotions – revenge.

It may be true that the majority will at present express this emotion if called upon in a referendum to express a view on the death penalty. Rather than exploiting these feelings for political gain, government has a responsibility.

People react emotionally and moods change. Should the constitution be amended each time strong surges of emotion overcome society? Surely it is preferable to have core values as constants which will serve as guidelines in our society. In a constitutional state these values are found in the constitution.

By its very nature a constitution in a pluralistic society will protect those who do not represent a majority. The majority may, for instance, not want Afrikaans as an official language, or may not want the equality clause to provide for non-discrimination against gays and lesbians, or may think that foreigners should not qualify for fundamental rights in South Africa, or may favour juvenile whipping. Does that mean that a referendum should be held about all these issues and the popular will should be followed?

## An end to legal cruelty

**S**OUTH AFRICA is now a constitutional state. The constitution, as interpreted by the Constitutional Court, is supreme. Even if a majority of "the people" wanted to reintroduce cruel and inhuman punishment, they could not have it. Democracy, or populism, is limited by constitutionalism.

The abolition of the death sentence was based mainly on the prohibition against such punishment, not on the right to life alone. Retentionists, if they wanted to change the constitution, would have to construct an exception to allow for the institution of cruel and inhuman treatment, wherever the state felt it was "needed".

Another point on which the death sentence was abolished was the right to equal justice. Retentionists would have to have a provision on to the launch of Alex Eassey's prison.

Host Alex Mokoane welcomes James Prevoost



**BRINGING** back the death penalty would infringe various hard-won rights, including those of victims, argues Unisa law professor **H J VAN ROOYEN**.

is precisely why the criminal law swings into operation and the criminal deserves punishment.

But if "the people" say "Gouge out the eye of the assaulter who gauged out an eye; let the rapist who raped, be raped himself", the constitution says "No, only proportionate surrogate punishments may be imposed".

I, for one, am proud of that



'amnesty' for Walusz, Derby-Lewis

# S Killers

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Dilemma for TRC

# Hani

By **DESMOND BLOW**

**A FIERCE confrontation between the ANC and the TRC is in the offing if the killers of South Africa's most charismatic leader Chris Hani are released.**

The ANC has already indicated that although it respected any decision on amnesty by the TRC, it would resist the application for amnesty by former Conservative Party MP Chve Derby-Lewis and Janus Walusz - who shot dead the SA Communist Party secretary general at his Dawn Park home in Boksburg in 1993.

The ANC contends that the two men do not qualify for amnesty in terms of the Promotion of Unity and Reconciliation Act because they were motivated by factors contrary to the peace process then underway and the killing was not associated with any political organisation

□ However, a human rights lawyer disagrees - and says that if the two killers satisfy Section 20 of the Promotion of National Unity and Reconciliation Act, then the TRC will be forced to grant them amnesty.  
□ The interpretation of Section 20

by an amnesty committee - consisting of three judges and two TRC commissioners - as to whether they should be freed will be final.

Whatever decision is made - either to free the two killers or to refuse amnesty - it could cause great political conflict.

However, instead of reconciliation the Hani matter could lead to political conflict. Reacting to the ANC statement CP leader Berdi Hartzenberg accused the ANC of showing contempt for the amnesty process, and said there was an obvious lack of equal justice within the TRC

The ANC and a majority of the public will be angry if the TRC releases the two killers from prison while the right-wing is expected to condemn the TRC for being one-sided if they do not.

As Derby-Lewis was a CP member of parliament and Walusz was a member of the AWB, their testimony could also cause a huge political upheaval when they disclose why they wanted Hani dead

If their "full disclosure" does not take the matter much further, and they are still released from prison, there is bound to be an uproar

□ However, as Archbishop Desmond Tutu explained to City Press a fortnight ago, the Truth Commis-

□ TO PAGE 2

P.F.O.

# Hani's killers row (252)

FRONT PAGE 1

sion is compelled by an Act of parliament to release criminals if they comply with the conditions of the Promotion of National Unity Act.

They did not have to show repentance for what they did, he said.

The application by Derby-Lewis and Walusz to give evidence to the TRC will be heard early next year. In terms of the Act people already in prison have to be given priority.

Gauteng Premier Tokyo Sexwale this week said Walusz should not be granted amnesty unless he revealed who had ordered him to kill Hani.

Sexwale - remembered for the image he created by bending over Hani's bloodied corpse - has always maintained there was a wider conspiracy around Hani's death.

"Walusz was only the gunman who pulled the trigger - he must tell who his masters were, who was controlling him," said Sexwale.

A Police investigation, however, revealed that only three people were probably connected with the killing

Derby-Lewis, his wife Gaye Derby-Lewis and Walusz.

None of the three gave evidence at the trial so it was never revealed who had instructed Walusz to kill Hani, and Gaye Derby-Lewis was acquitted at the end of the trial.

Now Walusz and Derby-Lewis will give their version for the first time in a TRC hearing and Gaye Derby-Lewis will undoubtedly be subpoenaed to give evidence and all will be cross-examined.

The full truth as to whether Gaye Derby-Lewis was behind the killing or not will probably be revealed - otherwise Derby-Lewis and Walusz cannot be freed.

But even if Gaye Derby-Lewis should admit what Hani's widow, Limpho, and many others suspect - that she masterminded the killing - she cannot be charged for the crime. She has already stood trial for the Hani assassination with her husband and Walusz - and was acquitted.

She cannot be tried twice for the same crime. However, Gaye Derby-Lewis and Walusz will have to explain how the

so-called death list - which included the names of Nelson Mandela and Pik Botha as well as that of Hani - came into the hands of Walusz.

The list - found in Walusz's home shortly after the assassination - had the name and address of Ham on top, followed by that of Mandela, the late Joe Slovo, Pik Botha, Judge Richard Goldstone and former Sunday Times editor Ken Owen.

Gaye Derby-Lewis's fingerprints were on the "death list".

Former rightwing journalist Arthur Kemp gave evidence that at Gaye Derby-Lewis's request he had given her a list of the names and addresses of Hani and the others.

He told the Rand Supreme Court he had assumed she wanted them so that the Conservative Party could hold demonstrations outside their homes.

Kemp, who agreed to give evidence for the State when threatened with prosecution for being part of a conspiracy, said in cross-examination it was not unusual for Gaye Derby-Lewis to want such information as she was a research journalist.  As Gaye Derby-Lewis, like her husband and Walusz, did not give

evidence, they could not be cross-examined as to how the list had come into Walusz's possession. As a result, the State depended on Kemp's evidence to convict her.

Instead, his evidence under cross-examination cleared her.

Should the "full disclosure" prove that Kemp did not tell the truth, he could be charged with perjury.

To obtain amnesty they will also have to disclose how Hani's murder was planned and name anyone else.

They will also have to reply to questions not answered in the trial - such as why Walusz did not use the silencer for the pistol in the murder when Derby-Lewis had taken such trouble to have one made.

Police believe if the silencer had been used, they would not have been alerted so quickly and Walusz - who was arrested within minutes of the assassination - may have escaped.

Another question which will have to be answered is how and when Walusz came into possession of the Z88 firearm that had been delivered to Derby-Lewis at his home.

Jan Lubbe, Derby-Lewis' attorney, told City Press that his client would not involve others in the plot in his "full disclosure".

# People's will gets death sentence

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— using non-axiomatic criteria

**A**S IS CLEAR from the title of my book, the thrust of the work is to make out a case for the right of the populace to determine the content of the laws of the country — in particular the contents of the Constitution.

One has to, of course, proceed from the premise that we are a representative democracy

Therefore, there is a sense in which we are required to defer our right to decide some issues ourselves to those we have elected

However, where the will of the people is manifestly ignored by our elected representatives, there arises a crisis of democracy in what way can our representatives still be said to speak and decide on our behalf?

In order to make out a case for the will of the people regarding the death penalty to be reflected in the Constitution, it is also necessary to show that arguments against the death penalty are not axiomatic

If they are axiomatic, the will of the populace is irrelevant

Insisting on the will of the people to prevail in such a case would be like trying to solve a mathematical problem by popular consent

Therefore it is crucial to examine the arguments against the death penalty

These are.

- That it is uncivilised,
- That many Western countries have abolished it,
- That the death penalty tends to victimise the poor and blacks;
- That people who face capital charges cannot afford experienced counsel,
- That there is always the possibility of error;
- That there is always an element of caprice in handing down the death penalty,

SEVERAL surveys have shown that the majority want the death penalty reinstated. **MANDLA SELEOANE**, a researcher with the Human Sciences Research Council, Centre for Constitutional Analysis, makes a case for the peoples' will in his book *The Death Penalty — Let the People Decide*.

■ That the death penalty serves no deterrent purpose

An examination of the above arguments leads very quickly and easily to the conclusion that they are in no sense axiomatic

The civilisation argument is in fact a non-argument, it comes down to labelling, directed at embarrassing into silence those who might take up the cudgels for the death penalty. In the face of this non-argument, one merely has to maintain a steadfast unwillingness to be bullied

The argument that many Western countries have abolished capital punishment is both illogical and inattentive to the connection between law and the material conditions prevailing in any country at any given historical moment

One can accept the fact that a number of Western countries have abolished it, but should we abolish the death penalty? Our appeal to the West has not shifted the debate a morsel.

It is true that most people who commit capital offences cannot afford the fees for experienced counsel. Usually indigent people facing capital charges are provided with

pro deo defence, which may or may not be very experienced. But then experience is relative. Therefore it is non-sequitur to argue from the inexperience of the defence to the abolition of the death penalty

Whereas it is true that there is a possibility of error and that, therefore, a person may be wrongly sentenced to death, it is also true that, in respect of some cases, there are simply no prospects of error

Barend Strijdom is a case in point, and there must be many other cases like that

The question inevitably arises, therefore why should those who are clearly guilty benefit from our fear to punish those who may be innocent? Why is it impossible to so arrange our penal system that it will give maximum protection to those in respect of whom there is doubt, while punishing those in respect of whom there is no doubt?

The inclination to victimise blacks and the poor, and the element of caprice are difficult problems

But in both South Africa and the USA, a substantial bulk of those who are calling for the death penalty are black and poor people. The reason is that they are exposed to violent crimes more than whites and affluent people, whose residential areas receive better policing

If one is confronted by such a dilemma, the consideration arises whether it is better to err on the side of democracy (as reflected by the demands of the people) or on the side of 'non democracy' (as reflected by the willingness to ignore the wishes of the majority)

Regarding the deterrence argu-

ment, although there may be no empirical evidence to support the claim that capital punishment deters criminals, there is also no empirical evidence to support the claim that it does not

Further, if it were accepted that it does not, why should we single out capital punishment? In other words, if a particular type of punishment is abandoned because it does not live up to its claims, why should we not also abandon imprisonment, since it may be argued that it too does not deter? Why should we not also then abandon reformation as a penal theory, since it too does not live up to its claims?

The right to life is another feature of this debate which merits some consideration. The claim is that the right to life is an absolute right and that it cannot, therefore, be forfeited, even by murderers. This claim, apart from all its other defects, can be dismissed simply by investigating the conceptual frame within which it is made

Abolitionists hang their arguments on the social contract. Some of the most outstanding among them still recognise Hobbes as the best exponent of the natural right to life. And Hobbes based his views on the natural right to life on the social compact. Within that conceptual frame, Hobbes posited a mutual duty to refrain from injuring one another, in other words, my right not to be deprived of my life is conditional on my respecting the right of others not to be deprived of theirs. If I fail in this obligation, I thereby forfeit my right to life

Therefore, if the argument of the

abolitionists is premised on the social contract, it is simply impossible to make out a case for rights which are unconditional

Even if their argument is not based on the social contract, it is still impossible to make out a case of absolute rights, for why must any citizen respect such rights? On what sort of basis can it be argued that other citizens ought to respect such rights?

Arriving as I do at the conclusion that there is nothing axiomatic about the arguments against the death penalty, it seems to me that a case can be made for the right of the population to influence the content of our Constitution. We elected the Constitutional Assembly because we were informed that, to be legitimate, the Constitution should be written by people who have our mandate. On what basis, then, can they ignore the will of the people, where it (people's will) is clear?

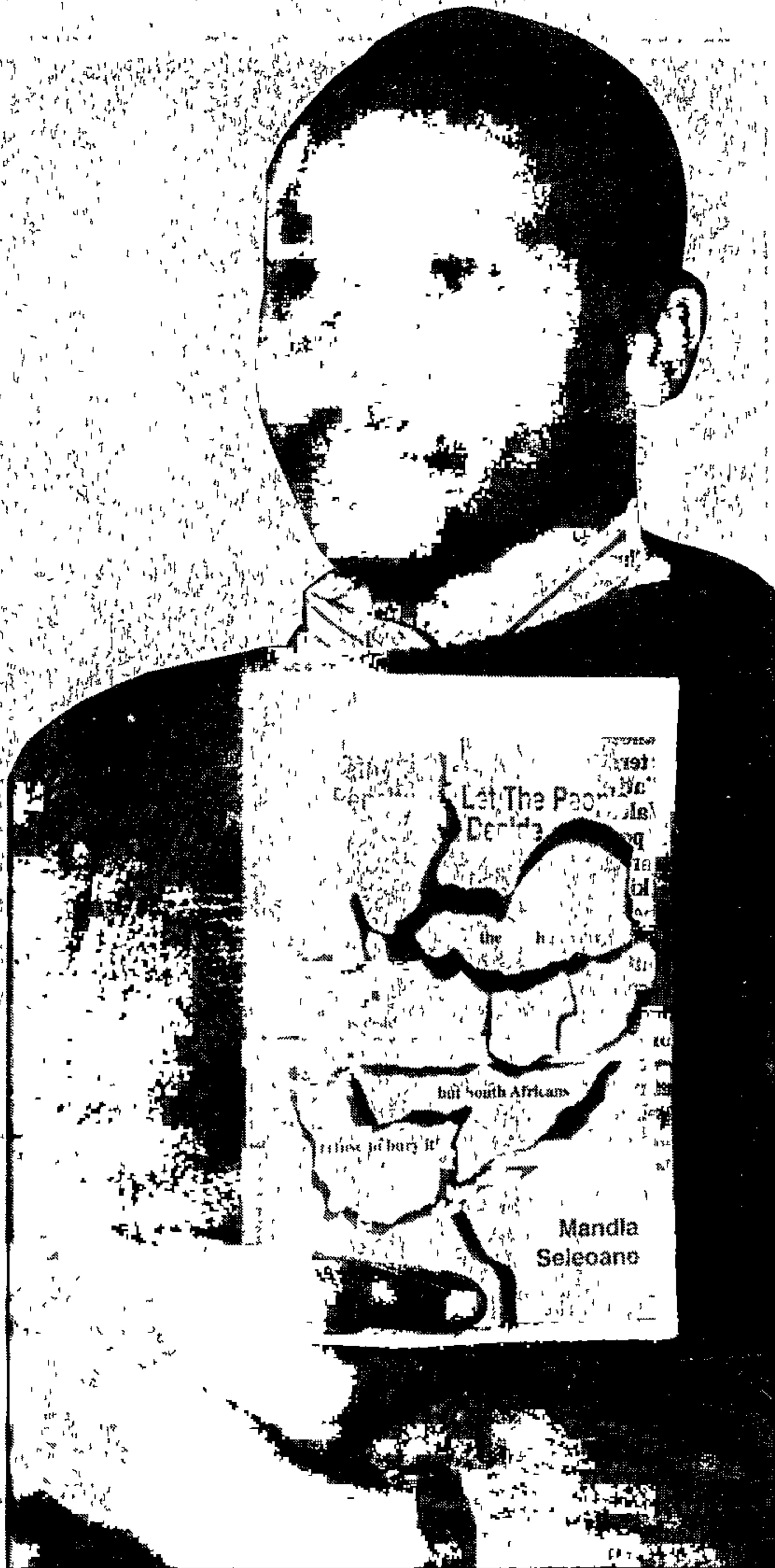
Recently there have been a number of surveys which suggest that South Africans want the death penalty to be brought back

Whatever the case that might possibly be made for ignoring popular sentiments, the risks have to be weighed up very carefully. The day might well come when South Africans are impelled to adapt Jean Marat's rhetorical question with reference to the betrayal of the working people in France after the 1789 Revolution, and ask themselves: "What will we have gained, to have destroyed the aristocracy of racial oppression by whites to replace it by that of the criminals?"

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**PRO DEMOCRACY** . . . Mandla Seleane holds up the book in which he argues that the criteria for abolishing the death penalty are fallacious, and that the people should therefore be allowed to decide on the matter

# The louder the police denials, the more compelling the evidence

Vigilant coverage of the murder of Mamelodi activists Dr Fabian Ribeiro and his wife, Florence, which began at the scene of their bloodied bodies 10 years ago, marked the start of a lengthy investigation by The Star

Although revelations during the past 10 years have come breathakingly close to proving 'state complicity', no one was ever charged

Denials or fabrications by the state and police were met only with further uncovering of evidence by Star journalists since the double murder on December 1 986

Former news editor Peter Mann said the newspaper's coverage was responsible for putting pressure on those who knew the identities of the killers

"It was a huge vindication for the Star when the Truth and Reconciliation Commission heard about state involvement in the murders last week," he said

Mann said 'The Star knew at the time who had committed the murders, but faced difficulties in pursuing the investigation be-

The investigative role played by The Star during the 10-year probe into the murders of Dr Fabian Ribeiro and his wife, Florence, has finally come full circle with the newspaper vindicated, writes Edwin Naidoo

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cause of government restrictions

In former editor Harvey Tyson's book, *Editors Under Fire*, Mann said the newspaper's Mamelodi correspondent, Maokeng "Touch" Kgwele, was at the scene minutes after the murders

"When he got there, he was told an appalling tale by residents They had first noticed a white car, which they said was a Nissan Skyline, registration number GHN 107T, cruise slowly past the Ribeiro home Two white men were in the car Residents noted the number because it was unusual to see whites in the township

"Moments after the white car had left, a maroon car (some witnesses say it was red) halted outside the home Two men got out and ran inside

"A fusillade of shots rang out Dr Ribeiro and his wife had been shot on their patio"

Mann said that outside Jacob Mampuru heard what he described as a noise which sounded like someone hammering a nail into a roof Chris Ribeiro, who was 24 at the time, rushed to try to save his parents

He was too late The killers were also seen by a group of people at a party nearby Enraged witnesses flung bricks at the vehicle as it made its getaway

Someone took the car's number plate which began with the prefix NPN

A resident, who arrived in a bakke, picked up seven witnesses to give chase, in the belief they could take a short cut and catch up with the killers Not far away they spotted the vehicle in which the attackers travelled, came to a halt near a Landrover at the entrance to the township

Two white men, one armed, got out of the vehicle and swapped with the killers All four

drove in the direction of Pretoria

The witnesses, who had no weapons, were scared to continue the chase, and returned to the Ribeiro home

Maokeng interviewed several witnesses, but on the instructions of Mann, did not take down their names because he would have later been forced to reveal them under the notorious Section 205 law or face prosecution

Meanwhile, in The Star's newsroom, Mann's deputy at the time, Andrew Walker, and then crime reporter, Mike Cohen, began tracing the cars

The first was traced to Noel Robey, who lived at Hartbeespoort Dam A reporter and

photographer were sent to Robey's home He was not in, but his wife confirmed the Landrover belonged to him

Her husband was a "security consultant" who worked in Pretoria She knew little of his job, but said he had come to the country from what was then known as Rhodesia

Within hours of the publication, the Robey family had disappeared The second vehicle was traced to a vehicle on a garage block awaiting renovation.

Police came to the offices of The Star and demanded the names of sources

Mann said they became angry when they were told no names

## Residents told reporter a shocking tale

Robey's home

He was not in, but his wife confirmed the Landrover belonged to him

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Police came to the offices of The Star and demanded the names of sources

Mann said they became angry when they were told no names

were taken, and had threatened to arrest everyone in Mamelodi and put them on an identity parade.

The police left without serving their subpoenas and The Star published a report which expressed the determination of police to catch the killers, with telephone numbers of policemen whom members of the public could contact

Mann said that during the discussion with police, the newspaper suggested there was evidence against Robey, but the policemen said there was "not a shred"

At the funeral, families were told while mourning that armed and masked men were at the Ribeiro home. Jacob Mampuru and a friend, Mark Malali, went to investigate Mampuru was shot, but his friend escaped The assailants were believed to be wearing gas masks or balaclavas

After the shooting, Mann said

former soldier Graham Cook was arrested, but only after an amazing confrontation between The Star and the Bureau for Information At the time the bureau was the only authorised communication channel for any unrest incident Whatever it put out was deemed the only statement which could be published

"Often the official version was dramatically different from what we saw and heard when we smuggled reporters into no-go areas," Mann wrote

Then the police claimed the shootings were related to a criminal case The bureau, meanwhile, backtracked, saying the matter fell out of its ambit

When the case came to court, it was revealed that Cook was a member of a South African Defence Force reaction unit sent to the Ribeiro funeral with instructions not to enter the property.

Cook and member Mannus Ludik, had "willfully" ignored the instructions, but the magistrate found Cook had been justified in opening fire because he believed Mampuru had been threatening his life He was acquitted

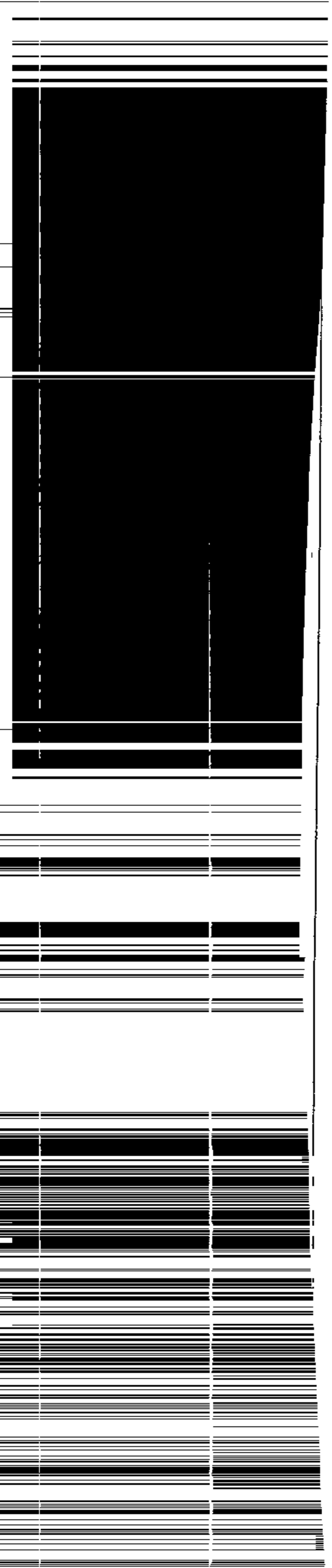
Mann said The Star's next bombshell was the discovery of the white car which cruised past the Ribeiro home It was registered to the commanding officer of the Security Police branch in Schoeman Street, Pretoria

Just when it appeared that police investigation was going nowhere and The Star's investigation probe was beginning to dip, Mann said, police announced a preparatory examination to see whether Robey should face charges for the Ribeiro murders

But at an identity parade none of the witnesses recognised him and the case was dismissed

However, in the face of mounting evidence of state involvement in violence, the Harms Commission was appointed It found Robey was a CCB member

Mann said the fact that The Star had been vindicated by the submissions before the TRC was a triumph for journalism



# Come

# clean or I quit, Tutu tells ANC

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Archbishop says he is unhappy about the stand taken by Premier Phosa and Justice Minister on amnesty procedures

By ROBERT BRAND

Archbishop Desmond Tutu confirmed today that he would resign as chairman of the Truth and Reconciliation Commission unless the ANC subjected itself to the commission's amnesty procedures

"If parties are able to grant themselves amnesty, what is the point of having a Truth Commission?" Tutu said in an interview with The Star

He added that there was "no crisis yet".

The ANC's National Working Committee (NWC) is expected to discuss the issue today and adopt a formal position.

"We may be able to find out soon what their position is." But Tutu said statements by Mpumalanga premier Mathews Phosa and Justice Minister Dul-

lah Omar that ANC members would not apply for amnesty for "acts of war" such as the 1983 Church Street bomb in Pretoria were not acceptable to him.

He had made this clear in his meeting with President Mandela last week, and the president had assured him the party had not yet adopted an official line.

However, if the ANC adopted the position expressed by Phosa "and to some extent supported by Dullah Omar", he would have no choice but to resign, Tutu said.

"The (Truth Commission legislation) is quite clear: it does not make provision for moral distinctions, and that is something the ANC must have been aware of."

"You have to ask for amnesty for acts and omissions which would attract criminal prosecution or claims for civil damages, acts such as killings, murder, ab-

duction and severe ill-treatment. "To talk about a just war is to introduce irrelevancies."

Tutu also reacted strongly to claims by National Party leaders F W de Klerk and Hennis Kriel at the weekend that the commission had been hijacked by the ANC.

"De Klerk and Kriel ought to show a great deal more humility and contrition. If I were them I'd probably shut up."

"They know we have always asserted our even-handedness. We have said clearly to the ANC that we will not adopt their position."

"Their (De Klerk and Kriel's) subsequent spewings-forth are very distressing."

It's all twak, says FW

5-17 535

# Emphatic calls for iron-fist approach

Star 4/11/96

(252)

Survey respondents overwhelmingly in favour of bringing back the death penalty, better pay and training for police, and stiffer bail conditions

By GRAHAM REES

New demands for an iron-fist approach to crime and criminals have emerged from a survey conducted jointly by The Star and one of the country's biggest financial institutions, Nedcor

The results of the survey, released today, show that Greater Johannesburg residents across racial, social and economic sectors want the Government to pump far more of the national Budget into fighting crime - for greatly improving police pay, conditions and training; ensuring greater police visibility; building more high-security prisons, and making troops available to help the police

The survey again showed massive public support for the re-introduction of the death penalty - something that has been flatly rejected by the Government.



About 7000 people responded to the questionnaire, which was published in The Star last month and also circulated on Nedcor's

Internet Web site.

Of the respondents, 89,9% voted in favour of capital punishment with 78,8% indicating "strong" support for its re-introduction.

More than 83% said they wanted substantial tightening of bail conditions

Most respondents favoured improving police salaries and training - 77,2% "strongly agreed" to this while another 21,2% simply "agreed".

The majority supported introducing visible police and troops

on the streets - 76,5% "strongly agreed" and 21,1% "agreed" (a total of 97,6%)

Punishing police corruption severely and dismissal from the service was demanded by 97,9% of respondents.

Even though 78,6% agreed to the Government permitting private security officers to make arrests, there was a fair amount of resistance to this approach (20,3% against it)

Others involved in the crime survey were the Post Office, which provided a Freepost service for replies; Nedbank, Permanent Bank and People's Bank country-wide; and SABC Radio, which will be broadcasting the findings.

The results of the survey will be forwarded to Parliament for the attention of the relevant cabinet ministers, all of whom were aware that the survey was being carried out

## Off with their hands, NP provincial congress is told

The hands of criminals should be chopped off, the National Party's Gauteng congress heard in Johannesburg on Saturday

Speaking in support of a motion calling for stronger action against crime, Benoni delegate Salaam Abraham said more than the return of the death penalty was required to deter criminals. "We demand further action, like

chopping off the hands of criminals," he said

NP MP Sheila Camerer expressed reservations about the idea. However, Abraham's proposal was an indication of the frustration people felt about the high crime level, Camerer said

Delegates sharply criticised the Government for ignoring surveys showing that SA's majority want-

ed the return of the death penalty. These included more than 70% of ANC supporters. Annelise van Wyk from Pretoria called for crime to be criminalised.

The congress unanimously endorsed a proposal that signatures be collected for a petition of no confidence in Gauteng Premier Tokyo Sexwale and Safety and Security MEC Jessie Duarte - Sapa

Exclusive

'ALL-OUT FIGHT' WITH McNALLY IF APPLICATION FAILS

# Coetzee positive on amnesty

CT4/11/96 (252)

**THE AMNESTY APPLICATION** to the TRC of former Vlakplaas commander and police captain Mr Dirk Coetzee will be heard from tomorrow. **ROGER FRIEDMAN** reports.

**F**ORMER Vlakplaas police hit-squad commander and police captain Mr Dirk Coetzee is positive the Truth and Reconciliation Commission will grant him amnesty, but has promised an "all-out, personal fight" with KwaZulu-Natal attorney-general Mr Tim McNally should his amnesty application fail.

Coetzee and former Vlakplaas operatives Butana Nofomela and Mr David Tshikalange appear before the commission's amnesty committee in Durban from tomorrow. Should their application fail, Coetzee — with retired Brigadier Johannes van der Hoven and Colonel Andy Taylor — has a date with McNally at the Durban Supreme Court on December 2, concerning the murder of human rights lawyer Mr Griffiths Mxenge.

Coetzee was suspended from duty by the National Intelligence Agency after McNally laid the

murder charges a few months ago. This, after McNally had, in 1989/1990 — at the government's request — investigated Coetzee's admitted role in plotting Mxenge's death and concluded he was a liar.

McNally was then appointed counsel to the Harms Commission, which was appointed in 1990 to probe "certain unsolved murders". Harms concluded there was no proof that a police hit-squad existed.

Altogether, Coetzee will apply for amnesty in respect of about 25 acts, including Mxenge's assassination and the poisoning, shooting and burning of Eastern Cape activist Mr Goniwe Kondile, both in 1981. If he is granted amnesty for the Mxenge murder, he will be indemnified from prosecution by McNally, and from possible civil action by

the Mxenge family, who plan to oppose his application.

His application document gives details of murder, conspiracy to murder, attempted murder, cross-border raids, theft, house-breaking, burglary and bombing — including the theft of cars from the embassy of "a country hostile to South Africa" in Swaziland.

The amnesty committee has set aside nine days to hear his application, four this week and another five later this month.

Interviewed yesterday, Coetzee said he felt "100% positive that I qualify on all the relevant

points. Whether the truth will comply with all the legal niceties, that I don't know," he said.

"I must still go back to Durban on December 2 for the attorney-general and that will be a different cup of soup. If I get amnesty, then I

don't think they will be able to charge me. But if not, then it will be a personal fight between Dirk Coetzee and Tim McNally, the man who made me into a liar in



**SURE:** Mr Dirk Coetzee

1989, the man who would not believe the truth."

Coetzee said he feared that McNally had not bought into the new South Africa's reconciliation process and remained part of "the old, rotten, short-sighted, I don't have enough adjectives to describe it" system.

He suggested a committee be formed to oversee the work of McNally and his Gauteng counterpart Dr Jan D'Oliviera, as they were presently the sole custodi-

ans of evidence and information that was of national importance but which they did not necessarily know how to use to the country's best advantage. An example of this was McNally's prosecution of former defence minister General Magnus Malan which developed into a "farce", said Coetzee.

Regarding his Vlakplaas successor Eugene de Kock, who was sentenced last week to more than 200 years' imprisonment, Coetzee said he was "a selective teller of the truth".

"He has no vision of the future. He cannot see one day into the future," said Coetzee, who fled the country in 1989 to seek the protection of the ANC in exile after helping lift the lid on the police hit-squads.

"Had Gene approached the truth commission instead of waiting to be painted into a corner, and co-operated by revealing everything much earlier, then I think there would have been a much more positive outcome for him," said Coetzee.

It is believed De Kock is planning to apply for amnesty soon.



## BMF awards top prize



# Mxenge case just one of many to be uncovered

**ROGER FRIEDMAN**

**F**ORMER security police captain Dirk Coetzee has spent the past few days showing his lawyer and a television crew around Vlakplaas outside Pretoria, pointing out sites and evidence relating to the assassination of ANC lawyer Griffiths Mxenge, which he planned.

Fifteen years ago this month, three of his operatives, Butana Almond Nofomela, David Tshikalange, Joe Mamasela and the late Brian Ncqulunga abducted Mxenge and took him to an old cycling track outside Durban where they killed him brutally. They stole his valuables, his clothing and his car.

The car was burnt out near Plet Retief on Coetzee's instructions. The twisted remains were one of the exhibits he showed his lawyer and the television crew. Tomorrow, they will be visiting the cycling track, the house where Mxenge lived, and

the bar where he met Mamasela after the deed for a debriefing.

The Mxenge case is, however, just one of many Coetzee will shed light on in the course of his amnesty application this month. Others include:

- The murder of Askari Peter Dlamini and ANC cadre Selby Mavuso in October 1981 near Komatipoort. Mavusa was abducted in Maputo, given poison, and then shot dead.

- Conspiracy to murder ANC member Mr Mawick Nkosi in Manzini, Swaziland, in 1980. Nkosi was not at home, but Patrick Nkosi and Patrick Makau died as a result of the bomb.

- The murder of Ace Moema in Nelspruit in 1981. Moema was an Askari who was suspected of having links with the ANC. Coetzee will say he authorised the murder which was carried out by Captain Koois Vermeulen.

- The murder of Goniwe Kondile, who was abducted in the Eastern Cape in 1981 and

seriously injured in detention. Coetzee will say that so serious were Kondile's injuries the police feared another Steve Biko. So they faked his release, abducted him again, poisoned, shot and burnt him.

- The killing of a diamond dealer who apparently sold Mamasela, Nofomela and Tshikalange R5 000 worth of poor-quality stones.

- An attack on Mrs Joyce Dipale's home in Gabarone in November 1981 in which an unknown woman was killed.

- The kidnapping of activist Mr Joe Pillay, with intention to murder. The murder was only prevented by the public outcry which followed his disappearance, according to Coetzee.

- Conspiracy to murder Mar-lus Schoon in Zeerust in November 1981, conspiracy to murder an unknown Swazi detainee in November 1981, and the attempted murder of "Comrade A" in Maseru in October 1981.



# Tutu threat to quit TRC

ARC 4/11/96

(252)

CHENÉ BLIGNAUT AND JOHN YELD  
STAFF REPORTERS

**Desmond Tutu has threatened to resign as chairman of the Truth and Reconciliation Commission if members of the African National Congress refuse to apply for amnesty.**

"The ANC should explain to us what their position is. They are not in a position to decide which deeds constitute gross human violations and which don't. That is our decision," Archbishop Tutu said in a television interview last night.

"If parties are able to grant themselves amnesty, what is the point of having a Truth Commission?"

Archbishop Tutu said today that his comments were in response to statements by Mpumalanga Premier Mathews Phosa, who had said ANC leaders should not have to apply for amnesty for legitimate military actions carried out in accordance with ANC policy.

Archbishop Tutu said there was "no crisis yet" because the ANC had not yet taken an official stand. He said President Mandela had indicated that while some ANC leaders agreed with Mr Phosa, the issue had yet to be discussed by the National Executive Committee. He said the Act setting up the TRC had no provision for "making the moral distinctions which Premier Phosa is seeking to draw".



**Truth test:** Archbishop Tutu challenges the ANC

Archbishop Tutu also reacted strongly to claims by National Party leader F W de Klerk and Western Cape Premier Hennis Kriel that the commission had been hijacked by the ANC. "De Klerk and Kriel ought to show a great deal more humility and contrition. If I were them I'd probably shut up. They know we have always asserted our even-handedness," he said.

# Debate over decision to adjourn amnesty applications

BO 4/11/96

(252)

**Stephen Laufer**

THE decision to adjourn amnesty applications by five former Vlakplaas and northern Transvaal security policemen involved in up to 40 murders to February 24 next year has added complexity to the debate around the truth commission's request for an extension of the amnesty cutoff date

The postponement last Friday after eight days of testimony leaves prospective amnesty applicants without the legal certainties

which a final decision on the five could have provided

Legal experts believe that facing the original cutoff date of December 15 without the precedent and greater certainties of amnesty committee decisions, will increase the pressure on prospective applicants. Uncertainty as to the committee's interpretation of the provisions in the Truth Commission Act will increase their inclination to play safe and apply for amnesty before December 15

Moving the cutoff date — as

proposed by the commission to parliament — might have the opposite effect, it was felt.

A later cutoff date of March 15 would allow potential candidates to postpone applying for amnesty in the hope of a clearer legal framework after more decisions — including those in the cases of Trust Feeds killer Brian Mitchell, former Vlakplaas commander Dirk Coetzee, and the northern Transvaal five

Coetzee's application will be heard in Durban from tomorrow

# Generals' no displeases Government

(252)

BY PATRICK BULGER  
Parliamentary Correspondent

Cape Town - The Government was "extremely displeased" with the refusal of apartheid-era military generals to provide specific information on past deeds to the Truth and Reconciliation Commission, Deputy Defence Minister Ronnie Kasrils said yesterday.

Kasrils, a former Umkhonto weSizwe intelligence chief, said the generals' submission was "absolutely unrepentant", a view shared by Defence Minister Joe Modise, who is recuperating from illness.

He said the submission provided "an insight into an arrogance and unrepentant frame of mind that is not a happy thing for this country".

Kasrils intimated there were attempts in senior government circles to have the generals make a new submission to the TRC.

He was speaking to journalists at a briefing on the Defence Ministry and its relationship with the joint standing committee on defence, whose chairman, Tony Yengeni, also addressed the briefing.

Yengeni also slammed the generals' submission, which he said "hardens attitudes".

On his own role in the struggle, Kasrils said "I also have a problem because I am a disciplined member of the ANC".

"The ANC has a collective approach and is still considering this issue very carefully".

Kasrils said he hoped TRC chairman Archbishop Desmond Tutu would reconsider his threat

to resign from the TRC if the ANC refused to apply for amnesty.

Earlier, Tutu said he would resign unless the ANC agreed to seek amnesty for acts of war.

At a briefing, Tutu, his deputy Dr Alex Boraine and amnesty committee chairman Judge Hasen Malli spelt out the crisis facing the TRC if the ANC adopted Mpumalanga Premier Mathews Phosa's approach to amnesty.

"It is not yet a crisis. It will become a crisis if the ANC decides it wants to adopt that particular position," Tutu said. The TRC was in danger of becoming a witchhunt, targeting perpetrators only on one side, he said.

The ANC said yesterday any suggestions that members would not be applying for amnesty were devoid of all truth.

*Star 5/11/96*

## Tutu receives a 'warm response' from PW

BY ROBERT BRAND

Durban - Former state president P W Botha is said to have responded "warmly" to a proposal for a private meeting with Archbishop Desmond Tutu in his role as chairman of the Truth and Reconciliation Commission.

"It was a warm and positive response," said Tutu yesterday about the letter which the TRC has received from Botha saying he was prepared to discuss evidence heard by the commission

implicating him in apartheid-era human rights violations.

Tutu is in Durban for the amnesty hearing of former Vlakplaas commander Dirk Coetzee which starts today.

He said he would travel to Wilderness on the Cape south coast, Botha's retirement home, for the meeting. A date is being arranged by Tutu and Botha's secretaries.

Botha was previously opposed to the commission. He refused to co-operate with the National

Party in drawing up a submission to the commission in August.

The commission resisted strong calls to subpoena Botha after testimony at hearings implicated the former state president in apartheid-era atrocities such as the 1988 Khotso House bombing in Johannesburg.

Tutu said last week the commission should have regard for Botha's age - he is 80 - and his former position. It was decided that he would seek a private meeting with Botha as a first step.

EVIDENCE BY SECURITY POLICEMEN 'CALLS FOR HUMILITY'

# Tutu advises FW and Kriel to 'shut up'

ET 5/11/96

(252)

**DURBAN:** TRC chairman Archbishop Desmond Tutu has suggested that NP leader Mr F W de Klerk, in the light of evidence to the amnesty committee, appear penitent. Tutu has also threatened to resign if the ANC decides its members need not apply for amnesty. **ROGER FRIEDMAN** writes.

**T**HE time had come for National Party leader Mr F W de Klerk, Western Cape Premier Hennis Kriel and others to stop questioning the Truth and Reconciliation Commission's integrity and "shut up", TRC chairman Archbishop Desmond Tutu suggested yesterday.

De Klerk, speaking in Gauteng on Saturday, appealed to the commission to be even-handed and not "allow itself to be led around the bush by the ANC"

This evidently struck a nerve with Tutu, who has threatened to resign if the ANC follows Mpumalanga Premier Mr Matthews Phosa's suggestion that it is not necessary for its members to apply for amnesty for actions considered by the ANC to have been carried out in the course of a just war

Tutu referred to allegations, made before the amnesty committee by former security policemen in the past few weeks, that the NP government had known about gross human rights violations "If we look at what came out

last week, I might want to suggest to people like De Klerk and Hennis Kriel that they would do better to be slightly more humble and penitent and, perhaps better still, to shut up," Tutu said.

He was addressing members of the media gathered in KwaZulu-Natal ahead of former Viakplaas security police commander Dirk Coetzee's amnesty hearing today

Tutu said he would resign if the ANC officially adopted Phosa's position on amnesty. However, his office later described the threat as a "storm in a tea cup", while President Nelson Mandela's office said it had been "misunderstood and exaggerated"

A spokesman for the President said: "If a member of the ANC expresses an opinion, we don't understand what the fuss is about and the threats of resignation."

The ANC said "We appeal to the Truth Commission to have the courtesy to check facts with ANC leaders before commenting on media reports which bear no resemblance to the truth"



**SEARCHING SOULS:** Deputy chairman of the Truth and Reconciliation Commission Dr Alex Boraine (left) and chairman Archbishop Desmond Tutu

Tutu said it was possible that too many people had forgotten what South Africa was like in the lead-up to the 1994 election, "when our country was on the verge of disaster" The negotiated settlement, in which amnesty was

a critical element, had prevented this "Armageddon" "The Promotion of National Unity and Reconciliation Act makes no provision whatsoever for moral distinctions to be made" Although everyone made moral

distinctions and there obviously were people who felt a struggle against an unjust system was a just struggle, this was not in the Act "If we allow the ANC, if it does in fact take this decision, people will justifiably say the TRC is a

witch-hunt It is not yet a crisis It will become a crisis should the ANC decide it wants to adopt that particular position " Tutu acknowledged that his deputy chairman, Dr Alex Boraine, "does not agree with my strategy"



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# Govt 'displeased' with generals' attitude to probe

**POLITICAL STAFF**

THE government was "extremely displeased" with the refusal by apartheid-era military generals to provide specific information on past deeds to the Truth and Reconciliation Commission (TRC), Deputy Defence Minister Mr Ronnie Kasrils said.

But Kasrils could not say yesterday whether he would approach the TRC for amnesty.

Speaking at a parliamentary briefing, he said the generals' submission was "absolutely unrepentant".

Kasrils, a former uMkhonto weSizwe intelligence chief, said the generals' submission provided "an insight into an arrogance and unrepentant frame of mind that

is not a happy thing for this country". He intimated that there were attempts to have the generals make a new submission.

On his own role in the struggle, Kasrils said "I also have a problem because I am a disciplined member of the ANC. The ANC has a collective approach and is still considering this issue."

He hoped Archbishop Desmond Tutu would reconsider his threat to resign from his post as TRC chairman if the ANC refused to apply for amnesty. "We would not like to see him step down."

The deputy minister was confident he would be able to justify his past actions if he did go before the TRC. "I have no problem. I would be fully ready to justify the actions of uMkhonto weSizwe."



# Pressure on TRC to subpoena Mamasela

DURBAN The Truth and Reconciliation Commission is to subpoena self-confessed murderer and former security policeman Joe Mamasela to give evidence at an in-camera inquiry, commission deputy chairman Dr Alex Boraine said yesterday.

Mamasela was implicated in gross human rights abuses when five former security policemen appeared before the commission's amnesty committee in Johannesburg last week.

In one case, Mamasela allegedly lured 10 Mamelodi youths to their deaths after posing as an African National Congress cadre. The youths were drugged and blown up by special forces operatives near the Botswana border after Mamasela said he was taking them for military training.

Boraine said yesterday there was growing pressure on the commission to subpoena Mamasela and the commission had decided last week to subpoena him in terms of Section 29 of the Promotion of National Unity and Reconciliation Act, which provides for members of the commission's investigative unit to question Mamasela at an in-camera hearing. — Sapa

# IUTU WARMS ANCO

## Archbishop gets tough over party's attitude to TRC

By Mzimasi Ngudle  
and Claire Keeton

**T**he Archbishop of Cape Town, Desmond Tutu, has called for a more honest and open approach to the Truth and Reconciliation Commission (TRC) process.

In his address to the TRC on Tuesday, the Archbishop urged the Commission to be more than just a fact-finding body. He said it should also be a place where the truth is spoken and where the wounds of the past are healed. He criticized the party's attitude towards the TRC, saying it was not doing enough to ensure a fair and just process.

He said the party's attitude was a major obstacle to the TRC's work and that it was necessary for the party to change its approach. He called for a more open and honest dialogue between the party and the TRC.

In his address, the Archbishop also urged the TRC to be more inclusive and to take into account the views of all South Africans, not just the white minority. He said the TRC should be a place where all voices are heard and where the truth is spoken for all.

The Archbishop's comments came in the context of a recent report by the TRC that the party had been uncooperative in providing information about its role in the apartheid era. He said the party's attitude was a major obstacle to the TRC's work and that it was necessary for the party to change its approach.

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(2532)

Source: *South African Mail and Guardian*, 11/1/96

# Tutu repeats his threat to quit TRC

Lawetan 5/11/96

By Mzimasi Ngudle  
and Claire Keeton

Archbishop gets tough over party's attitude towards applying for amnesty

**T**RUTH and Reconciliation Commission chairman Archbishop Desmond Tutu yesterday reiterated his threat to resign if the African National Congress adopted Mpumalanga premier Mr Mathews Phosa's position on amnesty for ANC members.

Tutu confirmed his threat on the eve of the amnesty hearing of the former commander of the notorious Vlakplaas interrogation unit, Dirk Coetzee, and his two former henchmen, Almond Nofomela and David Tshikalanga.

Last week Phosa said ANC members had no reason to apply for amnesty since they had fought for liberation, unless they had committed

excesses outside of ANC policy.

Tutu said he had already met President Nelson Mandela twice about this "problem" but he would like a meeting with Mandela, Phosa, and Justice Minister Mr Dullah Omar to discuss the issue.

## In limbo

He said his position was "in limbo" pending the outcome of an ANC meeting yesterday to adopt a clear position.

The ANC national working committee met in Johannesburg yesterday to discuss this and other issues.

Meanwhile, Tutu suggested that former state president Mr FW de Klerk and

former law and order minister Mr Hennis Kriel would "do better to be slightly more penitent and more humble, or even better, to shut up".

Tutu also said the commission was in danger of becoming a witch-hunt, targeting perpetrators only on one side of the apartheid conflict.

The TRC was in limbo while waiting for the ANC to decide whether its members involved in "justifiable acts of war" should apply for amnesty.

He also repeated his earlier threat to resign if the ANC should decide to support Phosa's view that its members were involved in the "just war" and had no need to apply for amnesty.

# TUTU WARNS ANC

## Archbishop gets tough over party's attitude to TRC

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He also repeated his earlier threat to resign if the ANC should decide to support Phosa's view that its members were involved in the "just war" and had no need to apply for amnesty. TRC deputy chairman Dr Alex Boraine said the commission was obliged to follow up allegations

against political leaders arising from the human rights violations or amnesty hearings "whether (they concern) the former state president or a cabinet minister".

He emphasised that the political parties would be "faced with deep and probing questions" when they were recalled to the TRC after giving unsatisfactory submissions recently.

### Flood of applications

Hundreds of jailed Pan Africanist Congress and ANC members are expected to submit amnesty applications soon, the chairman of the TRC's amnesty committee, Mr Justice Hassan Mall, said yesterday.

Mall said 600 applications from the PAC and 390 from ANC members

were expected shortly in addition to the 3 322 already filed with them.

Boraine said the flood of applications had aggravated existing problems with the commission's infrastructure. He said the TRC's investigation and research units were struggling under the heavy load, even though they had anticipated an increase in applications.

"We were predicting that the moment members of the former security police started giving details of violations, a whole lot of others would break cover and start making applications."

● Coetzee, Tshikalanga and Nofomela are seeking to be pardoned for the gruesome murder of Durban human rights lawyer Mr Griffiths Mxenge and his wife Victoria in 1985

*Boraine said*

*5 111/96*



# ANC will co-operate with commission to the

Wynndham Hartley  
and Farouk Chothia

CAPE TOWN — Both the truth commission and the ANC expressed a desire to meet to discuss the ANC's position on amnesty after statements by the party's legal head, Mathews Phosa, led to commission chairman Desmond Tutu threatening to resign.

Deputy Defence Minister and ANC NEC member Ronnie Kasrils appealed to Tutu yesterday to reconsider his threat to resign as a result of the ANC's attitude to amnesty applications from its members.

Kasrils said he hoped the commission and the ANC could get together to discuss the issue. Tutu had said that the commission was rendered meaningless by the ANC's attitude, expressed by Phosa, that its members need not apply for amnesty for legitimate acts of war.

Truth commission deputy chairman Alex Boraine said yesterday the commission would seek a meeting with President Nelson Mandela, Justice Minister Dullah Omar and

Phosa to "thrash this thing out". ANC spokesman Ronnie Mamoepa said the ANC's "door has always been open" to the commission to discuss matters of mutual concern. The suggestion that ANC members would not apply for amnesty was "devoted of all truth". He said the ANC would co-operate with the commission to the "fullest extent of the law". ANC members would, "where applicable", apply for amnesty.

Amnesty committee chairman Judge Hassan Mall said 3 322 applications had been received so far, about 80% of them from prisoners. He said the committee expected to receive 300 applications from ANC-aligned prisoners soon, and another 600 from PAC-aligned prisoners.

A senior ANC source said Umkhonto we Sizwe and the ANC's intelligence and security department would soon make a submission to the commission. The submission would list all operations which fell within ANC policy, such as a skirmish between Umkhonto and SADF members, those which could be regarded "grey areas", such as the unmen-

tioned killing of civilians; and those which fell outside ANC policy, such as the intentional killing of civilians. Kasrils and parliament's defence joint standing committee chairman Tony Yengem said they would not be applying for amnesty. They said they were disciplined ANC members and would abide by the "collective approach".

Kasrils said he had no problem justifying the action that was taken by Umkhonto we Sizwe. The two lashed out over the recent submission to the truth commission by the

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old defence force. Yengem demanded that defence force made a "more tangible" submission.

Sapa reports that Tutu rebuked NP leader FW de Klerk and Western Cape premier Hennis Kriel for their criticism of the commission's objectivity. "If we look at what came out last week I might want to suggest to people like Mr de Klerk and Hennis Kriel that they would do better to be slightly more humble and penitent and perhaps better still, to shut up."

Meanwhile Boraine said the body would subpoena self-confessed murderer and former security policeman Joe Mamasela to give evidence at an in-camera inquiry. Mamasela was implicated in gross human rights abuses when five former security policemen appeared before the commission's amnesty committee last week.

The commission is set to become more dependent on foreign financial aid after being told by the finance department to trim its R150m budget in line with other cuts in state spending. Boraine said the commission had turned to European and US donors to help make ends meet.

'fullest extent'

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# Amnesty entirely in TRC hands

(251)

The decision to grant or refuse amnesty rests solely with the Truth and Reconciliation Commission's five-member amnesty committee, headed by Judge Justice Hassen Mall. The committee is obliged to grant amnesty for any act deemed as "associated with a political objective", as long as it satisfied the person applying for amnesty has been truthful about the application.

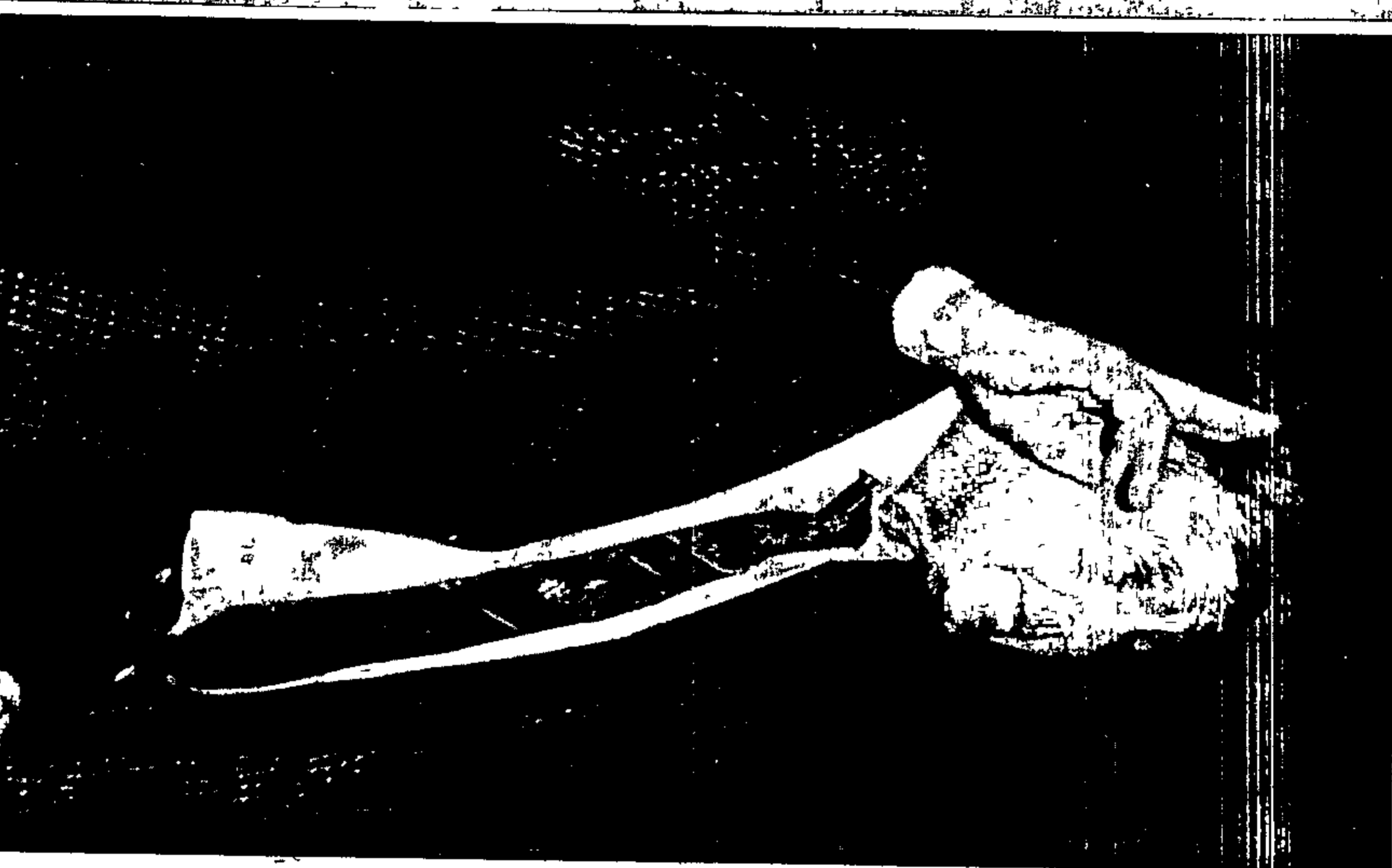
To decide whether an act is a crime or offence should be classified as "political", the amnesty committee will consider the nature of the perpetrator, the nature of the objective of the act, the nature of the organisation and the nature of the act itself.

It is a committee that is not bound to grant amnesty for political acts, but it will consider the nature of the act, the nature of the perpetrator, and the nature of the objective of the act.

The amnesty committee will accept amnesty applications only if the applicant is a member of the armed forces, a member of a police force, a member of a security force, or a member of a paramilitary organisation.

The amnesty committee will accept amnesty applications only if the applicant is a member of the armed forces, a member of a police force, a member of a security force, or a member of a paramilitary organisation.

To speak the truth... former hit squad commander Dirk Coetzee takes the oath at the start of yesterday's amnesty hearing in Durban. He told the truth probe he had a conservative Afrikaans background, and was prepared to kill and die for his country at the time



# My soul won't rest until past is exposed - Coetzee

Mar 6/11/96

(252)

Tells TRC that he is trying to get former colleagues to testify, as he applies for amnesty for the killings of lawyer Griffiths Mxenge and two others in 1981

By ROBERT BRADY  
Durban

**D**irk Coetzee, once a state assassin adept at covering his tracks, says he has turned into a crusader for truth.

Coetzee told the Truth and Reconciliation Commission's amnesty committee yesterday he had convinced some of his former colleagues to own up, and was trying to persuade others to do the same.

"I am determined to expose the truth about this country's past, or at least the small bit that I played a role in."

My soul won't rest until the truth about the past, about the apartheid era, has come out."

Coetzee, together with his former colleagues Almond Nofemela and David Tshikalanga, is applying for amnesty for the 1981 murders of Griffiths Mxenge, Sizwe Kondile and Joe Pilay.

He testified yesterday about the Mxenge murder, and offered his apologies to the family.

"What can I offer them? A pat on the back? I can say I am sorry. But I don't expect them to forgive me because I don't know if I would be able to forgive a man like Dirk Coetzee," he said.

# Policeman told to 'make a plan' for Mxenge

By ROBERT BRADY  
Durban

It was a rainy night when Griffiths Mxenge was kidnapped from near his Umhlanga home and stabbed to death at a sports ground in the township, Dirk Coetzee recalled before the Truth and Reconciliation Commission yesterday.

Two or three days before the murder, Coetzee, then commander of the security police's Vlakfontein unit, had been told by Port Natal security police chief Brigadier Jan van der Hoeven to "make a plan" with the fiery civil rights attorney.

Mxenge was a "thorn in the flesh" of the security police because he defied ANC cadres in court, Coetzee said.

To him, "make a plan" meant he had to kill Mxenge, Coetzee said. Captain Andy Taylor, the security police officer investigating Mxenge's home and work addresses, and a photograph of the man, Coetzee said.

Van der Hoeven had made it clear that he did not want Mxenge to "disappear" or to be shot that it should be made to "look like a robbery".

The hit squad consisted of policeman Almond Nofemela, student constable David Tshikalanga and two Askaris - "turned" former ANC members - Joe Masekela and Bhele Ngqulunga.

On the night of November 19, they waylaid Mxenge near his house, took him to the Umhlanga stadium, and murdered him. At about 11pm, Coetzee met the four men at a pub in Field Road, Durban. Masekela was wearing Mxenge's jacket and watch, Coetzee said.

Masekela, Nofemela and Tshikalanga were later paid R1 000 bounty money each "for their good work". Ngqulunga did not receive bounty money because he had not taken part in the actual stabbing.

The hearing continues today

# A nod or a wink would be taken as an instruction to kill

He said he had also persuaded another former Vlakfontein member, Warrant Officer Paul van Dyk, to come clean.

He was also talking to a "number of other security policemen" to persuade them to own up, Coetzee said.

"I tell them, the sooner we stand up for the truth, the sooner we can put the past behind us."

Coetzee described his upbringing and his early career in the police force which, he said, indoctrinated him into thinking South Africa belonged exclusively to the white man.

He was made commander of Vlakfontein, as a captain.

When he became commander of Vlakfontein in August 1980, it was a base where "nine or ten" Askaris - former ANC members who had been "turned" to work for the security police - could stay in safety and secrecy.

Under his command, he told the commission, Vlakfontein had turned into a highly organised unit comprising teams of Askaris with white police "handlers" who could be deployed anywhere in the country at short notice.

Officially, the unit was meant to assist in tracking down and arresting insurgents.

Under his command however, only one insurgent was arrested. Real orders were not explicit.

"Make a plan with so-and-so" or a nod and a wink, would be taken as an instruction to kill an activist, Coetzee said.

"I was only executing dirty tricks orders - stealing cars, murdering people, harassing people."

And then Eleventh Commandment, as expressed by former security police chief Brigadier Rendie Zeeman, was "Never get caught", Coetzee said.

Two retired senior security policemen, Major-General Nick van Rensburg and Brigadier William Schoon, were subpoenaed yesterday by the TRC.

TRC spokesman John Allen said Van Rensburg, formerly of the Fort Elizabeth branch, had to appear on November 20. Schoon is required to appear on November 19 and General Johan Coetzee would appear on November 18.

They will all testify at inquiries held in terms of an act which specifies the hearings must be held in camera. Sapa.



NOTHING BUT THE TRUTH: Captain Dirk Coetzee takes the oath before his testimony to the TRC in Durban yesterday. PICTURE: THE NATAL MERCURY

# Chief ordered Mxenge hit

ROGER FRIEDMAN (252) or b11/19/96

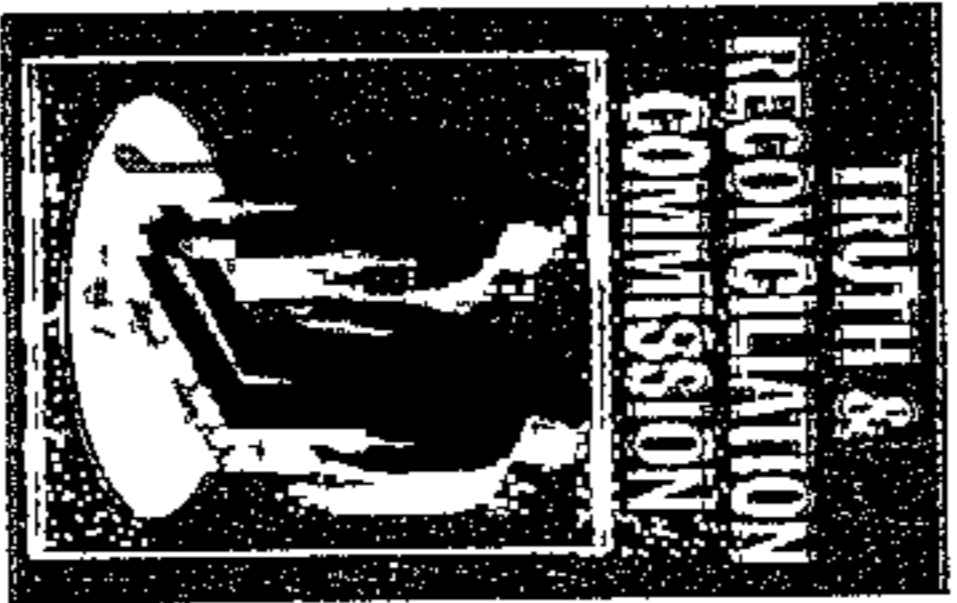
DURBAN: In November 1981 the entire Vlakplaas crew was operating in the Durban area when, at one of his twice-daily meetings with then-Port Natal security police chief Brigadier Johannes van der Hoven, Captain Dirk Coetzee was allegedly instructed to kill ANC lawyer Mr Griffiths Mxenge.

Coetzee claimed yesterday — not for the first time — that a few days before the killing on November 19, Van der Hoven told him to "make a plan" with Mxenge.

Van der Hoven put him in touch with Captain Andy Taylor who supplied a photograph of Mxenge and details of his house and workplace.

Coetzee said he asked Van der Hoven to arrange with the head of the security police's Section C, Colonel Willem Schoon, to send Mr Joe Mamasela to Durban to carry out the job. Mamasela was then working under a Captain Jan Coetzee of the West Rand security police.

Mamasela arrived in Durban a day later with a hunting knife and two pocket-knives. That night Mamasela, Almond Nofomela and Warrant Officer Paul van Dyk went to the Mxenge home to poison the lawyer's four dogs. The idea was to give the hit-squad as much leeway as possible in carrying out their attack.



On the night of November 19, Coetzee met his team of killers — Mamasela, Nofomela, Mr David Tshikalange and the late Brian Nqulunga — at a bar in Field Street for a report-back. Mxenge was dead, he was told. Mamasela was sporting the dead man's jacket and watch.

After the meeting, Coetzee said, he went to the married quarters at C R Swart Square where Van der Hoven had an apartment and told him the job was done. The following day Van der Hoven told him he should return to Vlakplaas immediately.

On his return to the then-Transvaal, Coetzee said he went to see the second-in-command of the security police,

Brigadier Jan Du Preez, on his small-holding outside Pretoria and was told to get rid of Mxenge's brand-new car as soon as possible.

When he returned to Pretoria and reported to Schoon, the Section C chief's only question was about evidence possibly having been left at the scene.

It had been Du Preez's idea to reward the Mxenge killers with "bounty money". Mamasela, Nofomela and Tshikalange each received R1 000. Nqulunga received nothing because he apparently had not been an active participant in the murder — "he just stood by with a gun", Coetzee said.

The "final decision" to kill Mxenge had been Van der Hoven's, he said. Mr Justice Hassen Mall, head of the amnesty committee, said "Did you ever have occasion to question orders that were given to you to eliminate people?" Coetzee "Never did I question orders."

Mall "With the benefit of hindsight, perhaps it is easy to say that some of these people should never have been targeted?"

Coetzee "I think none of these targets should have been targeted, in hindsight."

"I WAS OPERATING ABOVE LAW"

CT 6/11/96

# Coetzee carried 007-type arsenal

(252)

**DURBAN:** A directive described Vlakplaas' functions as being to track and arrest terrorists, but its operatives did anything but legitimate police work, the security police unit's former commander, Captain Dirk Coetzee, said at his amnesty application hearing. **ROGER FRIEDMAN** reports.

CAPTAIN Dirk Coetzee, the first commander of the security police hit-squad based at Vlakplaas farm outside Pretoria, drove around with an arsenal in his car boot that would have made James Bond proud.

Coetzee told the Truth and Reconciliation Commission's amnesty committee yesterday that Vlakplaas operatives usually carried only official police firearms.

However, he used to do his rounds with a case of explosives, a crate of Russian-made grenades, a pair of Russian-made pistols, an AK-47, a silenced 59mm machine-gun and a 007-type 9mm machine pistol mounted in a briefcase.

Although he did not drive a Jaguar sports coupé, his car had designer number plates — DJC (his initials) 036 (his age) T (Transvaal) — falsified by the obliging folk who ran the police printing press.

"Did you believe in apartheid at the time?" asked Coetzee's counsel, Mr Rudolf Jansen.

Said Coetzee "Yes, I did, unfortunately."

Jansen "Did you think that you were operating above the law at the time?"

Coetzee "Absolutely."

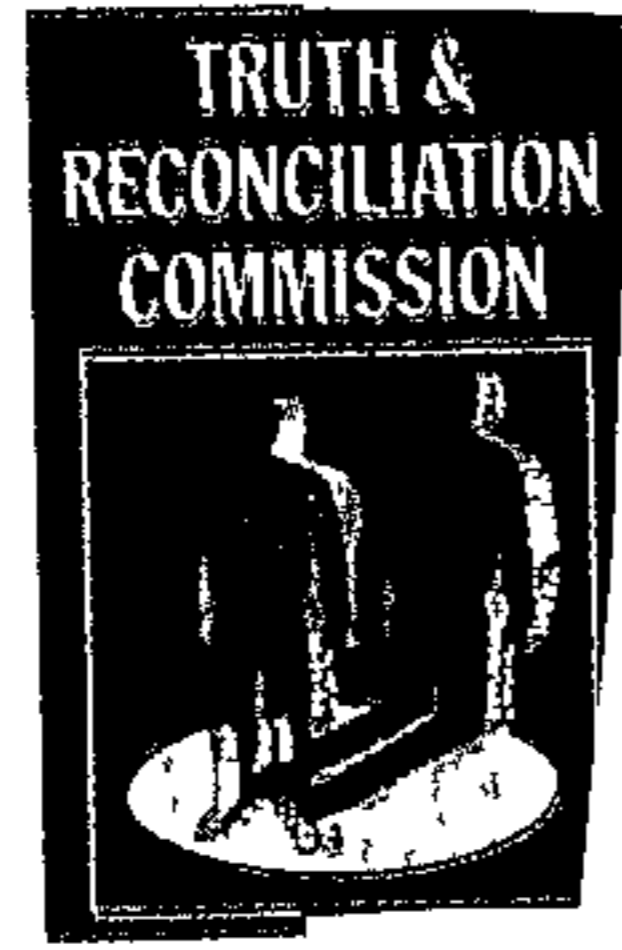
Coetzee, commander of Vlakplaas between August 1980 and December 1981, is applying for amnesty for more than 20 crimes — including murder and theft — which he says he ordered or executed.

Two of his former agents, Almond Nofomela and David Tshikalange, are applying for amnesty for some of the same crimes, including the murder of ANC lawyer Mr Griffiths Mxenge.

Mxenge's brother, Mr Mhleli Mxenge, is opposing the amnesty application. Earlier this year, he unsuccessfully challenged the commission's amnesty process in the Constitutional Court.

Mxenge sat, stony-faced, in the front row of the old Alhambra Theatre auditorium yesterday as Coetzee described the planning of his brother's murder and the attempts to disguise the involvement of the police.

Coetzee, in tweed jacket and bright tie, set the scene for his application with personal details. His childhood in Pretoria, his staunch Afrikaner parents, his member-



ship of the Voortrekker Youth movement, his spell with the post office, early police training, officers' course, membership of the security police.

As a teenager he cheered when Dr H F Verwoerd walked out of the Commonwealth and parted when South Africa became a republic in 1960. He matriculated in 1963, volunteered for national service in 1966 and joined the police in 1970. In 1973, he "assisted Rhodesian police getting rid of freedom fighters that were killed in that war." He joined the security police in 1976, and was transferred to the security police's C1 unit based at Vlakplaas.

The problem in the country at the time, Coetzee said yesterday, was that neither the Criminal Procedure Act nor the Terrorism Act, was "sufficient" to counter the aspirations of the liberation movements.

Jansen "What did Vlakplaas do?"

Coetzee "I was only executing orders as far as dirty tricks were concerned, which involved stealing cars, murdering people, harassing people anything but legitimate police work as indicated in the directive."

The directive, outlining the unit's function as being to track and arrest terrorists, apparently was sent by second-in-command of the security police Brigadier Jan du Preez to Coetzee's C1 unit head Colonel Willem Schoon in September 1981.

Jansen "How many people were arrested?"

Coetzee "Only one and it was so insignificant. It happened on the Western Transvaal border when Captain (Koos) Vermeulen picked up a hitch-hiker who turned out to be an ANC cadre."

Vlakplaas' activities were not audited and its untrained operatives only used their pocket-books to fill in the petrol used for their cars. They never received written instructions and were not required to keep diaries. However, there was a rigid command structure, Coetzee said.

"Each morning at 7:30 you'd report to your section head. And at 8am the section heads reported to the officer commanding (the security police), General Johan Coetzee."

It was a predecessor of Coetzee, Brigadier Ferdie Zietsman, whom Coetzee credited yesterday with coming the security police's "eleventh commandment": Don't get caught. The Vlakplaas crew lived by this maxim, "although if you did get caught in the end it was never a major problem."

Coetzee was the first commander of Vlakplaas which, before his arrival, had been used as a hideout for turned ANC cadres (askaris). At that stage, most Vlakplaas askaris were not members of the police, but were paid R200 a month as informers.

By July 1981 the askaris had been made official policemen, entitling them to allowances, benefits and official firearms. Coetzee said he arranged documents, food, a fridge, a generator and other comforts for them.

Meanwhile, he pulled in seven white policemen and divided his unit into four teams of two white policemen and four or five askaris. "We'd operate countrywide on request and sometimes as a full team when requested."

The security police evolved their own language or code to convey more sensitive orders or requests.

"In Mr Mxenge's case I was asked to make a plan with him, which clearly indicated to me I must kill him."

"If a person was being discussed and it was a problem area you'd get that nod and wink."

Two more retired senior security police officers, Major-General Nick van Rensburg and Brigadier Willem Schoon, have been subpoenaed to appear before the TRC, Sapa reports.

# Developing a human rights culture in SA

CF 6/11/96

(252)

GEORGE ELLIS examines some of the challenges in developing a culture of human rights in South Africa.

RESPECT for human rights depends on the development of a human rights culture, based on human rights values. Thus, underlying any concern for human rights must be sound attitudes with regards to both *humans* and to *rights*, both attitudes have to be consciously developed and nurtured. I will look at these in turn.

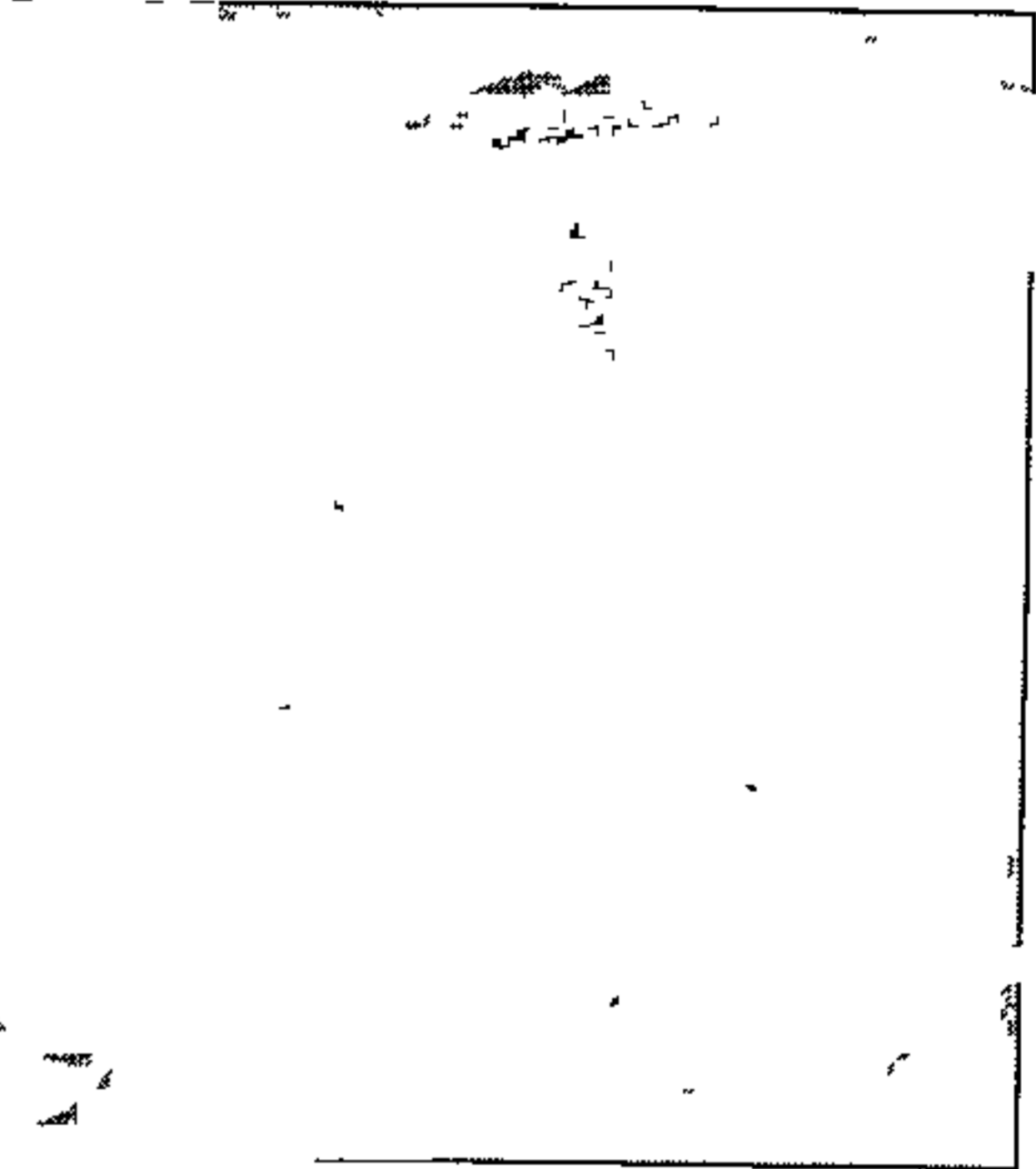
As to rights in order to protect rights, we have to have a steady determination to protect people from all the horrors that governments and others inflict on time to time — the murders in the name of the state, the tortures and destabilisation in the name of democracy.

We need to search out the truth about such events and to make it public, for most of these deeds flourish in the dark — the hit squads and warlords, the police and justice officials who turn a blind eye to what is going on or actively support it, the politicians who claim they did not know what was happening *pursuing public truth* is the first line of defence.

This is not easy for, despite the modern media, there are many kinds of deception that occur. People understand what basic human rights are, but can be misled in many ways and need some training to see what is happening. They need particularly to note the dirty tricks and whispering campaigns that are used to undermine and manipulate society, such as to have had in this country in past decades and, indeed, right up to the election.

In future, if destabilisation groups ever operate again, people need to have the ability to be on the alert, watching for the covert operation that tries to set neighbour against neighbour, friend against friend.

If one is determined to preserve community strength, to have a spirit of co-operation and working together, one will try to have in place structures that face conflict and solve local and national political problems, a *network of peace structures* that can face up such issues as they occur (such as the Quaker Peace Centre and Amnesty). One will also have to work for all-important *underlying attitudes* that assume good will and act as if it exists even in the face of contrary evidence, because of the realisation of the many kinds of miscommunication that can occur. In many situations it will prove to be the case



## GEORGE ELLIS

there was no malice in action, and, where there was, this attitude will tend to act against that malice. We can build up a public spirit that resists the efforts of the moment or any other agency to take away people's freedom and dignity and resists open or covert efforts to build up distrust and suspicion.

This is now commonplace in this country. However, three particular things are worth noting that are important here. The first is that *rights always carry with them responsibilities* and this must be explicit too. In all cases citizens have both rights and responsibilities. The right to complain carries with it the responsibility to be constructive.

One of the most debilitating features of a democracy is the armchair critic who can tell you what is wrong with everything but makes no constructive suggestion and is not engaged in community building. We must value and support the acts and analyses that build for the future and sideline destructive criticism that leads nowhere.

The second feature — really a particular case of what has just been said, but an important one — is that *the media and those purveying news have a particular responsibility*. They have to report what goes right wrong but they also have to report what goes right. Often they do not "No news is good news" becomes "good news is no news", so only the bad is reported

and the media act as amplifiers of only the bad in society and try to search out only the sleaze and smut, to search for and to amplify divisions and disharmony instead of creating unity and co-operation. They sometimes even invent material that will cause divisions. So, part of our task is to *hold the media to their proper duty*, to make them also act in a responsible way.

The third feature is that we must at all times be vigilant and aware of the *danger of self-deception*, of the *unwillingness to listen to others because what they say is not what we want to hear*.

If it turns out to be our friends or relatives or political comrades who are oppressing others, we have to face up to that fact and do something about it.

The Truth and Reconciliation Commission will have to be ready to hear the unpleasant acts of both sides and we will have to support them in that task and, indeed, insist on it so that all are equally treated and justice is done. We have to resist the temptation to ignore or hide what "our" side does, assuming that, if we do it, it has to be OK, it's only "them" that do wrong. No one is exempt the call for behaving with respect and regard for others falls on all. And this leads to the heart of the matter.

There is a need for justice and for the support of justice. It rests on the second leg, emphasising the human in "human rights". The fundamental theme is *the appreciation of the value and worth of humans*. This is the foundation stone, the essential theme without which the whole cannot succeed.

We need role models and stories, films and television, parents and teachers who teach and demonstrate the value of individuals irrespective of their race or creed, their size and shape, their looks and colour. The public need to work continuously at creating a society and a state that values humanity and human life, in particular through electing national and local leaders who stand for these values.

If the state values individuals, that will be apparent in the law and the school system, in the deliberations of Parliament and in the general ethos of public life. This is obvious and even trite, but despite that we have to say it over and over again. At the moment we do largely have such an attitude in our national political system, we have to defend it and preserve it against all the forces that tend to undermine it.

When this is embedded in the nature of the state, the justice system will of necessity have those checks and balances that will safeguard the individual

against the state or agents of the state that might wish them harm, or try to subvert their interests for personal gain.

Local communities will also develop a culture that defends the rights of the individual in the local community, even if they act in an unpopular manner or are not part of the "in" group. Families and individuals in turn will live in a culture and milieu that encourages them to respect the rights of others and not to pursue their own interests in ways that harm others. This can be taught to some extent, to a great degree it relies on exemplary behaviour and role models who embody this theme, as against local gang cultures, criminal elements and various kinds of exploitation which encourage self-centredness at the expense of others.

A *communal spirit that values each person* is the essential foundation. It is not easy to maintain in the face of real clashes of interest and divisive forces, but the events of the past year, the spirit and acts of reconciliation that our president in particular has generated, make it possible and are indeed the ground of miracles. The task is difficult, but possible.

The real danger is the enemy image: the demonising picture, presenting as unhuman and hateful the unbeliever, the fascist, the communist, the government collaborator, the sellout, the traitor, or whatever, which excuses and allows all sorts of horrors in the name of righteousness.

A classical local case was the Total Onslaught mythology that underpinned the worst excesses of the military and police in the apartheid era. What is needed to develop a true human rights culture is respect for every person — including your opponent and the oppressor — in a way that does not excuse or condone evil, but also does not deny the humanity and spark of vital life and the possibility for change in even those persons who are carrying out the foulest deeds.

That is the real test and the real foundation. It does not lead to political impotence, as the lives of Mahatma Gandhi, Martin Luther King and many others have shown. Rather, it is the basis of that transforming spirit which is the basis of social and political miracles. That is what we have to aim for, in order to put human rights on a really solid footing in this country and internationally.

□ George Ellis is a professor of Applied Mathematics at UCT and one of the world's leading cosmologists.

# The whole truth...

**W**HEN HE RECALLED his experiences at the hands of the security forces, Father Smangaliso Mkhathshwa last week expressed a wish to say more when he testified during the Truth and Reconciliation Commission's amnesty hearings in Johannesburg

He could not, because two security policemen who applied for amnesty at the hearing were only involved in two of the many attempts on his life

A lawyer for Captain Jacques Hechter and Warrant Officer Paul van Vuuren, Advocate Roelf du Plessis, said military intelligence – and not his clients – were involved in other attempts on Mkhathshwa's life

Mkhathshwa's desire to say more about his brushes with the security police was also spurred on by the feeling that Hechter and Van Vuuren made selective confessions to evade criminal liability

This feeling was echoed by the speaker of the North West provincial legislature, Mr Jerry Thibedi, who also narrowly escaped death when Van Vuuren and Hechter bombed his Mabopane home in 1987

## Past crimes

In his testimony to the TRC, Thibedi said that amnesty should not be granted if perpetrators failed to fully disclose their past crimes

Mkhathshwa and Thibedi's misgivings beg the question whether amnesty applicants were speaking the whole truth or simply tailored their evidence to get amnesty

Underscoring the suspicion that they were not disclosing the full facts as required by the TRC Act was their failure in some cases to name the people who gave them specific orders to kill

Hechter went even further and claimed that he suffered from loss of memory, largely confirming Van Vuuren's testimony

In their testimony, these two – as well as Brigadier Jack Cronjé, Captain Wouter Mentz and Colonel Roelf Venter – echoed a general instruction to eliminate African National Congress activists

## Directly implicated

They said Trewits, a counter-insurgency unit formed by the State Security Council to eliminate activists, identified targets

Except for former state president PW Botha, former police ministers Louis le Grange and Adriaan Vlok, and some top military and police generals directly implicated in specific human rights abuses, the evidence led did not identify the composition of the forums which decided who ought to be eliminated

The five who applied for amnesty in

*sawetan 6/11/96*  
Are amnesty applicants tailoring their evidence to get amnesty, rather than disclosing the full extent of their crimes? **Mzimasi Ngudle** reports...



**Father Smangaliso Mkhathshwa ... he feels security police made selective confessions to evade criminal liability.**

Johannesburg claimed that former South African Defence Force special forces, police and the national intelligence agency – all represented in Trewits – decided who must live or die

Missing in numerous instances was the identity of the people who gave the orders "The instruction must have come from Trewits," said Cronjé in some of the bland statements repeated during the hearings

With almost all intelligence files destroyed, the TRC relies considerably on oral evidence and assertions made by amnesty applicants

The TRC's amnesty committee has heard two categories of amnesty applications so far

The first category includes former security policemen serving jail sentences, who have proclaimed a change of heart and asked the amnesty committee to spare them their prison terms Colonel Eugene de Kock is in this category

The second category consists of former security policemen who were either under threat of criminal prosecution (like the five whose amnesty applications were heard in Johannesburg) or those implicated in other human rights abuses who made a last-minute approach to the amnesty committee

Examples are Cronjé, Mentz and Venter,



**Captain Jacques Hechter ... he admitted his involvement in an attempt on Father Smangaliso Mkhathshwa's life.**

along with Hechter and Van Vuuren, who applied for amnesty at a stage when the state was going to proceed with their criminal prosecutions

The five decided to apply for amnesty just when their former colleagues and alleged co-perpetrators were ready to testify against them in a pending criminal trial

## Vlakplaas operatives

Captain Dirk Coetzee and former Vlakplaas operatives David Tshikalanga and Almond Nofomela, whose amnesty applications are being heard in Durban this week, also fall into the second category

On Monday amnesty committee chairman Mr Hassan Mall said that 80 percent of the 3 322 applications received were from prisoners, and that 600 Pan Africanist Congress and 300 ANC members in jail also intended to apply for amnesty

This leaves one to conclude that if there were no convictions or threats of criminal or civil prosecution, the truth would never come out And full disclosure of past atrocities would become well-nigh impossible

This would be a heavy blow to reconciliation in South Africa, which is the TRC's basic objective No wonder Mkhathshwa is still waiting for more answers

# Amnesty bid opposed

*source in 1996*

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## Griffiths Mxenge's sister breaks down during TRC hearing

By Mzimasi Ngudle

**A** DISTRAUGHT sister of slain activist lawyer Mr Griffiths Mxenge was helped out of Durban's Christian Centre yesterday after she broke into tears. She had been listening to self-confessed hit squad commander Dirk Coetzee telling the Truth and Reconciliation Commission's amnesty committee about her brother's gruesome killing.

Mrs Nontobeko Mkhize returned to her seat after a lunch-hour adjournment and heard how former Vlakplaas operatives Joe Mamasela, Almond Nofemela, David "Spyker" Tshikalanga and Brian Ngqungu had stabbed her brother to death on

November 19 1981. Coetzee said the askaris (ANC men turned government agents) were each paid R1 000 for the "good work they had done" Mxenge's brother Mhleli sobbed quietly as Coetzee said the askaris were paid another R1 000 each for the "good story they had done". Mr Mhleli Mxenge later told a Press conference he was totally opposed to the granting of amnesty to the killers because they were not acting within the scope of their duties when they killed his brother.

In his testimony, Coetzee, who is applying for amnesty for the murder of senior Umkhonto we Sizwe cadre Mr Sizwe Kondile and the abduction of activist Mr Joe Pillay, admitted that the hit squad was above the law.

He was never questioned about the killings. "I was instructed to plan his (Mxenge's) murder and make it seem as if the motive was robbery. The killing was preceded by the poisoning of his dogs on November 17."

### Abducted him

"On November 19 Mamasela, Nofemela, Tshikalanga and Ngqungu abducted him from his home, took him to Umlazi Stadium where he was stabbed to death."

### Natal head of the security branch

and accused in a pending criminal trial. "Brigadier Jan du Preez gave the instruction to burn the vehicle," he said. He had asked Van der Hoven to arrange with Brig Willem Schoon to bring Mamasela from Vlakplaas.

### Sergeant Koos Schutte

a foreman and mechanic at Vlakplaas, brought Mamasela on November 17. Schutte brought a hunting knife and two Okapi knives, and four chunks of meat poisoned with strychnine which were given to the dogs.

### Van Dyk

Mamasela and Nofemela went to Mxenge's house where the meat was given to the dogs. Nofemela and Mamasela then observed his movements before

### abducting him on my instructions

and stabbing him to death in the stadium." Mxenge's car was then driven to a border post near Piet Retief, stripped of valuable items and then burnt.

### Coetzee said the hit squad

which occasionally worked as a full team of eight white security policemen and four or five askaris, reported daily to regional heads of security police when operating countrywide.

### At Vlakplaas

hit squad members reported to section officers who in turn reported to Vlakplaas commander General Johan Coetzee.

### Vlakplaas had five sections

and Coetzee was a commander of section C1 - a unit which eliminated activists "because they could not be prosecuted through normal laws".

# How we went about wiping out the ANC - Coetzee

*'R2 000 for every corpse brought back'*

ARGUS CORRESPONDENT

Durban - Former hit squad leader Dirk Coetzee has described in chilling detail how apartheid police units conducted a carefully planned dirty tricks campaign to wipe out ANC and other activists.

In evidence that sounded like the plot of a well-written spy novel, Captain Coetzee told the amnesty committee of the Truth Commission about the operations of his Vlakplaas and other security branch units, which were responsible for a series of brutal murders

It was standard practice, he said, for hit squad members to receive "koppeld" for murders committed

This referred to the R2 000 paid to hit squad members for "every corpse they brought back", he said

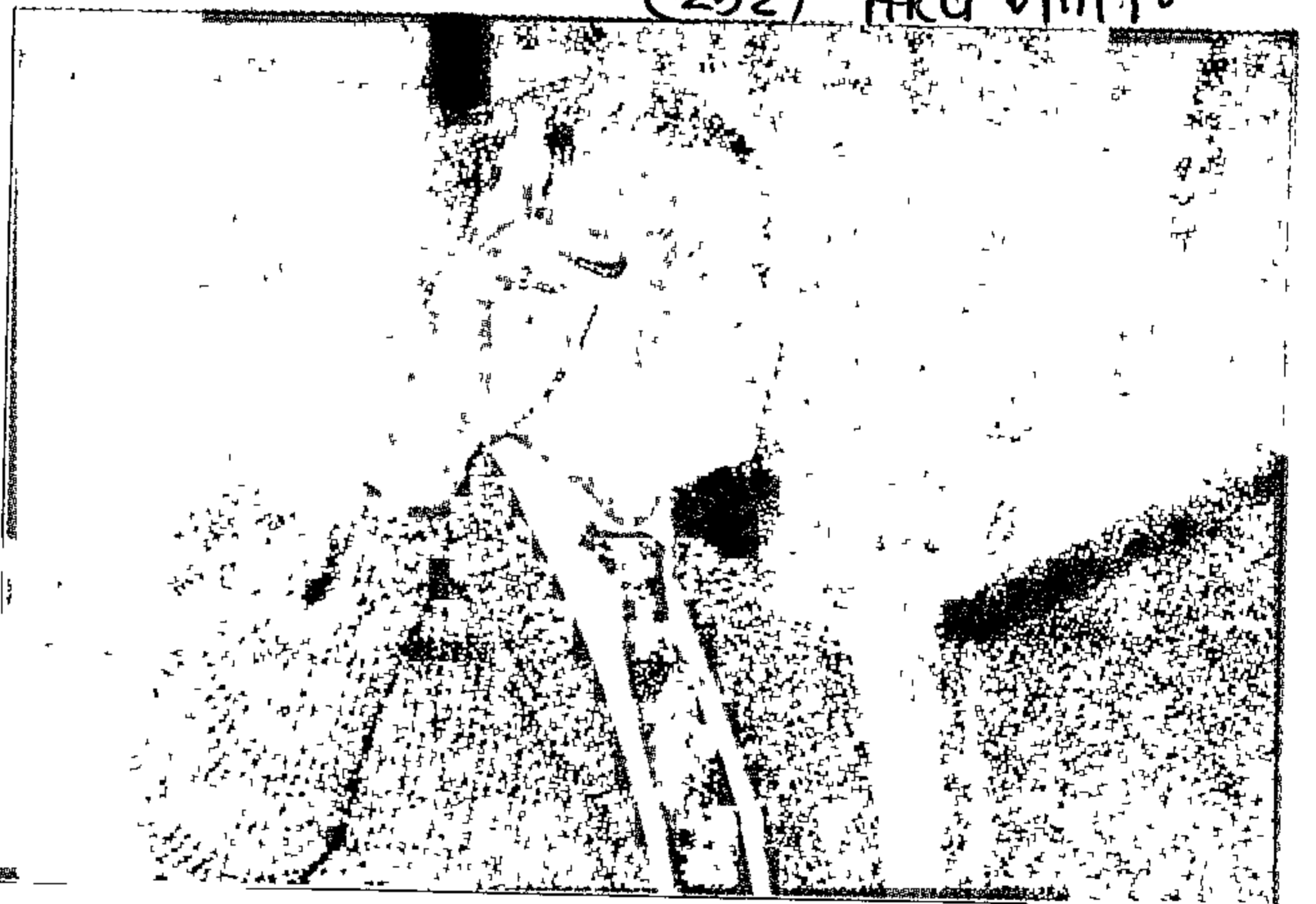
However, he said his Vlakplaas unit had never been paid for any of their killings

Security branch officers also had access to highly-sophisticated and dangerous weapons, manufactured largely in Russia and East European countries, said Coetzee

In his car boot, Captain Coetzee had generally carried Russian hand grenades, AK-47 rifles and bombs prepared by police headquarters, he said

He also carried a briefcase, fitted with a 9mm pistol and a silencer

Police had never kept official records of the weapons, but used them so the ANC could be implicated in crimes committed with them, he said



So help me God: Dirk Coetzee takes the oath before his testimony to the Truth Commission

Captain Coetzee said the security branch was a small clique which operated like a little family and was closely linked with high-ranking SAPS officers

He said security branch members adopted an "11th commandment" which was "Don't get caught"

"We had to prepare our missions in such a way that if the CID was forced to

investigate, they wouldn't conduct anything but a routine investigation," said Captain Coetzee

Coetzee continues with his evidence today

He will be followed by former hit squad members David Tshikalange and Almond Nofemela, who are also applying for amnesty



# Coetzee 'was asked to kill Griffiths Mxenge'

**Faf Fouk Chothia**

**DURBAN** — Former Vlakplaas commander Dirk Coetzee said yesterday that he had been asked to make a plan about human rights lawyer Griffiths Mxenge, which "clearly meant" he had to be killed. He told an amnesty hearing the request had come from Port Natal security police commander Brig Jan van der Hoven. He said that sometimes a "nod given" meant an order to kill. It was part of a "very devious way of talking (and) something security people will understand".

In a written submission, Mxenge's brother, Mhleli, asked the truth commission to turn down amnesty applications from Coetzee and fellow Vlakplaas members Da-

vid Tshikalanga and Almond Nofomela on the grounds that they killed Mxenge out of personal malice and for financial reward. Mhleli said his brother had been killed in 1988 in the most barbaric way, and granting amnesty would be a "travesty of justice". He was stabbed 45 times, his car burnt and dogs poisoned.

Coetzee said he met a relative of Mxenge in 1994 and "doubted they would ever be able to forgive a man like Coetzee".

"I'm sorry. What else can I say — pathetic nothing?" Coetzee said. The hearing started several hours late because a strike by warders at Westville prison delayed Nofomela's arrival. He is serving a jail term for murdering a farmer.

Coetzee said Mxenge had been murdered because he was a "nursance". He was an attorney who represented ANC activists, and R100 000 had been deposited in his trust account. Police efforts to "build" a legal case against Mxenge were unsuccessful. Mhleli said Coetzee, Tshikalanga and Nofomela had to prove they acted in the course and scope of their duties to qualify for amnesty. Coetzee acted out of malice because police could not charge Mxenge with an offence. Legislation governing the commission specifically excluded granting amnesty in such instances, he said.

Coetzee said Mxenge's watch, wallet and money were taken to make the murder look like a robbery. Nofomela and Tshikalanga

were paid R1 000 each for the successful operation, Coetzee said. Mhleli said it was clear that his brother was killed in a robbery for personal gain.

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"Had Coetzee arrested my brother and detained him, and my brother died in the process, then acting within the scope of their duties would make sense," Mhleli said. Sapa reports Coetzee said his strict Afrikaans and religious upbringing shaped his beliefs and helped him rationalise the numerous criminal acts he committed in defence of apartheid.

Coetzee said that while head of the security police unit at Vlakplaas outside Pretoria, he was involved in stealing cars, the abduction and murder of anti-apartheid activists and cross-border raids — "anything but legal police work". Coetzee said his indoctrination began as a child when he was a member of the Voortrekkers, a youth movement which "educated us in the history of our forebears". Coetzee said he believed God had given SA to the Afrikaners and he joined the military to defend SA from the communist onslaught.

Asked whether he would have been prepared to die for his country, Coetzee replied "Absolutely". The hearing continues today.

□ Sapa reports that two more retired senior security police officers, Maj-Gen Nick van Rensburg and Brig Willem Schoon, were subpoenaed yesterday to appear before the commission on November 19 and 20

# Killing of IFP members prompts applause at hearing

(252) ED 6/11/96

EMPANGENI — People attending a truth commission hearing in Empangeni yesterday applauded when a witness testified that her son used to kill IFP members.

Josephina Msweli was testifying before the commission's human rights violation committee about the beating to death of her son Simon in a Sappi forest by the SAP's stability unit and KwaZulu police on August 14 1992.

Msweli said her son was an ANC member and that he killed IFP members while he was alive, prompting a torrent of applause in the hall.

Msweli said one of the policemen involved in her son's death was a Van Niekerk from the stability unit in KwaMbonambi.

She said it was time for reconciliation but wanted her

son's killers to tell the truth about who ordered his killing and why. Msweli said another son, Musa, was also killed by police.

Zikhokhle Inget Nkwan-yana of KwaSokhulu said police were constantly searching for her son Vusi, 22, who eventually disappeared.

During the police's numerous visits in the early 1990s, they searched her house unsuccessfully for weapons, assaulted her parents and cut off the tip of her son Zakhela's little finger.

Nkwan-yana said Vusi disappeared in 1993 in a forest near KwaSokhulu. Sometime before this he and his friends were accused by the IFP of being IFP "by day" and "comrades" at night.

The following year, her other son Khuhkani was shot

dead by stability unit police. "I live in a house which is surrounded by my children's graves," Nkwan-yana said.

She said among the police who harassed the family were a W/O Duffel, a Derek and a Fellbank, from KwaMbonambi police station.

Violence monitor Mary de Haas said security force members implicated in violence along KwaZulu-Natal's north coast before 1993 remained in their posts even though they were named in reports of the Goldstone commission.

De Haas said former president FW de Klerk and former law and order minister Hennis Kriel should be called to account for apparently taking no action when told in 1992 of KwaZulu police murder squad activities — Sapa

## Bill proposes new

### rules for amnesty

(252) ED 6/11/96

TOWNSHIP

Violence monitor Mary de Haas said security force members implicated in violence along KwaZulu-Natal's north coast before 1993 remained in their posts even though they were named in reports of the Goldstone commission.

De Haas said former president FW de Klerk and former law and order minister Hennis Kriel should be called to account for apparently taking no action when told in 1992 of KwaZulu police murder squad activities — Sapa

# Killings 'covered up'

By Claire Keeton

SECURITY police and the Vlakplaas unit could have been involved in the assassination of Dr Henry Vika Luthuli, according to testimony presented to the Truth and Reconciliation Commission (TRC) in Empangeni, northern KwaZulu-Natal yesterday.

His widow, Mrs Dorcas Nokuzula Luthuli, told the human rights violation hearings how her husband was shot dead in their house in Eskhawni on August 2 1990

Luthuli - like Dr Fabian Ribeiro and Mr Griffiths Mxenge - was a professional man committed to fighting the injustices of the apartheid system

The inquest into his death, currently in progress, suggests the possible involvement of a Vlakplaas hit man, Empangeni security police, KwaZulu Police (KZP) and Inkatha, according to independent violence monitor Ms Mary de Haas

She said he may have been murdered after performing a post-mortem on two boys which revealed their death was linked to KZP guns.

Commissioner Richard Lyster said the investigation indicates there was a "massive cover-up" on Luthuli's murder "Those who know the KZP would not have expected anything else from a corrupt and useless police force."

Mrs Luthuli said her whole family had been severely traumatised by her

husband's death and death threats

She said on August 2 her husband came home from his surgery to find patients waiting for him. While she was showering she heard a "very loud and unusual noise".

Luthuli said she thought it was from the geyser and came running out of the shower to her husband.

"When I got there, he was dead and the computer was on. I thought he was electrocuted and was scared to touch him. But (our daughter) Nolundi came and saw cartridges and said: 'My dad is shot'."

"I tried to do mouth-to-mouth resuscitation. When I pressed him, blood poured out of his mouth and he died in my arms."

(252) *Southern* 7/11/96  
The children, who were 10 and 4, did not know he was dead and they were touching him and calling out his name."

She saw "absolutely no one" after rushing outside to see who had shot him. The KZP never answered when she called them and finally her neighbour fetched the police

The police took a statement from Nolundi but not from her, and they collected the cartridges.

"There wasn't a proper investigation. The police were dragging their feet and told me there were problems. They said their lives were at stake." Luthuli said, adding that one detective on the case was shot and killed. She wrote a letter to the then presi-

dent FW de Klerk asking him for a proper investigation but this was forwarded to Ulundi and her documents were returned by post. Some witnesses did not turn up for the last day of the hearing in Empangeni yesterday because they feared for their lives. Those who came were reluctant to have their photographs published, fearing for their safety.

One of them was Mrs Nomusa Shandu (77). She said she still hears the voices of her six dead children and grandchildren who were shot and burnt during political violence.

ANC leader Mr Bheki Ntuli told the TRC his elderly mother was shot in the chest on January 18 1995 and his brother on December 15 last year

Dark Coetzee for murdering Mxenge

NOIOMERX WAS THE FIRST TO EXPOSE

# ANC under fire in amnesty row

Wyndham Hartley 80 7/11/96 (252)

CAPE TOWN — The ANC was playing "intolerable" war justification games with regard to applying for amnesty in the same way as old order military generals, the DP said yesterday.

DP human rights spokesman Dene Smuts also lashed out at Deputy Defence Minister Ronnie Kasrils for criticising former SADF generals, while himself refusing to apply for amnesty by "hiding behind" the ANC's collective approach.

She described Kasrils' position as intolerable, saying: "If the ANC can play war justification games, the old regime can do the same."

Smuts charged that the ANC's position on

amnesty was a direct contradiction of the Promotion of National Unity and Reconciliation Act which it voted for in Parliament.

"There is no collective approach in the Act and there are no categories providing for acts that fell within organisational policy or outside it. There is nothing the ANC can say to Archbishop Tutu at any meeting which changes that fact."

"It is not for the ANC to decide, even in consultation with the truth commission, who should apply for amnesty or where it is applicable. It applies wherever someone was guilty of an offence. The ANC is trying to package the past to suit its propaganda," Smuts said.

She said truth commission chairman Desmond Tutu's defence of the law and the independence of the commission was "magnificent", but the same could not be said of the behaviour of the governing party.

Her criticism follows weeks of wrangling over the ANC's apparent insistence that it would not apply for amnesty for what it considered legitimate acts of war. The bombing of the Magoo's Bar on Durban's beachfront fell into this category as a legitimate military target, it has said. Tutu has threatened to resign as chairman of the commission if the ANC continues to grant itself amnesty.

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**"It is blessed with a wide spread of pulling power, which means the 406 need not rely on use of**

# De Klerk urges TRC to subpoena everybody

## Claims of 'superior cause' refuted

CLIVE SAWYER  
POLITICAL CORRESPONDENT

The Truth Commission should subpoena everybody where there is evidence to support it, says National Party leader F W de Klerk.

He slated those who had been involved in violence, but who now claimed special treatment on the grounds that their cause had been superior.

Mr De Klerk's statements at a media briefing are the latest turn in a row initiated by some in the African National Congress who have said those who committed justified acts of war should not have to apply for amnesty, a view out of line with official ANC policy.

Meanwhile the NP was preparing its second submission to the commission.

Its first submission came under fire from several people who said it was less than frank and revealed little remorse

about apartheid-era atrocities. Mr De Klerk said the second submission was being prepared at the party's initiative

He denied attacking the commission in a speech to the NP Gauteng congress last weekend and said: "I attacked the African National Congress and its strategy aimed at setting a trap for the Truth Commission to act in a one-sided manner."

"I think the chairman (Archbishop Desmond Tutu) has been acting correctly and I do not care what he calls me as long as he does the right thing."

Stressing that his administration had begun cleaning out dirty-tricks groups, Mr De Klerk said former Vlakplaas commander Eugene de Kock had been arrested before the 1994 election, and that there had been eight successful prosecutions of security force members in 1992.

Asked whether revelations at the Truth Commission were hurting the NP, Mr De Klerk said the commission was acting in

line with the constitution by being even-handed.

In a reference to recent statements by some in the ANC, Mr De Klerk said he rejected the approach by some people that they should be treated differently because their cause was better than others.

"Where the facts justify it, subpoenas must be issued in all directions."

Mr De Klerk said much had been made of the period before 1990 and "the fact that I and others were members of the State Security Council"

He urged people to check the records, that allegations of abuses at the time were either denied by former president P W Botha or security force leaders, or that there had been a serious effort to investigate the incidents.

"I at no time had reason to believe serious efforts were not being made to investigate... I at no time had reasons to believe atrocities had been authorised," he said.



**SKIP THE GRAVY:** Truth and Reconciliation Commissioner Ms Mary Burton turned down a R200 000 government car allowance and chose to continue driving her own modest Toyota Conquest. She also gives a portion of her commissioner's salary to the Black Sash. PICTURE: GARTH STEAD

## No shiny new Merc for Burton

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**MELANIE GOSLING**

SHE was offered the car of her choice — free — for up to R200 000, but turned it down as unnecessary spending of taxpayers' money.

Ms Mary Burton, human rights campaigner, former president of the Black Sash and a commissioner of the Truth and Reconciliation Commission, has not leapt on the gravy train.

While R3 million of taxpayers' money went on buying cars for the TRC's 18 commissioners, Burton took not a cent of the R200 000 car allowance each commissioner was eligible for.

Instead she chose to continue driving her own modest Toyota Conquest.

Asked why she had turned it down, Burton replied "I already had a car. There really didn't seem any point in buying a new one."

So while other TRC commissioners drive around in their shining new Mercedes-Benzes, BMWs and four-wheel-drive Pajeros, Burton buzzes around in her Toyota.

The high salaries the TRC commissioners earn — R29 733 a month — also worry Burton.

"It has been my concern, and the concern of some of the other commissioners, that the

salaries we're paid are very high. We discussed it, but were told we couldn't do anything about it as the salaries were laid down."

So Burton decided to give a quarter of her after-tax salary to the Black Sash whose advisory offices help many people with things like disability grants, pensions and child maintenance.

But the woman who stands out like a beacon of integrity in a sea of government over-spending, is modest about her actions. She was reluctant to be photographed, and said: "I really don't want to appear hoher-than-thou."

● See Page 6

CT 8/11/96

# Coetzee's apology offer rejected

CT 8/11/98

(252)

**DURBAN:** The mother of slain Eastern Cape student activist Sizwe Kondile has rejected any attempt at reconciliation with former Vlakplaas commander Captain Dirk Coetzee, who has applied for amnesty for his part in Kondile's murder

In some of the most gruesome testimony yet heard by the TRC's amnesty committee, Coetzee said Kondile's corpse was reduced to ashes after he was "braaied" on a pyre of wood and tyres for seven hours

"The buttocks and upper parts of the legs had to be turned frequently to ensure they were reduced to ashes. We were drinking and having a braai next to the fire"

Coetzee said the decision to kill Kondile was taken after the Fort Hare University student suffered brain damage while in detention at Jeffreys Bay police station in the Eastern Cape in 1981

Major-General Nic van Rensburg, then a high-ranking officer in the security branch, had told him (Coetzee) "a plan would have to be made for Kondile"

"He told me a doctor had said Kondile had blood on the brain and if they wanted to avoid a Steve Biko case, they would have to do something"

Coetzee first told of his involvement in Kondile's death to journalist Jacques Pauw and later to the 1990 Harms Commission of Inquiry into hit-squad activity

In retelling his story to the amnesty committee yesterday Coetzee was required to make a full disclosure about the circumstances of Kondile's murder and to prove

the killing was politically motivated

Coetzee said he had recently returned to the murder site with members of a Japanese television crew who later took Kondile's mother there to pay her last respects to her son

"I hope to meet her one day and look her in the eye and say a pathetic sorry," he said

Coetzee received an almost immediate response from the Kondile family's legal representative, Mr Imram Moosa, who was at the hearing

Moosa said Kondile's mother believed a meeting with her was an honour which Coetzee did not deserve

"She says if you really have remorse you would not have applied for amnesty and would stand trial," Moosa said — Sapa



## Hain seeks probe into robbery 'frame-up'

**BARRY STREEK**  
POLITICAL WRITER

**ANTI-APARTHEID** campaigner Mr Peter Hain, now a British MP, is to ask the Truth and Reconciliation Commission to investigate the role of the South African security services in his trial in London in 1976 for bank theft

Hain, the head of the campaign to stop the 1969/70 Springbok rugby tour and the 1970 South African cricket tour of Britain, is convinced he was framed by the former

Bureau for State Security (Boss)

Hain arrives in Cape Town this morning after being invited by the ANC to participate in a parliamentary workshop for ANC whips

He will also use his visit to ask the TRC to examine his case in the light of new evidence which he revealed in his latest book, *Sing The Beloved Country: The Struggle for the New South Africa*, which was released in Britain this week

Hain said "I lived with the tyranny of apartheid of 40 years as a child growing up

in South Africa, when my parents were persistently harassed and banned and jailed for their anti-apartheid activities, and later in exile, where the security services tried first to kill me with a letter bomb, and then tried to set me up for a crime I did not commit

In 1972, Hain was sent a letter bomb, allegedly by Boss, but this was defused by a British bomb squad. He was arrested in 1975 and charged with the theft of £490 from Barclays Bank in West London. He was subsequently tried at London's Old Bailey in 1976 and acquitted

# TUTU STANDS UP TO ANC

(252) FM 8/11/96

**Anglican prelate** Desmond Tutu has made headlines twice in the past week by threatening to resign as chairman of the Truth & Reconciliation Commission (TRC). His threats have been prompted by concern that the ruling ANC believes it does not have to apply for amnesty for its actions during the armed struggle against white minority rule, even where they resulted in the death and maiming of civilians.

Tutu's view is that his position — and, by implication, that of the TRC — is superfluous if the ANC thinks it can grant itself amnesty. His logic is impeccable. One of the primary reasons for establishing the TRC under his chairmanship was to create an institution, led by a man of unassailable moral credentials, to grant amnesty to the perpetrators of politically motivated offences in return for full disclosure.

Mpumalanga premier Mathews Phosa — who is a member of the ANC's national executive and head of its legal department — has played a prominent role in articulating the view that the ANC need not apply for amnesty of the vast majority of its armed actions. As long as these "acts of war" were carried out on the instructions of the ANC leaders, ANC combatants need not seek amnesty for them, Phosa argues.

He compares the killing and wounding of civilians in ANC attacks, including the 1983 and 1985 car bomb attacks in Pretoria and Durban, with the bombing of Dresden by the Allies during War World 2.

The comparison is revealing. Phosa, like many ANC leaders, equates SA's apartheid with Nazism and the ANC's

struggle against it with the resistance movement in occupied Europe. The implication of the "just war" theory is twofold that ANC actions are, in nearly all cases, exonerated in advance and that only those who fought in defence of minority rule need apply for amnesty.

But as President Nelson Mandela has acknowledged, Phosa is not alone. His sentiments are widely held within the ANC. Mandela may even have understated the position they permeate the ANC's formal submission to the TRC.

The situation, is more complex than Phosa and his like-minded ANC comrades, including prolix Water Affairs Minister Kader Asmal, seem to think.

As Tutu has pointed out, the enabling law of the TRC, the Promotion of National Reconciliation & Unity Act, does not exonerate human rights abuses because they were committed for a "just cause." Amnesty has to be applied for by both sides to the conflict and earned

by truthful disclosure.

Phosa's argument that ANC combatants need not apply for amnesty if they were carrying out orders is redolent with irony. It emulates the defence used by Nazi functionaries accused of complicity in war crimes after the collapse of Hitler's Third Reich.

There is another important consideration: the ANC's oft repeated boast that it represents a superior morality. To quote the words of its immediate past president, Oliver Tambo: "We in the ANC have for nearly 70 years respected humanitarian principles in our struggle." Tambo's declaration is linked to the ANC's 1980 commitment to uphold the 1949 Geneva

Conventions and the 1977 Additional Protocol.

Read together with the ANC's Code of Conduct, these declamations underline an important point: the ANC's undertaking to treat noncombatants humanely and to eschew, in the words of Article 3 of the Geneva Conventions, "murder of all kinds, mutilation, cruel treatment and torture."

Measured against its own high standards, the ANC's lapses — the murderous bomb attacks during rush hours or on crowded bars, the silence during brutal extrajudicial executions by comrades of alleged collaborators and the shocking treatment of ANC cadres in detention camps in Angola — mean that it cannot indulge in moral complacency.

The security forces under the old, unlamented regime carry an awesome burden of guilt and a proportionate need to seek amnesty through public acknowledgment of, and contrition for, past cruelty. The ANC, however, is not guiltless. It, too, must exhibit moral humility. It is too clever and insufferably smug to state that — in Phosa's words — "it is a miracle that the ANC broke so few eggs to make such a large omelette for SA." ■





# The amnesty squabble

**T**HIS WEEK'S ROW between Truth and Reconciliation Commission head Archbishop Desmond Tutu and the African National Congress over amnesty applications by the organisation's members threatens to open up new debates over the definition of human rights violations

Actions committed by the liberation movement in its "just war" are also likely to be scrutinised – leading to renewed debate over some of the methods used during its armed struggle

Until now there has been a tacit understanding that former Umkhonto we Sizwe cadres would not be expected to appear before the TRC *en bloc* – except if their actions transgressed the organisation's policy

This position has been reiterated by both Justice Minister Dullah Omar and ANC legal head and Mpumalanga premier Mathews Phosa.

Phosa said this week that amnesty applications were being prepared for 100 people who are in prison on various charges

"Our members have been in touch with these people and maintain contact with many. When looking at how to secure the release of some, the TRC was seen as one of the options that we could use to help them"

He said that the figure included Inkatha Freedom Party and Pan Africanist Congress members. Some of the applicants had already approached the TRC for amnesty, while others have employed lawyers to deal with their cases.

Phosa said the definition of human rights violations was being debated again. He added: "We may have to redefine even-handedness. There are a number of things that will be up for debate"

"This debate is not new – it goes back to when negotiations first started and we in the ANC pointed out that a lot had to be discussed, including the climate in which we lived and issues like the repeated state of emergency"

The contentious issues were repeating themselves, he said, and added that he was keen to clarify the issue with Tutu when they meet on Sunday

One of the first public disagreements that President Nelson Mandela and National Party leader FW de Klerk had in the negotiations period before the 1994 election was because of tension around the armed struggle and amnesty, Phosa said

He said on the night before the constitutional talks, former security policeman Krappies Engelbrecht had told him that he should be given amnesty as there were "a whole lot of men" who were in a position to cause chaos

Phosa told him that he was not involved in any such negotiations and therefore he would

The definition of human rights violations is being debated again. These deliberations could result in several surprises as the Truth Commission continues its work. **Sharon Chetty** explains why...



not discuss the issue.

"It is a matter of commonsense about how this should be looked at. You cannot equate the two sides in any way," he emphasised

"We don't want a situation where the victims (the ANC) crawl for amnesty, while the perpetrators and others go free – the scales of justice must be even – but there's no way that the past can be looked at evenly"

Wits University political scientist Dr Tom Lodge described this week's row between the TRC and the ANC as a "silly quarrel".

He pointed out that South African law, even before 1994, does not accord legal immunity to prosecution – the distinction, he said, was moral and not legal

## Politically motivated

"The whole point of the amnesty is that it is politically motivated, and to bring in question the moral issues which are wrong.

"One can understand why the ANC accords a different interpretation to the issue. The distinction is there, they must trust in the common sense of the public to see that"

Lodge said that ANC leaders should set an example by being supportive of the TRC and that they should start by applying for amnesty. They should encourage members to go to the TRC. "By doing this, they will be putting themselves on a higher moral plane than the Nats. You can never lose by saying sorry"

He said that it does not matter if a lot more ANC people go before the TRC as opposed to NP functionaries or members of the former security forces as the accumulation of guilt was a relatively minor issue

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"When saying sorry, you will always win. Those Nats who do not apply for amnesty should then be prosecuted."

Lodge suggested that, for example, a high-profile leader like Ronnie Kasrils could make a difference if he went to the TRC and said that certain acts

were committed in the context of a just war

That would make it easier for other ANC and MK people to apply for amnesty, he said

"People are forgetting what the TRC is about – it is not about weighing moral blame, but is a political device to look at the past, give amnesty and to aid in the political transition"

Jody Kollapen, national director of Lawyers for Human Rights, said that while the differences between the actions of members of the liberation movements and those of the security forces can be distinguished when looked at from a moral perspective, the law does not make a distinction between the two.

He said it must also be remembered that the granting of amnesty was done at the request of the individual. If someone chooses not to apply for amnesty, then they are open to prosecution.

Kollapen pointed out that while the TRC would exist for a limited time only, the serving of justice could take much longer.

"If the state is in possession of evidence that points to misdemeanours, then it has the obligation to prosecute," he said, adding that former security force members would not be immune from prosecution even if they avoided the TRC.

The TRC process has been absolutely critical. While old wounds have been opened and there has been an attempt at healing them, he added, it is vital that the situation is handled correctly

It is also important that the TRC looks at every case brought before it, he said. "There have been enough political compromises already. It is important that the law must take its course"

# TRC in key talks on PW and ANC amnesty today

*Meeting with ex-president heads agenda*

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**ANDREA WEISS**  
STAFF REPORTER

Truth Commission chairman Desmond Tutu convened a special meeting of the commission in Cape Town today to discuss how to approach former president P W Botha who is to meet commissioners soon.

The commission will also discuss the reluctance of certain African National Congress members to apply for amnesty. Archbishop Tutu has threatened to resign as chairman if the ANC chooses to grant itself general amnesty.

He was reacting to a statement by Mpumalanga Premier Mathews Phosa that

ANC members would not apply for amnesty for incidents such as the Pretoria Church Street bomb which it regarded as acts of war.

Archbishop Tutu said the primary purpose of today's meeting was to "discuss our approach" to discussions with Mr Botha later this month.

Archbishop Tutu has agreed to meet a high-powered ANC delegation at Johannesburg International Airport on Sunday before he leaves for a week-long visit to the United States. The delegation will consist of Mr Phosa, ANC deputy secretary-general Cheryl Carolus, Justice Minister Dullah Omar, Mineral and Energy Affairs Minister Penuell Maduna and ANC spokesman

Ronnie Mamoepa. Although the meeting has been billed as covering "matters of mutual interest" it is expected that amnesty will dominate the agenda.

Meanwhile, Safety and Security Secretary Azhar Cachalia has reminded members of the security forces of the previous government and former liberation movement that the deadline for applying for amnesty is December 15.

He said those who failed to apply risked facing "the full force of the law".

Observers believe this underlines that ANC members will be treated in the same way as others when it comes to amnesty.

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# Short-circuiting 'common under PW'

Wyndham Hartley

CAPE TOWN — Executive decisions without reference to the Cabinet and the state security council were common during PW Botha's presidency, NP leader FW De Klerk said yesterday

Asked during a news briefing whether bypassing the Cabinet was common, as the truth commission was told regarding the bombing of Khotso House, De Klerk said executive decisions took one of three forms

The first was where the decision was taken by a minister alone who felt it fell within his line function powers

The second was where Cabinet ministers would consult informally with some of their colleagues

BD 8/11/96  
The third was for a minister to table an issue formally when he wanted the collective responsibility of the Cabinet applied to the decision. It would then be discussed at Cabinet meetings and recorded in the minutes

Former police commissioner Johan van der Merwe told the truth commission that Botha ordered then law and order minister Adriaan Vlok to have Khotso House bombed because it was operating as the ANC's headquarters. De Klerk said that during his presidency he encouraged ministers to bring issues formally to Cabinet or to Cabinet committees. Referring to recent testimony before the truth commission, De Klerk said he had no reason in the past not to believe it when allegations of

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state abuses were denied. There were never good reasons to believe crimes were not seriously investigated and he did not have reason to believe atrocities were officially authorised. However, convicted murderer Eugene de Kock had been arrested under NP rule and other policemen prosecuted

De Klerk said that the NP's second, voluntary submission to the truth commission was being completed and should be handed to the commission before the end of the year. He praised the stand taken by commission chairman Desmond Tutu in standing up to the "ANC strategy to get its own way with the commission". He was quite happy with the way the commission operated so long as it was even handed

Land reform steps detailed

Wyndham Hartley

CAPE TOWN — Almost 2-million hectares of land had been redistributed under the land affairs department's programme in the first half of the ANC's term of office, Land Affairs Minister Derek Hanekom said yesterday.

In a report to President Nelson Mandela, he said that 312 redistribution projects involving 54 000 households had been completed by November 4 1996.

Land restitution claims totalled 11 130, and more than 200 applications had been received from farm labour tenants for the purchase of the land they had tilled on white farms in return for their labour.

Nine land reform laws had been enacted since May 10 1994, and another seven were under consideration by Parliament.

8/11/96

Police warned not to miss amnesty deadline

Stephané Bothma

PRETORIA — Serving and past police officers — many of whom are implicated in some of the 500 "third force" dossiers under investigation by Transvaal attorney-general Jan D'Oliveira — were warned yesterday that like Eugene de Kock, they would face the "full force of the law" if they missed the deadline for amnesty applications.

In a strongly worded statement, safety and security secretary Azhar Cachalia issued a similar warning to members of the liberation movements guilty of human rights violations during the anti-apartheid struggle, that time was running out for them to seek amnesty.

The closing date for amnesty applications to the truth commission is December 14. To date, no freedom fighters have submitted applications and various ANC officials have indicated there is no need for them to do so.

However, truth commission chairman Archbishop Desmond Tutu will meet the ANC on Sunday to discuss the matter.

Perpetrators of human rights abus-

es on both sides could face prosecution unless granted amnesty

Cachalia's statement, which lauded D'Oliveira's special investigating team for its successful prosecution of De Kock, was issued just days after 12 police dockets detailing alleged ANC attacks on soft targets were handed to D'Oliveira by national police commissioner George Fivaz.

The dockets implicate high-ranking ANC officials in incidents such as the Pretoria Church Street bombing, several land mine explosions in the Northern Transvaal which killed and maimed civilians, the Silverton bank siege and the Ellis Park bombing.

In addition to the 12 new dockets handed over for further investigation with a view to prosecution last Friday, about 500 dossiers relating to alleged third force activities are in various stages of investigation by D'Oliveira's special team

Their three-year probe has uncovered evidence relating to the arming of the IFP by police, the attempted coup to topple Transkei military leader Bantu Holomisa and the murder of numerous activists.

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# Coetzee tells of secret lab where Pillay was drugged

Farouk Chothia

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DURBAN — Military intelligence had a secret bunker in Pretoria where ANC members were interrogated, and drugged and government meetings with Unita leader Jonas Savimbi were held, former Vlakplaas commander Dirk Coetzee told the truth commission's amnesty committee yesterday.

Coetzee made the disclosure during his amnesty application in connection with the 1981 abduction of ANC-aligned teacher Joe Pillay from Swaziland. Coetzee said that Pillay, who had been blindfolded at the time, might be interested to know that he had been taken to a "very special and very impressive place". It was an observatory in Klapperkop Fort near Pretoria, where there was an underground bunker, four VIP houses and an ultra-luxurious conference room.

Coetzee said Maj Kallie Steyn of military intelligence and Col Andy Taylor of the Natal security branch had interrogated Pillay.

Steyn brought an army doctor who administered "truth serum" to Pillay.

"Pillay was kept in a state of semi-consciousness, where he just could not gain control over his thoughts."

When it emerged Pillay was not, as thought, a senior member of the ANC's Natal machinery, he was smuggled back to Swaziland.

Coetzee said a helicopter and a convoy of limousines arrived at the observatory while he was there. Steyn told him that it was Savimbi.

Coetzee is seeking amnesty in connection with 29 cases of human rights violations.

Coetzee said he had a braai and drank alcohol while junior officers burnt Sizwe Kondile's body on a pyre near Komatipoort in 1981. Kondile had earlier been poisoned with "knockout drops" and shot in the head with a silenced Makarov pistol.

□ Sapa reports from Cape Town that an ANC delegation, including Mpumalanga premier Mathews Phosa and Justice Minister Dullah Omar, is to meet truth commission chairman Desmond Tutu on Sunday. Tutu has threatened to resign if the ANC decides it can grant itself a general amnesty.

BD 8/11/96

# TRC crisis averted at 11th hour

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## Tutu to meet ANC

ANDREA WEISS  
STAFF REPORTER

**A looming crisis over the possible resignation of Truth and Reconciliation Commission chairman Desmond Tutu, which could have dealt a death knell to the TRC, has been averted at a high-level meeting in Cape Town.**

Archbishop Tutu threatened to resign from the TRC if the African National Congress side-stepped amnesty hearings. His threat followed remarks by Mpumalanga premier Mathews Phosa, indicating that ANC members would not be applying for amnesty for certain acts such as the Pretoria Church Street bombing.

TRC commissioners emerged from a special meeting yesterday saying that all channels would be exhausted before this line of action was considered.

Deputy chairman Alex Boraine said the view of the other commissioners was that this was a last resort, while Archbishop Tutu stressed that the ANC's position had not yet been made clear to the commission.

Dr Boraine said. "The majority of us would say that there are a number of steps one has to go through before we reach the position of last resort. Personally, I think we are quite a long way from that."

Archbishop Tutu, accompanied by two or three other commissioners, is due to meet a delegation of the ANC led by deputy secretary-general Cheryl Carolus at Johannesburg airport tomorrow. Archbishop Tutu has undertaken to report back to the commission on this meeting after his return from the United States.

The Sunday meeting was initiated by the ANC to discuss "our apparent differences", Archbishop Tutu said.

"The position is that the ANC has not

got a position as of now. We have not heard from them what their position is. Let's stop speculating," he said.

On the December 14 deadline for amnesty applications, Dr Boraine said the TRC might approach Parliament next year to request that retrospective legislation be passed to extend the date.

He renewed a call to people considering applying for amnesty "not to hesitate" and to apply before the deadline.

He said the commission would rather act within "the spirit of the legislation", which was that as many people as possible should be given the opportunity to get amnesty.

***"The position is that the ANC has not got a position as of now. Let's stop speculating"***

Dr Boraine said there had been an increased flow of amnesty applications, including some from ANC members in prison, which was making huge demands on our infrastructure.

He urged all parties to apply for amnesty or face the consequences, which

could include prosecutions.

Also discussed at yesterday's TRC meeting was how the body would approach former president PW Botha.

The decision was that the TRC would not be confrontational, but rather seek Mr Botha's co-operation.

A meeting between Mr Botha and Archbishop Tutu is likely to take place towards the end of November.

National Party secretary-general Roelf Meyer has also indicated that he wishes to appear before the TRC again to provide more information from the NP's perspective. Mr Meyer's offer comes as the TRC prepares to meet Mr Botha to persuade him to "co-operate" following disclosures that he may have been directly involved in ordering actions that might have transgressed human rights.

# 'Amnesty too good for them'

By CHRIS HLONGWA

**LIKE MEN condemned to eternal damnation, the three killers seemed unable to say anything to elicit sympathy from the families of their victims.**

At the amnesty hearings at the Durban Christian Centre on Thursday, Charity Kondile, the mother of student activist Sizwe Kondile who was murdered by former Vlakplaas commander Dirk Coetzee and his henchmen, could not hide her amazement at the lengths to which Coetzee would go in trying to win her heart as he applied for amnesty.

"You heard him say what a wonderful person I was!" she exclaimed.

Coetzee had earlier said he wished to be able to look Sizwe's mother "in the eye" and ask for forgiveness.

It was not that long after that plea for forgiveness that the family lawyer, Imran Moosa, made it clear Charity wanted "it to be known that such an honour you do not deserve. If you are that re-

morseful you should stand trial."

That summed up the mood of the families of Kondile and those of the slain human rights lawyer Griffiths Mxenge, and that of the crowd at the hearing no amnesty for any of the three killers - Dirk Coetzee, Almond Nofomela and David "Spyker" Tshikalanga.

The son of Griffiths Mxenge, Mbasa, who was 15 years old at the time, sat with his eyes glued on Tshikalanga as he listened to him describe how he stabbed his father in the chest, how the knife stuck, and how he jumped away when Mxenge pulled it out and attacked them as he desperately fought for his life.

The stabbings created over 40 wounds on Mxenge's body - they cut his stomach open and slit his throat so much that his head was almost cut off the body.

Painting his background, Coetzee (51) said he grew up in a conservative Afrikaner home in Pretoria and had no contact with "black Afrikaners of my age."

He said the gruesome crimes he later committed were due to his belief that he was fighting "to prevent an (ANC) onslaught from succeeding."

**ASKING FOR FORGIVENESS**  
Former Vlakplaas commander Dirk Coetzee and his henchmen viciously murdered Sizwe Kondile and Griffiths Mxenge, but now Coetzee says he wants to look the mother of an activist he murdered 'in the eye' and ask for forgiveness.

As one of his recruits for the death squad he built up as Vlakplaas commander, he picked David Tshikalanga, a gardener at his house who had become "like one of the family." He said that in killing Mxenge, he was only following instructions from his superiors, Brigadier Van der Hoven and Captain Andy Taylor.

He had been told it was difficult to build up a case against Mxenge, who had been defending ANC cadres in court and receiving funds from the then banned organisation. He had to be eliminated. Knives were to be used to simulate a "black on black" robbery.

Mxenge's killers, Joe Mamasele, Nofomela and Tshikalanga, were each given a R1 000 bonus in "appreciation for the killing."

"People who were a thorn in the flesh of the police, such as activists whom the police could not bring to court, were to be eliminated," he said.

After describing the details of Mxenge's murder, Nofomela said he had realised he was fighting on the side of whites because the things they did were done "only to blacks".

The 40-year-old Tshikalanga frequently pleaded failing memory in his account of the incident.

Reminded that in the Harms Commission he had denied taking part in the murder, he said he didn't remember denying that.

It was pointed out to him by Judge Bernard Ngoepe that there

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were "too many 'I don't remember's'."

The amnesty committee also heard how Eastern Cape activist Sizwe Kondile was killed in 1981 after he suffered brain damage during interrogation and the security police did not want "a second Biko incident."

He was abducted and given "knock-out drops" which resulted in his falling into a deep coma. A policeman shot him in the head with a Makarov pistol and his body was placed on a pyre of wood, doused with petrol and set alight.

"It takes seven hours for a body to burn, and during this time we were drinking and having a braai," said Coetzee.

Sizwe's mother later said the story of her son's murder had been published many times in newspapers but listening to his killers speak was different. "But I did not want to break down."

The next phase of the hearings will be arguments by counsel of the applicants and the family and only after all the cases have been dealt with, will the committee decide whether the murderers get amnesty or not. The decision is expected to be made early next year.

**'FIGHTING ON THE SIDE OF THE WHITES'**  
Almond Nofomela says he realised the things he was told to do were done 'only to blacks'. He is seeking amnesty for eight crimes, including the murder of a farmer, for which he is already serving time.

## Swanieville massacre in the spotlight

**STORIES OF** human rights violations involving township residents, vigilante groups, police and security forces will be the focus of the Truth and Reconciliation Commission's hearings at the Bona Lesedi Nursing College, Leratong Hospital, in Kagiso.

The hearings, from tomorrow to Thursday, will be chaired by Dr Fazel Randera, accompanied by Professor Piet Meiring and Joyce Seroke.

Townships to be covered include Mohlakeng, Khutsong, Kagiso, Carletonville, Bekkersdal, Randfontein and Krugersdorp.

From the majority of cases in Khutsong, Carletonville, it seems

that any kind of gathering that had to do with political protest, night vigils or mass funerals of police victims constituted grave danger for the people concerned during the darkest days of apartheid.

Stories of residents being assaulted, stabbed, harassed and some being killed by alleged comrades who had become undisciplined and unpopular in the township and were known as the "Gadafis" abound in testimonies. This group was said to be an ally of the African National Congress.

Another group of vigilantes known as the "Zim Zims" is alleged to have been on the payroll of the South African Police. This

group was notorious for abducting youths and other residents to a dam known as Sguvini, where they were heavily assaulted, hacked with pangas and shot. Some survived the ordeal, others did not.

□ The massacre of people at the Swanieville squatter camp in Kagiso, near Krugersdorp, in 1991 will also come under the spotlight. A group of hostel dwellers, later said to be Inkatha members, under police escort attacked the squatter camp and left a trail of destruction and death. The attack led to continuing violence in the area which was later alleged to be a fight among the Xhosa and the Zulu.



# Black security cop says he would prefer jail sentence to amnesty bid

By ELIAS MALULEKE

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FORMER security branch policeman and Vlakplaas hit-squad operative Mamasela has refused to apply for amnesty and has challenged the Truth and Reconciliation Commission to go ahead with its threat to subpoena him. He also challenged the judiciary and the police to charge him, saying he was ready to go to jail, rather than seek a pardon.

He indicated he would co-operate with the commission if he was asked to come forward to testify about police hit-squads. The commission has indicated he will be subpoenaed after his name was mentioned by policemen seeking amnesty.

"I have nothing to hide because I am already co-operating with the attorney general in his investigation of police dirty tricks," the 46-year-old Mamasela said, asking for his picture not to be taken.

The only black "inner circle" member of the police and military hit squads, he served under all the commanders of the Vlakplaas base and the security branch headquarters in Pretoria from 1978 to 1993. He left the force with a golden handshake of more than R450 000.

Mamasela, who has confessed to taking part in the murder of Kwazulu Natal human rights lawyer Griffiths Mxenge, turned against the ANC after his cousin was allegedly tortured and burnt on a stake by the ANC in Botswana.

He was the first to expose how police had:

- Abducted and killed the Pebco Three — Qaqawule Godolozu, Sipho Hashe and Champion Galela — in 1985;
- Abducted and killed two ANC activists and Mamelodi businessmen Andrew Makope and Harold Sefola in 1987;
- Tortured and killed police informer Jackson Maake in 1987;
- Murdered nine ANC youths in the former Kwandebile homeland in 1986,
- Murdered Vlakplaas operative Brian Ngqulunga in 1990, and
- Killed and maimed ANC youths in Duduza by giving them booby-trapped hand grenades to attack the homes of councillors and policemen.

Mamasela told the Sunday Times on Friday that other activities included the murder of activists who were buried in shallow graves or disused mine shafts. He had also been given insecticide-laced UDF and Cosas T-shirt to give to activists.

Mamasela, whose disclosures led to the conviction of Eugene de Kock, said applying for amnesty was out of the question. "I did nothing wrong that can force me to apply for amnesty, instead it was the ANC and the NP who used and abused me like a dog feeding on its puppies.

"I am not like Dirk Coetzee, the so-called 'angel' who killed to maintain the status quo of the apartheid government and redeemed himself when the chips were down by joining the ANC. I was forced to do the things I did," Mamasela said.

He said he was ready to go to prison if he was prosecuted for his deeds.

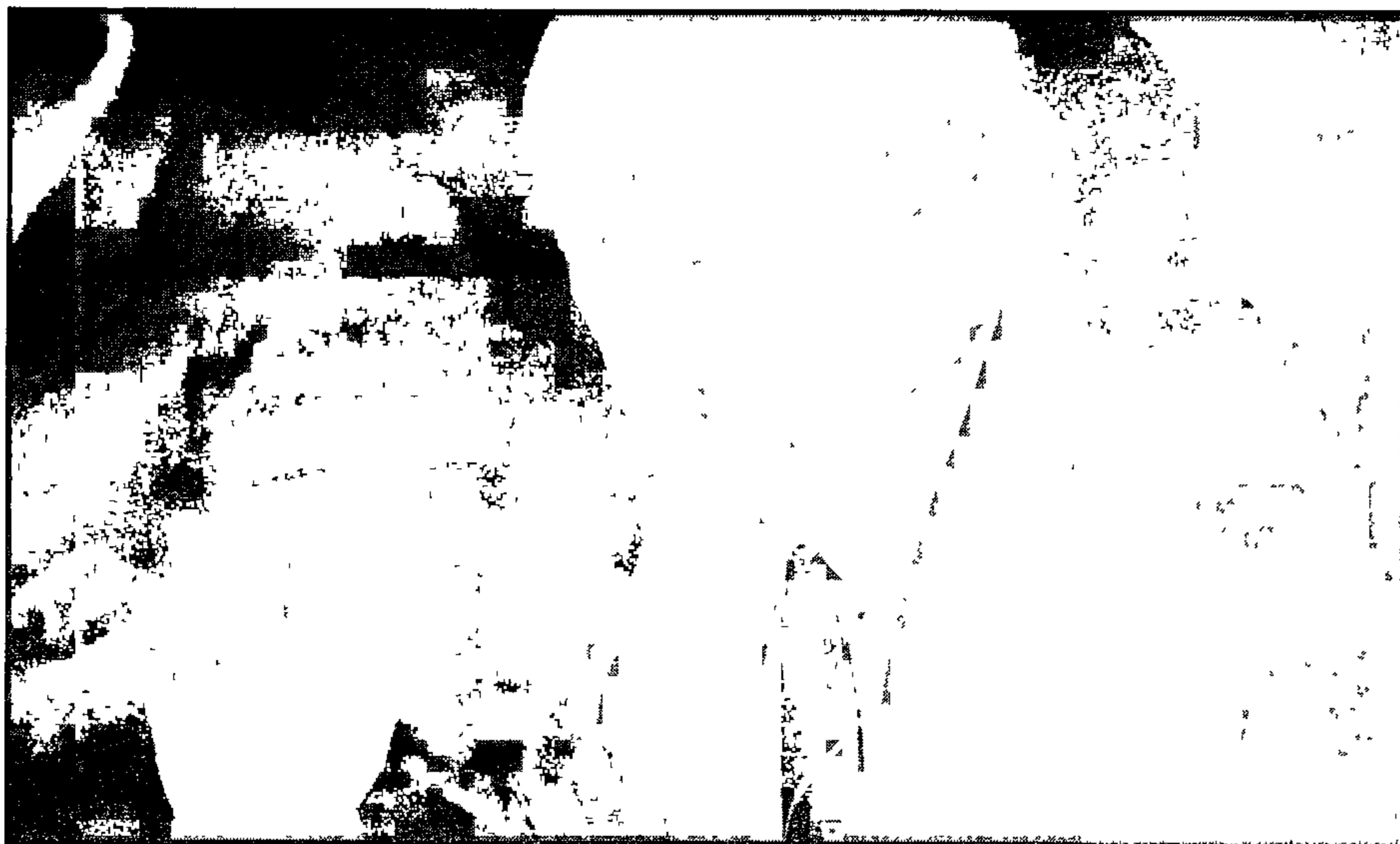
"I have nothing to lose because my life ended when I started living a life of lies. The ANC and the system have destroyed me and my family who did not know what I was doing," he said.

His former commander, Captain Jacques Hechter, and colleague Paul van Vuuren, confirmed Mamasela knew more than he had so far exposed.

"Most of the operations could not have been successful without his involvement. Mamasela was a star and dedicated operative," Hechter said.



# Chief Justice Michael Corbett brought dignity to the judiciary, writes CARMEL RICKARD



UNDERSTATED . . . outgoing Chief Justice Michael Corbett believed a talkative judge was a menace

**W**HEN Chief Justice Michael Corbett leaves his Bloemfontein office for the last time later this year, the door will close on an era

For seven years he has put his stamp on South Africa's judiciary. He is to be succeeded by a jurist of quite different temperament and legal approach, the deputy president of the Constitutional Court, Justice Ismail Mahomed

Judge Corbett's appointment in 1989 was widely welcomed. The reputation of the judiciary as the protector of individuals and their rights was at an all-time low after repeated pro-government decisions on security-related cases had been handed down by the Appeal Court under his predecessor, Chief Justice Pierre Rabie

Judge Corbett, by contrast, was a judge with a streak of liberal values. Litigants in security cases recall that when they found he was sitting on the Bench, they would feel that at least one member of the court might have some sympathy for their position

**O**N THE other hand, his liberal values went with conservative legal instincts

His friend and colleague on the Appeal Court, Mr Justice "Nick" Nicholas, says in a recent book honouring him, *Quest for Justice*, that as a judge he could be characterised as a "conservative, a proponent of judicial caution"

Judge Corbett delivered a number of important decisions and dissenting judgments in various branches of the law. But his most significant contributions are generally acknowledged as being in administrative law. This is the branch of law under which many key security decisions were taken during the apartheid years, and its development is crucial in promoting human rights and checking government oppression

In a case heard during the late 1980s, before he took office as chief justice, Judge Corbett re-emphasised the importance of allowing the views of all sides to be heard. His judgment followed a series of security-related cases on the same principle: should those affected by

## The closing chapter of a cautiously liberal rule

a decision be allowed to put their views to the person making the decision. Most earlier rulings had whittled away at this right, but Judge Corbett's judgment helped re-establish it as fundamental

Hugh Corder, professor of public law at the University of Cape Town, believes this was "an absolute turning point in what had been a growing trend to undermine the right"

But while Corder praises Judge Corbett as responsible for the most important contributions to administrative law in the past 30 to 40 years, other commentators are more reserved in their assessment. They say that while he appeared to shine as chief justice, this was partly because of the contrast he made to Judge Rabie

"He was a conservative jurist," says one analyst, "who in the SA context acquired a liberal aura only justified because of the extraordinarily repressive nature of the judicial system until that time"

Another adds "His record on civil liberties has been unjustifiably exaggerated and on free expression he has been a party to extraordinarily conservative judgments"

"Although his most important contributions have been in administrative law, so was the low-water mark of his career his judgment in 1989 confirming the closure of the New Nation newspaper, in which he did not express any regret at upholding emergency powers of censorship"

Judge Corbett's judicial record on free speech, much criticised by editors and academics, contrasts oddly with his views on the subject off the Bench

**F**OR example, speaking at the first international conference on human rights in South Africa, held in 1979, Judge Corbett backed a bill of rights, an almost revolutionary idea in establishment circles at the time

During his address, he said "In any society a free press is indispensable to the proper administration of justice"

"Judges cannot arrive at correct judgments unless they are made aware, through the media, of what is happening in society and what people are freely saying and thinking"

George Devenish, professor of public law at Natal University, says that with the appointment of Justice Mahomed a new jurisprudence of transformation will dominate the Appeal Court, formed by a fusion of the existing approaches to law, together with continental, Indian, Canadian and US jurisprudence

The ascendancy of the Roman Dutch school and the British liberal school, to which Judge Corbett belonged, is over "In that sense, the retirement of Chief Justice Corbett is also the end of an era," says Devenish

He adds that advocates liked appearing before Judge Corbett

"There were no histrionics in his court and he adopted a 'refined', understated approach, very subdued and polite"

In a conversation with Mr Justice Peet Nienaber of the Appeal Court, also published in *Quest for Justice*, Judge Corbett says he saw his first function as a presiding judge to "maintain the order and dignity of the court". He adds one has consciously to be aware of the need to curb oneself during debate with counsel, as "a talkative judge is a bit of a menace"

**H**E HAS been a strong leader and the Appeal Court Bench looks very different from when he first took office. Then there was an over-representation of judges from the Transvaal and Free State, many of them conservative adherents of the Roman Dutch school. Now the range of political and legal views within the white legal establishment is far better reflected

He also put an immediate stop to his predecessor's controversial practice of repeatedly selecting a small group of Appeal Court judges to hear the most contentious security cases

However, one notable omission from appointment to the Appeal Court during his time is Justice John Didcott, now on the Constitutional Court, and formerly from the Natal Supreme Court

The difference in the public profiles of Judge Corbett and his successor, Justice Mahomed, were reflected during two recent radio quizzes

The first asked who was Michael Corbett? Was he the lead singer of Mango Groove, the goalkeeper of Orlando Pirates, the deputy minister of transport, or the chief justice of South Africa? The first three got it wrong, the fourth got it right, but only through a process of elimination

Last weekend the BBC's Africa Service asked its studio panel in London who Ismail Mahomed was. This time the correct answer took only a split second

Those who know them say this contrast will displease neither judge

# ANC, Tutu 'resolve' amnesty dispute

Star 11/11/96 (262)

By ROBERT BRAND

The ANC and the Truth and Reconciliation Commission have, on the face of it, resolved their differences, with the ANC undertaking yesterday to encourage its members to apply for amnesty "in appropriate cases"

After a two-hour meeting between an ANC delegation and TRC chairman Desmond Tutu, ANC secretary-general Cheryl Carolus reiterated the organisation's commitment to the TRC process and said the ANC was not above the law which established the commission. But Carolus remained vague about whether its members responsible for armed actions in the course of the struggle against apartheid would apply for amnesty

The meeting followed a threat by Tutu to resign as chairman unless the ANC undertook to subject its members to the amnesty legislation.

The threat was sparked by the views of senior ANC leaders, including Mpumalanga Premier Mathews Phosa, that ANC members responsible for "acts of war" such as the Church Street bombing in Pretoria need not apply for amnesty.

After yesterday's meeting, both Tutu and Carolus said "misconceptions" about the ANC position towards the TRC had been cleared up. But the ANC had not changed its position, Carolus said. "Nothing which the ANC has



Happy conclusion ... Cheryl Carolus and Archbishop Tutu share a light moment at yesterday's meeting.

said was meant to unduly influence the work of the commission or to undermine it.

"Nothing we said was meant to convey the impression that the ANC would grant itself amnesty," Carolus said.

She said the party would encourage its members "in those categories of people who have to apply for amnesty" to do so. These would include ANC members in prison or liable for criminal prosecution as a result of deeds committed in the course of the armed struggle.

"Where it is agreed that there have been gross violations of human rights or transgressions as defined by the (TRC legislation),

we will apply for amnesty."

She would not be drawn on specific incidents, saying the ANC would take a close look at the "legalities" involved before recommending to its members to apply for amnesty in "appropriate cases".

Tutu said the meeting had served to "change the perception that the ANC were granting themselves amnesty".

This perception, he said, would have undermined the integrity of the commission if it had gone unchallenged.

He said the parties had also agreed that moral differences between the armed struggle and the state's response to it did not apply to the amnesty procedure.

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I'M SATISFIED — TUTU

# ANC, TRC clear up misunderstandings

CT 11 | 11 | 96 (292)

**IOHANNESBURG:** The meeting yesterday between Archbishop Desmond Tutu and the ANC helped underscore the Truth Commission's autonomy and integrity, he said.

**T**HE ANC and the Truth and Reconciliation Commission last night declared their satisfaction at the outcome of discussions on misunderstandings between them — including the issue of amnesty.

Commission chairman Archbishop Desmond Tutu said he was pleased the meeting, held at Johannesburg International Airport before his departure to the United States, clarified some serious misunderstandings.

"I am very grateful that this meeting is helping to underscore the recognition of the commission's independence, autonomy and integrity.

"As commissioners, we are loath to have that authority undermined," he said. Tutu earlier threatened to quit the commission chairmanship fol-

lowing reports that ANC members would not apply for amnesty.

Yesterday he said he had been "very deeply concerned" about the possibility that the ANC granted itself amnesty and might have had ideas about bypassing the commission.

Tutu said commissioners had a change of perspective after the meeting and its reaction would be revised.

If the commission did not challenge the perceived stance of the ANC, "it might have impugned the position of the commission." Also, it might have created the moral and legal problem that the commission did not treat all people equally.

"I'll say it again. It is not a witch hunt. For the sake of the country, this process has to be seen as independent, autonomous and fair and

must be accepted as such."

ANC deputy secretary-general Ms Cheryl Carolus, who led the party's delegation, said the ANC respected the commission's independence.

"We have assured them that nothing said by the ANC was meant to undermine its (the commission's) authority. At no stage did the ANC want to upstage the commission," she said.

The party would encourage members to apply for amnesty before the December 14 cut-off date. The party had been assisting members in this regard for months, Carolus said.

"We need to encourage people to apply for amnesty, to follow the example set by other members.

"Where there were violations we will apply for amnesty, and have been advising our members to do so."

Carolus could not say how many members might apply, except that "quite a number" have sought ANC legal advice — Sapa



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**AIR CLEARED:** Truth and Reconciliation Commission press conference after nearly three hours of testimony on human rights abuses

# Congo ostriches

**ANYONE** who has passed the pithful! At the world's largest birds huddled in baking in the hot sun with no shade, or ed on ground that has not seen a blade or a bush for years cannot but agree that the outbreak of Congo fever) the revent ostrich has at last come about.

Ostrich steaks are now as fashionable as handbags and shoes carved from their skins magnificent feathers are cruelly plucked they are still alive for such diverse and di purposes as headgear for dancers and di Their beautiful eggs are blown out at for jewellery and ornaments and those kept are put into incubators, disallowin parents their natural task of rearing thei They are exported while still alive ar those that survive the traumas and rigou the journey, many perish in the severe to which they are not accustomed.

For the amusement of some (with oi little brains and no compassion) they ar ly ridden like horses, regardless of the fa their bones are not strong enough, and therefore frequently severely injured.

Take a closer look at ostrich farming haps you too will take pity on these ove exploited creatures and will see why at l have struck back!

**JILL MORTIMER**  
SOMERSET WEST

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# Truth Commission crisis averted in talks with ANC

*I think we are satisfied, says Tutu* (252)

**Johannesburg - Desmond Tutu says a crisis threatening the Truth and Reconciliation Commission has been averted after the African National Congress denied claiming the right to absolve itself of human rights abuses.**

Archbishop Tutu, who threatened last week to quit as chairman of the commission, held nearly three hours of talks with ANC deputy secretary-general Cheryl Carolus and other ANC leaders yesterday to clear the air.

"The perception was that you (the ANC) were granting yourselves amnesty," Archbishop Tutu said afterwards at a joint news

conference with Ms Carolus

"We were very, very concerned about that. If it had gone unchallenged, it would have impugned the integrity of the commission and given the impression that it was being manipulated by the ANC," he said.

He had threatened to resign after several senior ANC members appeared to signal that the movement felt it had committed no abuses for which it should seek amnesty.

Ms Carolus told the news conference that the ANC believed that the anti-apartheid struggle had been a just war, but it accepted that some members needed to go

ARC 11/11/96  
through the legal process of seeking amnesty.

She said this had always been the party's position, but misinterpretations had arisen.

Archbishop Tutu said the meeting had eased the commission's fears "I think we are satisfied."

President Mandela gave the commission a mandate to form as full a picture as possible of abuses committed during the apartheid years.

Archbishop Tutu hopes the commission, which has heard harrowing testimony from victims of police torture and from some of the torturers, will help to heal the wounds of the past. - Reuter

# ANC to seek amnesty for members

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BD 11/11/96

Stephané Bothma

A NUMBER of ANC members would apply for amnesty for human rights violations, the organisation said yesterday shortly before meeting truth commission chairman Archbishop Desmond Tutu

This follows a public row between Tutu and ANC legal department head Mathews Phosa, who said ANC members need not apply for amnesty because they had been fighting an evil régime. Tutu threatened to resign if the ANC endorsed this view, saying there would be no need for a truth commission if one side in the conflict absolved itself

The ANC said yesterday that it accepted responsibility for acts committed during the struggle against apartheid, and had set up a subcommittee some time ago to assist members applying for amnesty. Many individual members had already applied for amnesty, the ANC said

However, apartheid was a crime against humanity, the party said. "Neither the organisation as a liberation movement nor any of its members were ever involved in any crime against humanity. On the contrary, the ANC was involved in a just and heroic struggle. However, where during the course of that struggle violations of human rights did occur, these must be acknowledged"

The organisation said that many of its members had paid the highest price for their participation in the struggle. Those subjected to arrest and im-

prisonment by "apartheid courts" and who had served their sentences did not have to apply for amnesty

People who had received indemnity in terms of the Indemnity Act and Further Indemnity Act and those who had been pardoned also did not have to apply for amnesty.

Stephen Laufer reports that hundreds of last-minute applications to the truth commission's amnesty committee by former ministers, senior security force officers, and ANC and PAC guerrillas look set to prevent the body from completing its work on time

The five-person committee will sit for a maximum of 125 days next year, despite a case load expected to include more than 1 300 PAC and ANC applications, and dozens of complex amnesty requests from at least one former NP minister and scores of former senior police and defence force officers. Single applications can require several days of hearings

The committee, headed by Judge Hassan Mall, had decided to hear evidence for two weeks out of each month next year, commission spokesman Mdu Lembede confirmed last week. The rest of the time would be spent considering judgment on the applications, including those dealt with entirely in writing, and in preparing for hearings

The committee's mandate ended with the rest of the commission's in December 1997, commission lawyer Robin Brink said

Cases involving senior security

Continued on Page 2

## Amnesty (252)

BD 11/11/96

Continued from Page 1

force officers could be expected to "last a considerable amount of time"

This view was confirmed last month when applications by five former security branch officers who served at Vlakplaas and in the northern Transvaal had to be adjourned to February after 10 days of hearings in Johannesburg

During their testimony, the applicants named several senior police and army officers, as well as former law and order ministers Adriaan Vlok and Louis le Grange

Vlok has said that he intends to apply for amnesty in connection with the bombing of Khotso House, as has former SAP commissioner Johan van der Merwe

Lawyers active in the area of amnesty have said several other gen-

erals and senior officers can be expected to ask for amnesty before the December 14 cut-off date laid down by law. Many of them fear that continuing investigations by the Transvaal attorney-general's office — successful in the prosecution of Eugene de Kock — could open them up to prosecution

The amnesty backlog is being exacerbated by a huge number of applications from prisoners

Of the almost 3 000 of these applications, several hundred had been decided administratively because the applicants could not show any political motive for their acts and were trying to use the truth commission as a court of appeal, Brink said

Each application had to be dealt with individually because the applicant could be entitled to amnesty

A major source of inefficiency is understood to be the absence of a dedicated senior administrator akin to a Supreme Court registrar

# Public can now debate reparation policy for apartheid victims

(252)  
ET 12/11/96

**COMPLEX** formula of urgent interim reparation measures as a starting point for healing lives shattered by apartheid has been tabled by Truth and Reconciliation Commission's Reparation and Rehabilitation Committee

The committee's "policy framework" focuses on five categories for urgent intervention: emotional intervention, material intervention, medical intervention, symbolic intervention and educational intervention

The costs will be borne by the President's Fund

The "urgent interim reparation measures" are meant to help victims of human rights abuses whose need for reparation is so great that they cannot wait until the government implements the commission's final recommendations

The policy framework — released yesterday to the public for

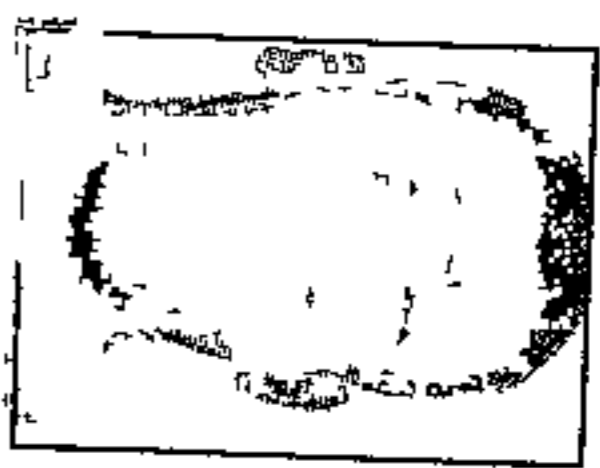
scrutiny — should at this stage merely be viewed as a set of proposals, the committee said. The document will be submitted to the government once the full commission is satisfied with its contents. The law provides that a joint committee of both Houses of Parliament must advise the President on urgent interim relief measures.

Yesterday the committee said it "warmly invited and encouraged all stakeholders in the process — victims and their families, non-governmental organisations, faith communities, the media, members of the public — to engage us in debating these issues."

It is hoped the final document will be with the government early next year.

Said the committee "If the state is to grant amnesty to perpetrators of human rights violations, it is under an obligation, within available resources, to provide for repara-

## JOHANNESBURG: After amnesty and rights violations hearings, the TRC's Reparation and Rehabilitation Committee now shows its hand. ROGER FRIEDMAN reports.



ratons to victims and survivors

"While the interests of attaining a peaceful settlement of South Africa's political crisis may have dictated that there should be no punishment for those willing to confess their crimes, victims of human rights violations nevertheless remain entitled to fair and adequate reparation and rehabilitation."

The Promotion of National Unity and Reconciliation Act which brought the commission into being recognised that there would be those victims whose situations were such that they could

recommendations on who should be awarded interim reparation. The national RRC should ratify these regional recommendations, and then refer them to a specially constituted Urgent Interim Relief Desk situated in the Office of the President

Mkhize said the committee wanted the desk in the President's office so that its work could be undertaken with the necessary gravity, authority and political clout. It was envisaged that the commission would be represented on the relief desk.

Reparation measures should begin to restore the dignity of victims of gross human rights violations, relate to the loss suffered by victims, relate to the socio-economic context of victims and to the capacity of the government, attendant ministries and civil society to implement policy recommendations

According to the act, reparations can include any form of compensation, ex gratia payment, restitution, rehabilitation or recognition. People found by the commission to be "victims" of gross human rights violations may have suffered harm in the form of physical injury, mental injury, emotional suffering, pecuniary loss or substantial impairment of human rights.

Mkhize said "It is really not that people are looking for handouts of some kind. Some people quite rightly don't want to be seen as welfare cases. They ask if heroes can be reduced to monetary compensation."

Urgent emotional interventions are envisaged for victims whose emotional quality of life has been and continues to be severely affected as a result of a violation and for those victims who have been orphaned as a result of the violation and have inadequate

material support to meet their emotional needs. Competent support services will be identified by the RRC

Urgent material interventions could take the form of a lump sum or pension, and are aimed at helping victims who are terminally ill, frail, unlikely to survive beyond the life of the commission, and orphans. Emergency shelter could also be provided to victims who have been rendered homeless as a result of the violation.

Urgent medical interventions include medical support to the terminally ill and/or frail, victims who are physically disabled as a result of the violation, victims suffering from debilitating physical conditions, and orphans. A network of medical services will be established, including volunteers and existing health facilities.

Urgent symbolic interventions include the issuing of death certifi-

cates, the clearing of victims' names (especially those with criminal records or considered to be informants), exhumations and reburials, the erection of tombstones and shrines, facilitation of feedback on cases being investigated, facilitation of public acknowledgements and apologies, and victim-offender mediation. These steps will only be considered urgently in the case of the terminally ill and/or frail.

Urgent educational interventions are aimed at victims and children of victims whose education was interrupted as a result of the violation, and for whom future prospects for education will be jeopardised unless there is urgent intervention to ensure they continue studying. Urgent relief will also be considered for orphans with inadequate material support, and for physically or mentally disabled victims needing specialised education.

Dirk Coetzee  
he sent askaris  
to Swaziland to  
identify ANC  
targets for  
elimination



# Pillay exception to Vlakplaas rule

By Claire Keeton  
Feature Writer

**S**ECURITY TARGET Joe Pillay was the exception to the Vlakplaas rule. He was allowed to live although he had been abducted and tortured by Vlakplaas agents and the security police – past the normal ‘point of no return’.

Sizwe Kondile was not as fortunate. They tortured and killed him in the same way as they did Siphon Hashe, Qaqawuli Godolozzi, Champion Galela, Harold Sefola, Andrew Makupe and Jackson Maake.

The list of police victims is long and not yet complete. These are only a few of the names that six former policemen identified before the Truth and Reconciliation Commission's amnesty committee over the past month.

Nor do these names include their ‘targets’ who were murdered simply for doing a good job as professionals: lawyer Griffiths Mxenge and his wife and Dr Fabian Ribeiro and his wife.

The hearings also exposed the attempted murder of Roman Catholic priest Smangaliso Mkhathshwa and trade unionist Jerry Thibedi.

Pillay, like them, was an innocent target kidnapped while working as a teacher in Swaziland. “It was clear to me he was not involved at all (in armed operations). He was absolutely innocent,” said Dirk Coetzee, the former police hitman in charge of Pillay's abduction.

But it is equally clear that Pillay survived the Vlakplaas hit squads (then under Coetzee's command) not because of his innocence.

## Made mistakes

They only let him live because Coetzee's men made mistakes which positively linked Pillay's disappearance to South Africa and his supporters raised an international outcry.

“If the askaris (turned ANC guerrillas) were not caught and Pillay was not known, I'm 100 percent sure the next instruction would have been to get rid of him. It was a point of no return,” said Coetzee.

But the outcry put the security police under pressure at a time when their strategy was to blame such disappearances – for example Kondile's abduction and death – on the African National Congress.

As a result the security police, assisted by the Foreign Affairs

Joe's innocence was not enough to save him from a brutal death

*25*  
“I'm 100 percent sure the next instruction would have been to get rid of him.”

Department, acted quickly to do damage control and decided to release Pillay in exchange for the release of their men imprisoned in Swaziland.

The four men captured by the Swazi police were known askaris, and were based at Vlakplaas.

Coetzee was Vlakplaas commander from 1980 to 1981 and he sent them to Swaziland to identify ANC targets for elimination.

Coetzee has applied to the TRC for amnesty for five murders and many other offences. He testified last week about Pillay's abduction and the vicious murders of Mxenge and Kondile.

Coetzee said he was told about Pillay's abduction when he was in Pretoria and claimed the askaris were acting outside their orders. He said they were an ill-disciplined group, drinking a lot and smoking dagga.

In response, amnesty committee chairman Judge Hassan Mall asked Coetzee if he had relied on information from ruffians to identify and kill people. Coetzee admitted he had, however, he defended the way Vlakplaas chose their targets.

The amnesty hearings have revealed the lack of control over Vlakplaas agents and senior security policemen, and the ease with which they could conduct deadly operations.

Coetzee and others, like former Pretoria-based security policeman Jacques Hechter, had practically unlimited access to explosives and weapons. An explosives expert, Hechter would drive around town with a boot full of materials to make bombs.

Apart from standard police-issue weapons, security policemen would be given weapons commonly used by the liberation movements like AK-47s and Makarov pistols.

Coetzee even testified how he had access to a James-Bond style weapon,

a gun disguised as a briefcase which South Africa received as a gift from an American. He said the gun would fire when the briefcase was held under the arm and the empty cartridges would be collected inside it.

Not only arms and ammunition but also poison and drugs were, freely available to police assassins to disable or kill their targets. The TRC has heard how poison was used to kill student activist Siphon Mtimkhulu and the way it was used to paralyse Kondile.

Coetzee described their sinister methods in his accounts of Pillay's abduction and Kondile's murder. Mxenge's killing was made to look like a violent robbery, with his watch and wallet stolen to give the impression of a crime.

In Pillay's case he was captured from Swaziland in February 1981 and taken to a secret underground military bunker near Pretoria, where he was severely assaulted and suffocated, much of the time while shackled.

“He kept denying involvement in the ANC and the (Natal security policemen) decided to bring in an army doctor with a drip. This was a so-called truth serum which the doctor controlled.”

“(Pillay) lost control of his thinking and couldn't resist. He was relaxed and sleepy,” Coetzee said, adding that he did not give his interrogators any information. Following the political deal saving Pillay's life, he was secretly swapped for the askaris.

## Fought back

If he had not fought back when he was captured – causing Jeffrey Bosigo to drop his South African passport – and if a colleague had not seen the askaris in Manzini, Pillay would probably not be alive today.

But Kondile paid the full price of security police brutality, dying in November 1981 near Komatipoort. Kondile was arrested by Port Elizabeth security police and viciously assaulted in detention.

The police, fearing he would die in detention like Steve Biko, faked his release near Bloemfontein and abducted him. He was poisoned on the banks of the Komatipoort River, shot in the head five times and burnt to ashes on a fire while his captors had a party.

# TRC set to act on relief for victims

ARG 12/11/96

(252)

ARGUS CORRESPONDENT

**Johannesburg -- The Reparation and Rehabilitation Committee (RRC) of the Truth and Reconciliation Commission has announced that it will make a proposal to the Government on how to deal with victims of human rights violations who require urgent interim relief (UIR)**

At a news conference yesterday RRC chairwoman Hlengiwe Mkhize said she would propose that a structure be established to collect the names from regional RRCs of candidates for interim reparation, and to assist the RRC to ratify its recommen-

dations to the president if necessary. The structure would also enable the TRC to directly refer urgent cases to a UIR Desk in the Office of the President. Ms Mkhize said UIR concerned the type of victims for whom the two-year period allocated to the RRC to submit its final proposal to government could be "fatal or irreversibly damaging".

Examples of the types of victims eligible for UIR were those "whose emotional quality of life has been, and continues to be, severely affected as a result of the violation", and orphans who had "inadequate material support to meet their immediate emotional needs".

Urgent medical or material interventions would be considered for victims who were "terminally ill and/or frail and will not survive beyond the life of the TRC", Ms Mkhize said.

In addition, educational assistance would be available for victims and victims' dependants whose high school or tertiary studies had been interrupted as a result of the violation, and whose future prospects for education would be jeopardised unless the TRC urgently intervened. RRC member Mapula Ramashala said the committee had yet to cost its proposal for UIR. She said the RRC was limited to policy formulation, "but we will also recommend business plans".



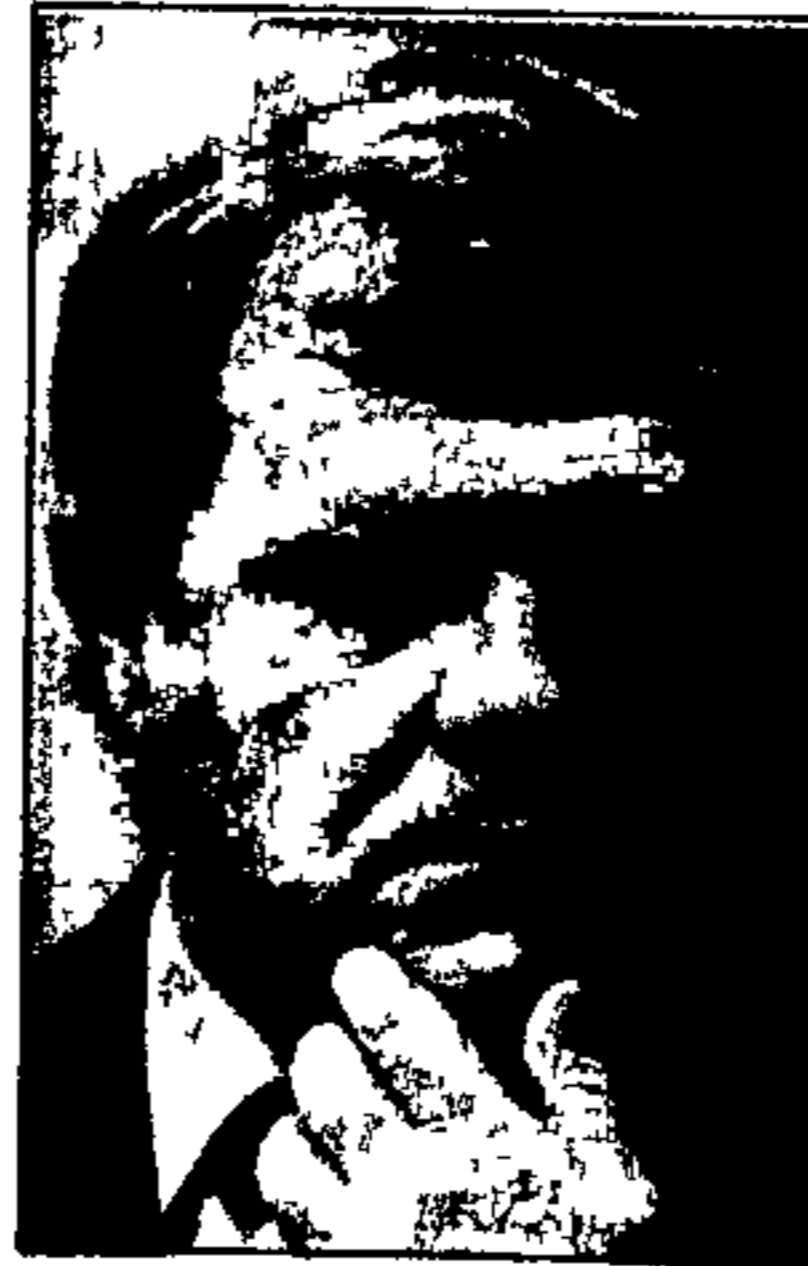
PROBE INTO KILLING OF GUGULETU SEVEN

# City cops subpoenaed

by TRC CF B/11/96 (252)



**SPECIALIST:** Director Leonard Knipe is one of the most powerful policemen in this province. He has headed the Peninsula Murder and Robbery Unit, playing a major role in solving tricky murder investigations and heading the task force established to solve the Station Strangler killings. He now heads the Violent Crimes Unit and is responsible for probing gang activities.



**CONFLICT:** Retired riot squad brigadier Dolf Odendal was nicknamed Major Conflict because he was often at the centre of township conflict in the 80s. He grabbed the headlines when he took on Dr Allan Boesak and mourners at the funeral of ANC member Mr Ashley Knel in a tug-of-war over the ANC flag. He was injured by a grenade at a funeral in 1985.



**THE KILLING** of seven men outside a hostel in Guguletu in 1986 has led to nine policemen being summoned before the TRC. **ROGER FRIEDMAN** reports.

**S**OME of the best-known names in the Western Cape police, including chief spokesman Senior Superintendent John Sterrenberg and Violent Crimes Unit boss Director Leonard Knipe, have been subpoenaed to appear at a public hearing of the Truth and Reconciliation Commission.

Knipe and Sterrenberg — and seven other policemen and former policemen, including former riot squad leader Brigadier Dolf Odendal — are to appear before the commission's Human Rights Violation Committee on November 28 "to give evidence and/or to answer questions" about the so-called Guguletu Seven massacre, in which seven young men died, in March 1986.

Evidence led at inquests into the killing of the seven outside a men's hostel in Guguletu found that the police had acted in self-defence in line with their duty to combat terrorism.

Magistrate Mr G Hoffman, who made his initial finding on sworn affidavits only, was unimpressed by three witness accounts from hostel-dwellers claiming that one of the seven was shot dead while trying to give himself up and another was "finished off" while lying wounded on the ground after being shot. He found there had been no act or omission which amounted to an offence.

The seven who lost their lives were:



Zandisile Zenith Mjobo, Zola Alfred Swelani, Mandla Simon Mxinwa, Godfrey Jabulani Miya, Themba Mlifi, Zabonke John Konile and Christopher Piet.

Appearing as a witness before the commission in May, Miya's mother, Mrs Eunice Miya, said "These Boers must be put here in front of the commission, so everyone can see them. They are with their families. They are happy. Our families are incomplete."

The nine Western Cape policemen are the first witnesses in the country to be

subpoenaed to appear in Human Rights Violation a move which seems to aggressive approach by

A "somewhat surprising" the subpoena was his in the commission. In all five — at the time of the shooting he was at the der and Robbery Unit subpoenaed anyone warning him first, he said.

Turn to Page 3

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**FAST TRACK:** Senior Superintendent John Sterrenberg has become a household name as he appears regularly on television to comment on crime. He worked at the Woodstock police station, with the anti-riot squad and with the video unit. He is a police diver and trained in hostage negotiations. He recently skipped several ranks from captain when he was appointed as head of the provincial public relations department.

PICTURE: BENNY GOOL

# City policemen subpoenaed

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CT 13/11/96

□ From Page 1

He was not involved in the shooting that day, but arrived at the scene 20 minutes later, he said.

Among the things he could tell the commission was why he ordered that the blood be washed from the street — after the police had finished video-taping and photographing the scene. He was already on record as saying he gave the order because dogs were lapping the blood. He would have been more than happy to appear before the commission had they asked. In fact, he said, he would have felt honoured.

"I just find it surprising that I have not been afforded the opportunity of being interviewed by an investigator first," Knipe said, adding that some of the participants in the Guguletu Seven shooting had not been subpoenaed.

Sterrenberg was not in the country yesterday. Apparently his subpoena was served on his wife.

Acting chairperson of the commission, Mr Dumisa Ntsebeza said the Section 29 (of the Promotion of National Unity and Reconciliation Act) subpoenas, allowed for people to be questioned in camera or at a public hearing.

Ntsebeza, who also heads the commission's investigative unit,

said investigators were confident they had sufficient "valuable information" to close their inquiry.

The Guguletu Seven event hearing, at which the nine policemen, family members of the deceased and other witnesses will appear, will represent the culmination of the investigation.

Commissioner Mr Denzil Potgieter, who is the convener of the Guguletu Seven hearing, said the subpoenas were issued to save time, as inviting people to give evidence was a waste of time if they failed to turn up and then had to be subpoenaed.

"All we have done is use the formal way of getting them to attend the hearing to ensure we will get them all there. We have given them notice. They are obviously free to approach us and tell us they have nothing to say and we would be willing to discuss their testimony or lack of testimony," Potgieter said.

According to the commission, subpoenas have been issued to Sterrenberg, Knipe, Odendal, Senior Superintendent John Johannes George Christoffel Kleyn, Superintendent William Rudolf Liebenberg, Inspector K Bothma, Inspector A Grobbelaar and Inspector Bertram Oswald.

# Subpoenaed by TRC

27/11/96

(252)



**CONFLICT:** Retired riot squad brigadier Dolf Odendal was nicknamed Major Conflict because he was often at the centre of township conflict in the 80s. He grabbed the headlines when he took on Dr Allan Boesak and mourners at the funeral of ANC member Mr Ashley Kriel in a tug-of-war over the ANC flag. He was injured by a grenade at a funeral in 1985.



**'PIONEER':** Director Johan Kleyn was appointed station commissioner at Mitchells Plain police station this year. He has worked as an investigator at the Peninsula Murder and Robbery Unit and has headed the Guguletu detective branch. He recently told the Cape Times he was implementing community policing in Guguletu in 1989 "before it was even heard of".



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Zandisile Zenith Mjobo, Zola Alfred Swelani, Mandla Simon Mxinwa, Godfrey Jabulani Miya, Themba Mlifi, Zabanke John Konile and Christopher Piet  
Appearing as a witness before the commission in May, Miya's mother, Mrs Eunice Miya, said "These Boers must be put here in front of the commission, so everyone can see them. They are with their families. They are happy. Our families are incomplete."  
The nine Western Cape policemen are the first witnesses in the country to be

subpoenaed to appear publicly before the Human Rights Violations Committee, in a move which seems to represent a more aggressive approach by the commission.

A "somewhat surprised" Knipe said the subpoena was his first contact with the commission. In all his years as a detective — at the time of the Guguletu Seven shooting he was at the helm of the Murder and Robbery Unit — he had never subpoenaed anyone without interviewing him first, he said.

□ Turn to Page 3

## CHRIS BATEMAN tells how the former government pursued the Cape Times after its reports:

- We report eye-witness accounts of Guguletu gun battle including versions of policemen involved and three residents of a hostel overlooking scene.
- BBC Africa Service calls then deputy news editor Tony Weaver, who relays reporter Chris Bateman's on-the-spot account.
- Bateman served with Section 205 subpoena to reveal names of hostel witnesses (he refuses).
- Weaver charged under Section 27B of the Police Act ("reporting untrue matter about police without having reasonable grounds for believing it to be true").
- First Bateman, then Crime Reporter, and later entire Cape Times reporting staff banned from daily police press conferences; police slap news blackout on paper.
- Police Minister Mxoliso Le Grange launches vitriolic attack on Cape Times, attacking editor, Mr Tony Hoold, and paper's circulation figures.
- News blackout taken up with Newspaper Press Union and shootout debated in Parliament; Le Grange backs off on news blackout.
- Weaver prosecuted and acquitted after marathon trial.



# TRC to examine health care sector

(202) CT 13/11/96 (93)  
HEALTH workers, particularly nurses, doctors and psychologists, will soon know whether a special truth and reconciliation structure is to be established to probe human rights abuses in the medical profession. (95)

The Truth and Reconciliation Commission announced yesterday it would be holding a consultative workshop on November 23, at which it was hoped consensus could be reached on how the health care sector should examine the role it played, or failed to play, in the human rights abuses of the past.

The workshop will be convened by TRC commissioner Dr Wendy Orr, deputy chairperson of the Commission's Reparations and Rehabilitation Committee.

A successful outcome would assist the TRC in making recommendations on institutional, educational and other measures which could be implemented to prevent human rights violations. — Health Writer

# TRC subpoenas for nine policemen

ARC 13/11/96

(252)

**JOSEPH ARANES**  
STAFF REPORTER

**Nine Western Cape policemen and former policemen have been served subpoenas to testify at a special Truth and Reconciliation Commission hearing.**

They include the region's chief police liaison officer, John Sterrenberg, the head of the violent crimes unit, Leonard Knipe, and Mitchell's Plain station commander John Kleyn.

They will be required to give evidence at a public hearing on the role they played in the death of seven suspected African National Congress members who were shot by police on March 3 1986 in Guguletu. The seven were Zandisile Zenith Mjobo, Zola Alfred Swelani, Mandla Simon Mxinwa, Godfrey Jabulani Miya, Themba Mhifi,

Zabonke John Konile and Christopher Piet.

Two inquests cleared the police of blame and they were also absolved during the trial of journalist Tony Weaver, who was charged under the Police Act after the event.

The hearing into the events surrounding the death of the Guguletu Seven will take up the last two days of the three-day hearings on human rights violations in the Peninsula to be held in the Truth Commission offices from November 26.

The other policemen subpoenaed are William Rudolf Liebenberg, retired riot squad colonel Cornelius "Dolf" Odendal and inspectors K Bothma, A Grobbelaar, L Coetsee and Bertram Oswald Moggee.

The nine men are due to testify on November 28.

See page 6

# Police men subpoenaed over Guguletu shootings

Stephen Lauffer

NINE senior Western Cape policemen, including gang unit head Director Leonard Knipe and regional spokesman Senior Supt John Sterrenberg, have been subpoenaed by the truth commission in connection with the killing of seven Guguletu youths.

Shot dead by police at an early morning roadblock on March 3 1986, police said the seven were Umkhonto we Sizwe guerrillas on their way to attack a police station. Three witnesses said at the time that

at least two of the young men had been shot while lying wounded on the ground trying to give themselves up.

Journalists who reported the allegations were prosecuted under the Police Act and ultimately acquitted, with the magistrate saying first hand accounts had refuted the police version of events. He recommended the attorney-general investigate charges of perjury and defeating the ends of justice against the police.

In May, the parents of the seven young men told the commission that their children had been unarmed passengers in a minibus taxi and asked for an investigation. The weapons found in the taxi had been planted, they alleged.

The other policemen required to testify are Senior Supt John Kleyva, Supt William Laebenber, former Col Cornelius Odendal and inspectors I Coetzee, K Bothma, A Grobbelaar, and Bertram Moggee. They are understood to have served with the riot police, murder and robbery squad, and security branch in the Western Cape at the time of the killings.

A 10th policeman involved in the incident, W/O Hendrik Barnard, was killed

(252) Bd 13/11/96

in a shoot-out some years ago.

The commission said the policemen would be required to produce evidence including sound and video recordings.

Subpoenaed under Section 29 of the Truth Commission Act, they will be required to give testimony in public hearings on November 27 and 28 in Cape Town.

Separately, the commission announced it would attempt to gain agreement on a common approach by members of the medical profession to uncover the truth about the participation of doctors, nurses

and psychologists in human rights violations during the apartheid era.

One group within the profession had called for a separate truth commission for the health care sector, and a workshop on November 23 would attempt to achieve a unified approach.

The Medical Association of SA, the Interim Medical and Dental Council, the Democratic Nursing Organisation of SA, the Psychologists Society of SA and the SA military medical services would send representatives. The meeting would be closed to the public and media.

## Cabinet may look at date changes

Wynndham Hartley

changes placed before Cabinet.



# TRC to look into amnesty bribes claim

The Truth Commission is to give top priority to an investigation into claims that senior Inkatha Freedom Party leaders tried to stop imprisoned party members from applying for amnesty by bribing them.

The claims were made by a prisoner who was interviewed by the Durban-based Zulu newspaper, Umafrika, and implicated IFP secretary-general Ziba Jiyane and Correctional Services Minister Sipo Mzimela.

Umafrika quoted IFP prisoner Boy Gwamanda as saying he was visited in prison by two senior IFP politicians who offered him money and favours if he did not apply for amnesty.

Gwamanda claimed he refused to take the bribe because he had already applied and was helping the commission with information.

Dumisa Ntsebeza, head of the Truth Commission's investigative unit, said yesterday he had not received a formal request for an investigation into the claims, but emphasised they would be looked into fully.



Implicated: Inkatha's Sipo Mzimela

(252)

Mr Ntsebeza is acting as the commission's chairman while both the chairman, Desmond Tutu, and deputy chairman, Alex Boraine, are overseas.

Carl Niehaus, chairman of Parliament's correctional services committee, said he had written to Archbishop Tutu requesting the matter be investigated, and had received a reply that this would be attended to.

At this stage there were only allegations against IFP leaders, he said - Sapa

# Survivor tells of fatal grenade blast in mine

ARGUS CORRESPONDENT

Johannesburg - The sole survivor of a hand-grenade blast in a West Rand mine shaft which killed three young activists on February 16, 1982 has told the Truth and Reconciliation Commission the victims were driven to their deaths by Joe Mamasela.

Mr Mamasela has admitted being involved in human rights violations while he was an Askari based at Vlakplaas.

Zandile Musi told the commission in Kagiso today that Mr Mamasela drove him and his three friends, Fanyana Nhlapo, Bumbo Madikela and Ntfiningo Matabane, to the mine shaft, supposedly to show them how to use guerilla weapons before their planned departure abroad for military training.

Mr Musi said Mr Mamasela showed the men two hand-grenades.

Mr Musi said he noticed a suspicious box near him "and then there was an explosion". His three friends were killed. Later the man who introduced the youths to Mr Mamasela admitted the hand grenade had been booby-trapped, Mr Musi said.

The hearing continues.

APR 14/11/96

# Minister to face truth commission probe

Wyndham Hartley

CAPE TOWN — The truth commission would investigate allegations that Correctional Services Minister Sipo Mzimela had abused his ministerial powers to coerce IFP-aligned prisoners not to apply for amnesty, acting commission chairman Dumisa Ntsebeza said yesterday

However, Mzimela's spokesman, Bert Slabbert, said the minister would take legal ad-

(252) BD 10/11/96  
vice after he had studied reports and broadcasts which carried the allegations

Slabbert said the minister had said a report in a Durban weekly newspaper claiming that he and IFP secretary-general Ziba Jiyani visited IFP-supporting convicts at Westville prison to persuade them not to apply for amnesty was absolutely untrue

ANC correctional services spokesman and ambassador designate to Holland Carl

Niehaus said on the strength of the report he had written to the truth commission on Monday, asking it to investigate

Ntsebeza, who also heads the commission's investigation unit, said the allegations would "be investigated by my unit as a top priority"

Regardless of any request for an investigation it was obvious that the commission would be expected to establish whether the allegations were true, he said



# Violence victims 'must now look to civil courts'

Farouk Chothia *BO 14/11/96*

DURBAN — THE KwaZulu-Natal attorney-general's office had declined to prosecute in a third hit squad-related case, deepening tensions between the office and the investigation task unit.

Attorney-general Tim McNally confirmed yesterday that his office had declined to prosecute KwaZulu-Natal legislature secretary Robert Mzimela, former KwaZulu Police commissioner Lt-Gen Roy During and former KwaZulu chief minister's department secretary Stan Armstrong on charges of defeating the ends of justice and/or possession of illegal arms.

Task unit civilian board chairman Howard Varney said in reaction there was now little prospect of organised political violence being "stopped through the administration of justice".

Victims would have to proceed with civil cases, he said.

McNally recently failed to secure a successful prosecution against former Defence Minister Magnus Malan. He thereafter declined to prosecute KwaZulu-Natal social welfare MEC Gideon Zulu and former KwaZulu deputy police commissioner Sipho Mathe, who were alleged to be involved in hit squad activities.

Varney said the unit had wanted Mzimela, During and Armstrong prosecuted in connection with the discovery of illegal arms — consisting of a light machine gun, a spare barrel and ammunition — in the KwaZulu legislative assembly

building <sup>(202)</sup> in September 1993, when violence was escalating.

Varney said During had admitted to the unit that he ordered an investigation into the discovery of the cache but stopped it on the instructions of Armstrong, whom he regarded as his superior.

During claimed that Armstrong informed him that the cache was under the "control" of Mzimela. During then asked the investigating officer to hand over the weapons to Armstrong, according to Varney.

Varney said the unit suspected that the machine gun was among weapons former Vlakplaas commander Eugene de Kock had supplied to IFP functionaries, and it might have been used in the KwaZulu-Natal conflict.

He said the unit believed that During should be prosecuted because his decision to heed Armstrong's instruction was unlawful and disgraceful. No one, including the president, had the authority to stop a bona fide investigation.

McNally said there was no evidence to prove During had obstructed the course of justice. He had set in motion an investigation, and his explanation "must be accepted".

No link had been established that Mzimela used the light machine gun for alleged hit squad activity, McNally said.

Sapa reports McNally also said the murder trial of former Vlakplaas commander Dirk Coetzee and four others would be postponed to April 15 next year to allow for a ruling on amnesty.

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# Charge Sexwale, Du Preez, urges lawyer

Cape Town – A lawyer for the families of Clive Derby-Lewis and Janusz Walus – convicted for the assassination of Chris Hanu – has asked the Truth and Reconciliation Commission to press criminal charges against Gauteng Premier Tokyo Sexwale and television producer Max du Preez for remarks they made about the granting of amnesty to the two men.

The families argue that the remarks were calculated to influence the TRC's ruling on the two men's amnesty applications

In a letter faxed to the commission's Cape Town offices yesterday, attorney Jan Lubbe quoted Du Preez saying it would not be in the interests of reconciliation if the two prisoners were granted amnesty

Lubbe said Du Preez had re-

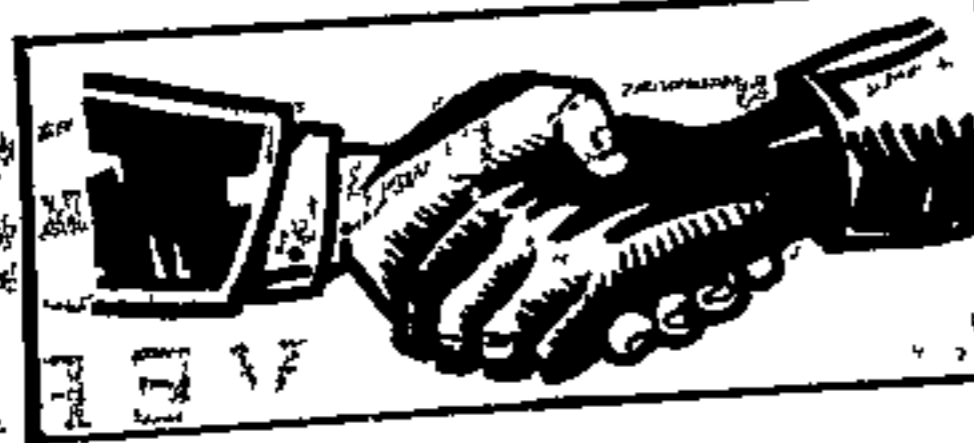
peated these comments during a televised debate involving commission chairman Archbishop Desmond Tutu on November 5

It is an offence to improperly influence the commission.

If the TRC accedes to the families' requests for legal redress, Sexwale and Du Preez could be fined or jailed for up to two years if convicted – Sapa.

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# Ebony & Ivory

## 'Courts aren't for us' - black prosecutors

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CP 17/11/96

By **ROCKY MOKOENA**

**MANY black prosecutors are joining the private sector because of alleged racial discrimination in Gauteng's magistrates' courts.**

The prosecutors allege that whites "are being given priority" when it came to filling senior positions

However, the senior prosecutor for Johannesburg, Adv Brink Ferreira, has told City Press that the allegations "were completely unfounded"

Black prosecutors also said that they were "never given fraud cases to handle"

They also complained of always being dumped in maintenance and traffic courts, which "denied them a chance to gain wider experience"

"I have been working in the maintenance court for four years, and whenever I apply for an alternative post I am told there isn't one

"But the whites I started out with are now at regional level, although I have better qualifications than them," said one black prosecutor.

The black prosecutors allege that whites are also given the option to choose where they want to work, while blacks are not offered a similar choice

These claims are included in a memorandum which has been sent to Justice Minister Dullah Omar,

and was leaked to City Press this week.

It is claimed that black prosecutors are encouraged to apply for posts in the townships "to work with their communities"

They also allege that new employees are forced to join the Prosecutors' Staff Association (PSA)

Similar complaints were made by black prosecutors at Benoni, Kempton Park and Pretoria magistrates' courts

Ferreira said his office had not received official complaints and said it was committed to non-racialism and non-sexism - as outlined in the Constitution

He said "good performance was the sole criterion for promotion".

## Bill meets need to change prosecutions - Omar

ARLT 18/11/96

Pretoria - Justice Minister Dullah Omar has asked for comment on the controversial National Prosecuting Authority Bill 1997, which he hopes to introduce in parliament next year.

The bill, if passed, will have a significant bearing on police investigations, as well as prosecutions in the courts.

"Concerns have been voiced about the need to transform South Africa's prosecution services, especially in the light of some

recent criminal trials," Mr Omar said

He said the bill provided for a single national prosecuting authority under the control of a national director of public prosecutions, the appointment of a director of public prosecutions for each provincial division of the High Court (Supreme Court) and the appointment of deputy-directors of public prosecutions

The president would appoint the national director and directors of public prosecu-

tions, while the Minister of Justice would appoint all deputy-directors.

Mr Omar said the national director must, with the Minister of Justice, determine a prosecution policy that would be followed throughout the country.

"The directors may give written directions to the national or provincial commissioners of police or to any other person" investigating or prosecuting a criminal matter. - Sapa

Continued on page 2

# Focus on rights of disabled

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**STAFF WRITER**

AN international legal conference on the rights of the disabled — especially children — is to be held at Parliament and hosted by the Community Law Centre and University of the Western Cape

Spokeswoman Ms Susan de Villiers said the conference, to be held today and tomorrow is the first of its kind in South

ET 18/11/96  
Africa and would be a forum for discussion of legal and other measures necessary to ensure that the requirements of the constitution, in terms of the disabled, were met

De Villiers said the conference coincided with the drafting of policy, by the Deputy President's office, on this issue

Speakers are to include experts on disabilities and issues affecting disabled children

NEWS



OBED ZILWA

Relaxed: General Johann Coetzee with commissioners Dumisa Ntsebeza and Mary Burton

# Former police chief testifies before TRC

*'I will give the whole truth'*

(252)  
ARG 19/11/96

**JOHN YELD**  
ON THE TRUTH COMMISSION

**Former police commissioner Johann Coetzee promised to answer truthfully any questions put to him by the Truth Commission during a closed inquiry at the commission's Cape Town offices.**

General Coetzee, who testified yesterday, was the fifth former top policeman to appear before the commission in response to subpoenas issued in terms of Section 29 of its founding Act. In recent weeks General Coetzee has been implicated by former security policemen in gross human rights violations.

Former security police head and later police commissioner Johan van der Merwe alleged General Coetzee had approved an operation to booby-trap handgrenades which resulted in the deaths and mutilation of several

African National Congress guerrillas in Gauteng in the mid-1980s.

In a two-sentence statement to journalists during a brief photo session at the lunch break yesterday, General Coetzee said he had given evidence in court throughout his professional career as a policeman.

"I've never been accused of lying and I intend giving the whole truth to this commission," he said

"This is what they expect of me and what they will get from me."

The inquiry was conducted by Dumisa Ntsebeza, head of the commission's investigative unit, and Mary Burton. They were assisted by several staff members, including the national director of the investigative unit, Glenn Goosen.

Two more policemen, Willem Schoon, a brigadier, and Nic van Rensburg, a general, have been subpoenaed to appear today and tomorrow to answer questions.

# General's evidence on massacre 'callous, cold'

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**EAST LONDON:** Retired Ciskei police commissioner General Johan Viktor was described as "callous and cold" by members of a Truth and Reconciliation Commission panel hearing evidence on the 1992 Bisho massacre yesterday.

In a series of tense exchanges between Viktor and the commissioners, the policeman was sharply criticised for his testimony on the role of the Ciskei police on September 7, 1992, the day 28 ANC marchers were shot dead by Ciskei troops near Bisho stadium.

Viktor, a police veteran of nearly 45 years, is better known as the man who in 1979 turned Vlakplaas farm outside Pretoria into a training base for askaris — turned uMkhonto weSizwe cadres.

He told the commission he had decided to set up the base for MK guerrillas who had lost interest in the struggle, so that he could make use of their knowledge of training camps and the whereabouts of other guerrillas.

His involvement in Vlakplaas was repeatedly raised by commissioners as they subjected him to lengthy and aggressive questioning on the Bisho massacre.

During a particularly tense exchange with commissioner Ms Pumla Gobodo-Madikizela he told her "I am not a racist. I am as black as you are."

Gobodo-Madikizela replied "I find your patronising attitude a bit irritating."

Commissioner Dr Mapule Ramashala invited Viktor to send a public message to the victims of

the massacre.

Viktor said his message would be "Once you choose your leaders see that they act responsibly."

He was referring to the ANC march that immediately preceded the massacre and the decision taken by march leaders to charge through a hole in the security cordon, after which troops on the other side opened fire.

*"I find your patronising attitude a bit irritating."*

— Commissioner  
**Ms Pumla Gobodo-Madikizela**

Commissioner Mr Bongani Finca said Viktor's statement was one of the most outrageous he had heard on the commission.

This was echoed by Ramashala, who said Viktor's reply was disconcerting and showed no compassion for the massacre victims.

Gobodo-Madikizela said his testimony demonstrated callousness and coldness and "shows the type of people the South African government chose to head important departments."

Viktor told the commission he had been seconded to Ciskei as police commissioner after being brought out of retirement by then South African police commissioner General Johan van der Merwe.

His job in the former homeland

had been to enforce existing laws, not to oppress Ciskeians, he said.

"Party politics was beneath my dignity. I was a professional policeman."

Ciskei police arrangements for the September 7 march had been left to two subordinates, Superintendent Raymond Simms, then head of the Riot Unit, and Brigadier Vusile Ngobo, then deputy head of the Ciskei police, he said.

Ngobo and Simms had been in overall command of the 70 policemen deployed as the first line of defence against the marchers.

Viktor said he was on the scene only to lend moral support to his men.

All shots fired that day had come from Ciskei Defence Force soldiers. Not a single shot had been fired by his men, he said.

"I am satisfied that my men did their duty that day. I am not running away from responsibility. I will take what is coming to me."

Commissioner Denzil Potgieter said a CDF internal inquiry into the shootings had found that the police had not been properly deployed to act against the marchers.

Viktor disagreed, saying "Whatever my CDF colleagues may say now, we were up front where we were expecting the problems."

He said he felt sorry for the many innocent people who died in the massacre but blamed the march leaders for not adhering to the conditions laid down for the march by a Zwelitsha magistrate.

# Amnesty queue grows

**T**HE AMNESTY COMMITTEE of the Truth and Reconciliation Commission (TRC) is gaining momentum towards the end of its first year, with applications flooding the offices ahead of the cut-off date for applications on December 14.

Perpetrators – particularly those under threat of prosecution – are not waiting until next year to see if the Cabinet supports the TRC's recommendation to extend the cut-off date for applications to March 1997.

Nor are they holding back their applications to see if the Cabinet will extend the period for which amnesty may be granted from December 1993 to May 1994.

Instead, many of those responsible for torture and murder are coming forward before it is too late. Former security policemen are under pressure of exposure at the TRC by their former colleagues and from the offices of the attorneys general (AGs).

At the same time, the shocking details of abuse revealed by applicants in public hearings is stirring up opposition to amnesty for these killers.

"I have a complaint against all the men who gave us booby-trapped handgrenades. I want to see them jailed," said Phillip Mazuza, the only survivor of a police trap in KwaThema which killed many of his friends on June 25 1985.

Mazuza said he felt "very bitter and powerless" when he watched the former security policemen responsible for his friends' deaths testify before the TRC in Johannesburg recently.

"I don't think they are genuinely sorry. I think they are dangerous and they are still hiding some things," he said. "It's not fair. They are only made to tell the truth and not tortured like I was."

## Electric shocks

A 20-year-old high school student at the time, Mazuza was detained for about 20 months and then charged with 24 counts of public violence. He was convicted on one charge of arson and served four years in prison.

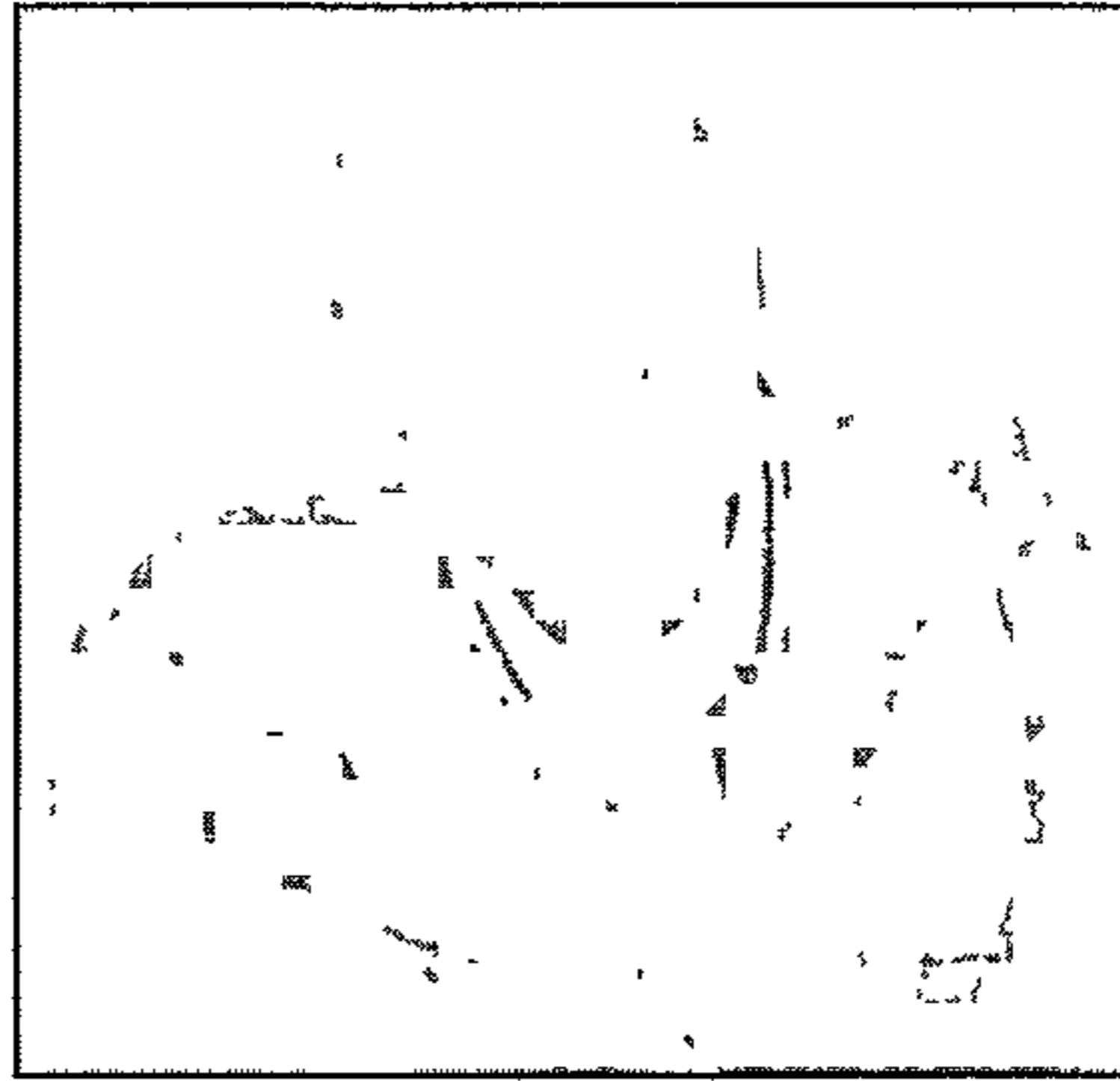
Now Mazuza, whose hearing was damaged by electric shocks and who has shrapnel in his arm from the grenade explosion, wants to see justice done.

In fact, the courts have not been slow to act while the TRC has been sitting, and two groups of former police hitmen have been charged with murder by the Transvaal and Natal AGs (Jan D'Oliviera and Tim McNally).

A widespread concern that these prosecutions would deter perpetrators from applying for amnesty has proved unfounded. On the contrary, this has forced applicants such as Brigadier Jack Cronjé to approach the TRC.

"This has contributed to the kind of application we have received recently," said commis-

(252) *Sdwetan 19/11/96*  
Concern that prosecuting perpetrators of human rights abuses would adversely affect amnesty applications at the TRC has proved unfounded. If anything, the reverse has happened. **Claire Keeton** explains...



**Phillip Mazuza, the only survivor of a police trap in KwaThema, wants to see justice done.**

PIC VELI NHLAPO

sioner and lawyer Denzil Potgieter. "The move to prosecute has driven people to the commission."

He said the testimony of amnesty applicants has had a "domino effect", encouraging those implicated to apply. "I'm much more optimistic now than I was a few months ago."

But, Potgieter cautioned, there has "not been the same movement on the side of the military" as from the ranks of the old South African police. Potgieter said he hoped applications from that quarter would be forthcoming.

The head of the TRC's investigative unit, Commissioner Dumisa Ntsebeza, said they need time to investigate the contents of applications before the amnesty committee makes its findings.

The process of serving Section 29 subpoenas on those implicated in human rights' abuse is already up and running, with the TRC having recently summoned several high-ranking former policemen.

Following the initiative of the national office, regional offices have followed suit, with Cape Town sending out subpoenas practically every day. Potgieter said the process seemed to be "working well" but he could not expand on this since the subpoenas formed part of ongoing

investigations.

Ntsebeza issued a stern warning to applicants to make a full disclosure and not be opportunistic by limiting their applications to known offences and waiting to see what comes out of the hearings.

"People who come to us to apply for amnesty by way of testing the waters only do themselves a great disservice. They must make sure they hand in a full disclosure without tailoring the evidence to suit their own ends or it will jeopardise their application," said Ntsebeza.

"They have one opportunity, and one opportunity only, to apply for amnesty."

He said that there was close cooperation between the TRC and the offices of the AGs, and that they would "not allow our offices to be unscrupulously manipulated".

Commissioner Fazel Randera said "It appeared as if the alleged perpetrators

were playing the commission offices off against the offices of the AGs, particularly their Pretoria office."

He said the TRC set up "nodal points" between themselves, the AGs and various state departments such as the police and defence. Despite this, Randera said, "at some points the TRC process will result in clashes between ourselves and the AGs."

## One aim in mind

Ntsebeza said the TRC and AGs had "one aim in mind – to expose the truth." "We have to link truth to reconciliation and obviously they have to link truth to criminal justice," he said.

He said it would be impossible to prosecute all perpetrators, and the amnesty agreement was one part of the price negotiators paid for peace in South Africa.

But even the AGs have to compromise justice by using and protecting state witnesses in their trials who may be guilty of horrifying crimes, for example former Vlakplaas agent Joe Mamasela.

Ntsebeza said "I'm not insensitive to the plaintive cries of victims. But the commission is a creature of statute and our hands are tied by our mandate and the four corners of the law."



# Survivors tell truth about 'war' in

MARITZBURG — Survivors yesterday told the truth commission in Maritzburg how they were attacked by IFP members during the so-called seven-day war in the KwaZulu-Natal midlands in 1990.

The commission also heard allegations about police inaction in stopping the violence, which erupted in the Msunduze valley on March 25 1990.

Violence monitor Radley Keys said that in many instances police stood and watched as armed IFP fighters swept through the mid-

lands region destroying and looting houses.

Keys claimed senior policemen were aware of the gravity of the situation, but failed to summon the help of the SADF, despite numerous requests.

The outbreak of the seven-day battle was the culmination of years of low-intensity warfare between the IFP and members of the United Democratic Front, which was formed as a front for the then-banned ANC in 1983.

Keys claimed government at the time was obliged to support the IFP due to links with the KwaZulu homeland government, which it had created.

He said while police protected the IFP at its rallies and marches, UDF members were beaten, shot and tear gassed at public meetings and gatherings.

“There was a clearly planned divide-and-rule strategy applied, with Inkatha in battle against the UDF and the UDF’s attentions directed at Inkatha.”

“The state could sit back and ensure that the low-intensity conflict debilitated its enemies and government could proclaim it to the world as ‘black-on-black’ conflict,” Keys said.

Survivor Mdunduzi Sishi said during fighting on March 26 police assisted IFP members and leaders during attacks.

On hearing gunshots outside his home in Vulindlela, Sishi said he went outside where he saw an armed crowd shooting at random.

“The police were around and they did not stop the attackers In-

stead they were chasing those that were being attacked,” he said.

Keys said he believed the bloodshed and mass destruction could have been averted had the army been deployed sooner.

At least 80 people died and thousands were left homeless or forced to flee their houses during the fighting.

The eventual deployment of troops stopped the immediate fighting, but the conflict continued for at least another eight months, Keys said.

A number of factors were believed to have sparked the war on March 25. Huma Ntombela, a pacifist and Unive adult education p Artchison said and stoning of buses fer porters from a rally Kings Park stadium.

IFP MPL and in David Ntombela w, as also fought in evidence, for ha ying allegedly been involved in 1, fomentings, the violence. He is due to address the commission tomorrow.

— Sapa

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# Senior NP leaders lashed by truth body

Stephen Laufer

EAST LONDON — Senior NP leaders, including Roelf Meyer and Hernus Kriel, came in for withering criticism from the truth commission at its second Bisho massacre hearing yesterday.

Also at the hearing, Ciskei's former head of visible policing Brig Vusile Ngobo said Ciskei Defence Force troops who opened fire on marchers had been deployed in contravention of an agreement putting the police in charge of crowd control.

Ciskei soldiers trying to prevent ANC demonstrators from making for central Bisho on September 7 1992, killed 29 and wounded 200. Meyer said the Goldstone commission had attributed liability by noting the CDF's

failure to close a gap in the Bisho stadium fence and its recommendation that Deputy Defence Minister Ronnie Kasrils be censured for his role in leading demonstrators through the fence.

Meyer said the NP submission was designed to set the record straight after ANC secretary-general Cyril Ramaphosa had blamed the NP government for the massacre at the previous truth commission hearing on the matter. The party had not been called last time but had asked to make its submission yesterday.

There had been no need for the Bisho march as the Codesa agreement on homeland reincorporation had remained intact despite the collapse of the constitutional talks at the time of the massacre. All sides had known that

it was only a matter of time before Ciskei was reincorporated into SA.

Kriel was in the NP delegation because he had been SA law and order minister at the time and was in Bisho on the day of the massacre. The other delegation member, Senator Ray Radue, had been the King William's Town MP at the time and had also been in the SA Bisho embassy's operations room during the incident.

Commenting on the NP's submission, truth commissioner Bongani Finca said he had "expected more." Meyer had said "not an iota of responsibility accrued to the NP government" although many regional leaders, including Grahamstown Anglican Bishop

Continued on Page 2

## Truth body (252)

Continued from Page 1

David Russell, had asked the SA government at the time not to support the dictatorship of Brig Oupa Gqozo.

Finca said he was concerned about "how reconciliation can be achieved if the country continues to hear the same denials, to experience the same selective choosing of facts, the same propaganda we got under apartheid".

Commissioner Mapule Ramashala indicated there was discontent at the imbalance between generous severance packages paid to public servants, including police officers, and the little money available to compensate victims. Meyer said he was grateful the issue had been raised. He would ensure that the NP's response formed part of the further party submission to the commission due early next year.

Kriel said he had spent the day of the massacre engaged in "a sort of shuttle diplomacy" in an attempt to prevent bloodshed.

He had been joined by his deputy Gert Myburgh and deputy SA defence minister Wynand Breytenbach in the Bisho embassy.

He had not known the Ciskei police commissioner had seconded Lt Gen Jan Viktor, Kriel said. When commissioner Denzil Potgieter read a press statement signed by Kriel in which he had announced Viktor was under investigation, Kriel said: "There were many Viktors in the police — it was a common name like Van der Merwe."

Now a farmer in the Free State, Viktor told the commission he had ceded operational control on the day of the massacre to Ngobo.

Asked what he had to say to the victims, Viktor said they "should choose their leaders more carefully." SABC TV reported that Viktor told the commission he did not "have any compassion" for the victims.

"Your demonstration of coldness, callousness, and insensitivity shows the kind of leaders SA chose for its departments and homelands," commissioner Pumla Gobodo Madikizela told Viktor. After his testimony, Viktor refused to comment on whether he would apply for amnesty for his role as founding commander of the SAP's Vlakplaas killer unit, and in connection with human rights violations to which other amnesty applicants had linked him. "This is the day and that is another day," he said.

# Special constables 'helped Inkatha'

ARGUS CORRESPONDENT

Pietermaritzburg - Two former special constables who served with Riot Unit 8 here said they took part in attacks on United Democratic Front supporters during a "Seven Day War" which ravaged the Edendale Valley in March 1990.

Elandskop Inkatha Freedom Party leader and now a member of the provincial council, David Ntombela, was also said to have had a major part in the events, the Truth and Reconciliation Commission

hearing was told

The two constables, Nkosi Shabangu and Philemon Madlala, who is serving a jail sentence for murder of an alleged African National Congress supporter, told of other incidents of killing and destruction by special constables aiding Inkatha.

Mr Madlala said he could identify Riot Unit members to whom he referred because they were seated in the hall. Mr Madlala said special constables were instructed to launch "counter-attacks" with Inkatha against the UDF (the underground wing of the ANC during apartheid)

and to shoot UDF members dead

Mr Shabangu said that during the "Seven Day War" period he drove 25 special constables from Elandskop to KwaShange. On the way they met Mr Ntombela, who ordered the special constables to alight. He drove the van further. In KwaShange he heard gunshots. Special constables were looting homes. The stolen property was loaded on to the Isuzu he was driving and was later taken to Mr Ntombela's house, as were stolen cattle

When the Riot Unit arrived in the area Mr Ntombela told them "not to interfere"

## Truth sitting disrupted as crowd demands entry

Maritzburg - A large crowd demanding access to the Truth and Reconciliation Commission hearings in the city hall here today caused a brief adjournment of the proceedings.

About 300 people demanding entry to the packed city hall protested noisily. Officials said they would try to set up speakers outside the hall.

During the hearing, Inkatha Freedom Party Midlands leader David Ntombela is to give Inkatha's version of the events which led to the so-called seven-day war in the Midlands in 1990. At least 80 people died and thousands were displaced in the con-

flict between Inkatha and members of the United Democratic Front

Senior policemen are also expected to testify.

In Pretoria, influential Afrikaner leaders, including Conservative Party chief Ferdi Hartzenberg, have formed a committee to help Afrikaners who want to apply for amnesty to the commission.

The Committee for Amnesty for Afrikaners was established earlier this month by leaders of cultural organisations, political parties, agricultural organisations and conservative trade unions - Sapa and Argus Correspondent

## IFP to tell TRC tale of 'seven-day war'

Pietermaritzburg - The controversial Inkatha Freedom Party leader in the KwaZulu-Natal Midlands, David Ntombela, is scheduled to testify before the Truth Commission here today

Mr Ntombela is among several witnesses called to give evidence on the March 1990 "seven-day war" in the Midlands, in which at least 80 died and thousands were displaced

Mr Ntombela will be the first IFP official to present Inkatha's version of events, which led to one of the bloodiest battles in KwaZulu-Natal's recent history. Police director Daan Meyer, who was a colonel with the police riot unit here at the time, will also testify today. - Sapa

# Afrikaners form body for amnesty applicants

By ROBERT BRAND

(252)

A group of influential Afrikaner leaders, including Conservative Party chief Dr Ferdi Hartzenberg, have formed a committee to assist Afrikaners who want to apply for amnesty from the Truth and Reconciliation Commission.

The Committee for Amnesty for Afrikaners was established at a secret meeting earlier this month attended by leaders of cultural organisations, political parties, agricultural organisations and conservative trade unions.

The meeting was attended by, among others, Hartzenberg, former police commissioners Johan van der Merwe and Mike Geldenhuys, Freedom Front leader Constand Viljoen, Iron and Steel Union chief Len van Niekerk, Dr Theo de Jager of the Foundation for Equality before the Law, and Blokkies de Beer of the Vereniging van Oranjewerkers.

The committee intends to provide financial and legal assistance for Afrikaners who want to apply for amnesty, and is seeking a meeting with President Mandela to request a postponement of the cut-off date for amnesty from December 6 1993 to May 10 1994.

TRC deputy chairman Dr Alex Boraine welcomed the move yesterday.

"I applaud the decision of a group of people ready and willing to assist Afrikaners in applying for amnesty. I would hope very much that this decision will not be confined to only one group, but

that other constituencies will follow suit.

"The commission has consistently maintained that if it is to succeed in its mandate, it is absolutely necessary not only for victims/survivors to come before the commission, but for perpetrators as well," he said.

The CP has thus far opposed the commission. In a statement yesterday, Hartzenberg called for the TRC to be disbanded, saying its credibility had been destroyed.

CP spokesman Pieter Aucamp told The Star last night it was still party policy that a blanket amnesty should be extended to all political offenders, but individual members who wanted to apply for amnesty would have the party's support.

De Jager said "many" people - including former national servicemen and policemen - had approached the foundation for advice on the amnesty procedure.

"It is clear that there is a lot of uncertainty and confusion about the commission and amnesty.

"We will give them advice and legal assistance and we will also co-ordinate the process," he said.

De Jager, Van der Merwe, De Beer and Viljoen were appointed to the committee. De Jager said the meeting had wanted Hartzenberg to serve on the committee, but he had declined although it had his full support.

■ The committee can be contacted at the offices of the Foundation for Equality Before the Law, telephone (012) 344-0727.

Star 20/11/96

# Gqozo pleads for forgiveness as truth commission subpoenas him

Stephen Laufer

EAST LONDON — The truth commission decided yesterday to subpoena Brig Oupa Gqozo to give further evidence on the Bisho massacre, despite an impassioned plea for forgiveness from the former Ciskei dictator.

After pressure from commissioner Mapule Ramashala, Gqozo told victims in the audience "I am humbled by the opportunity to talk to them. I hope they find it in their hearts to forgive, if not to forget. I know I don't deserve forgive-

ness, I know I am the person who made their wounds materialise. I want you to know it went beyond my power, beyond my control. I believe the soldiers did not want to kill."

Commissioner Bongani Finca said he had been disappointed by Gqozo's testimony as it had repeated earlier statements on the subject. He did not have the sense that Gqozo's apology had emerged from a struggle with the issues, and it did not gel with his reproaches blaming of the marchers for the massacre, Finca said. Proclaiming

complete innocence and making an apology did not go together.

Later, however, Gqozo accused the commission of abusing its powers. Gqozo told Sapa he saw no need to attend the hearing as he had nothing more to tell the commission. "They don't want facts, they want sensationalism and gossip. This (the in-camera hearing) is a cheap publicity stunt."

The commission also heard yesterday that Ciskei had been an agent's merry-go-round, with operatives from every SA intelligence service and sev-

Gqozo (252)  
BD 20/11/96  
Continued from Page 1

force officers had met monthly to discuss matters of common interest.

Countering an allegation by former Ciskei visible policing head Vusile Ngobo that he had not trusted black officers, Gqozo said the homeland had needed senior white personnel because blacks had never been trained.

He had been unaware of Ciskei police commissioner Jan Viktor's background as founder of the Vlakplaas killer unit, and when he had discovered it Viktor had assured him he had not been involved in "any bad stuff".

Gqozo, who was head of Ciskei military intelligence before he became ruler, said intelligence officers had a particular reputation as "whores". He had not been surprised to hear in 1994 that Nel had conspired to topple him.

Nel said later that he had deliberately told the media in 1993 when Gqozo had instructed him and May-Gen Dirk van der Bank to develop a plan to

set up "an Inkatha-style" armed group of young men to protect headmen from attacks by those seeking Ciskei's reincorporation into SA.

Convicted Motherwell bomber Gideon Nieuwoudt had recruited him to the Ciskei intelligence service in 1991 after disbandment of the CCB, where he had served in regions one and four responsible for Angola and Botswana. His cover name had been Derek Farrell and he had testified in camera to the hearings on the killing of academic David Webster under the name of Derek Louw.

Eena reports that former SA foreign affairs minister Pk Botha last night denied Gqozo's claims that he had "sabotaged" his military government's development projects. Gqozo said earlier that he had been a strong opponent of the apartheid government.

Botha said lack of financial control was the main reason behind "the financial mess in the Ciskei and Transkei". Botha also claimed Gqozo was "emotionally unstable from the moment I got to know him. He was unpredictable and I would have preferred him to resign. I made that clear to him."

eral of the homeland's own spy agencies exchanging employers and alliances frequently. But despite intense questioning by commissioners that elicited an admission from former Ciskei military intelligence chief Chrus Nel that he had also been an agent of the SADF's Civil Co-operation Bureau, the hearing was unable to establish a direct link between the September 7 1992 shooting and the dirty-tricks departments of the two governments.

Nel, who said he was co-operating with Transvaal attorney general Jan

D'Oliveira in other probes, also agreed to give further testimony, but said that he "might require witness protection". Bilateral agreements and structures which had been cast in stone and allowed Pretoria to channel expert personnel to Bisho had been at the root of his problems, Gqozo said. Some of SA's seconded police and military officers had sabotaged and undermined him.

A combined management board made up of SADF and Ciskei defence

Continued on Page 2

COMMISSIONERS 'NOT IMPARTIAL'

# IFP supporters refuse to testify before TRC

(252) CT 21/11/96

**MARITZBURG:** IFP supporters implicated in the Seven Day War refused to testify before the TRC here, saying its members were not impartial.

**A** POTENTIAL clash between IFP and ANC supporters was averted yesterday after IFP leader and MPL Mr David Ntombela refused to testify at the TRC hearing here

Hundreds of people flocked to the city hall to hear testimony by the IFP leader who has been repeatedly implicated in the brutal "Seven Day War" which ravaged the Edendale Valley in March 1990

Earlier, a security official had sprayed teargas at an impatient crowd that had tried to force its way into the already packed hall

Police lined the hallway as Ntombela and his attorney, Mr Petrus Coetzee, took the stand

The commissioners asked the jeering crowd to quieten down and allow the attorney to read a statement on behalf of Ntombela and another IFP stalwart implicated in

the events, Mr Phillip Zondi

In their statement Ntombela and Zondi said they felt they would not receive a "fair hearing" before the TRC as constituted. They asked for the commissioners to be relieved of their positions

The statement referred to an article quoting TRC media spokesman, Mr Mdu Lembede, apparently referring to Ntombela as a "well known warlord"

It said that one of the commissioners, Mr Ilan Lax, was an ANC member during the Seven Day War and was "a political opponent of (Ntombela) and the IFP"

When Ntombela left the stage hundreds of supporters streamed out of the city hall and raced to the parliamentary building

ANC supporters thronged around the building and it was rumoured that the IFP would rally

reinforcements if Ntombela were not allowed to leave. The crowd dispersed after being addressed by ANC MPL, Mr Sifiso Nkabinde

Earlier, a former Maritzburg Riot Squad member, William Basil Harrington, serving an 18-year sentence for the murder of an ANC supporter, apologised for his actions during his short police career. He admitted that he and his colleagues had regularly assaulted and tortured UDF/ANC supporters. "I would say I assaulted 1 000 plus people," he said

The Riot Unit had openly sided with the IFP, sold them guns and allowed the IFP to approve of special constables before they were employed

Harrington was unable to say if senior officers had sanctioned their actions, but said they were not reprimanded

● Director Danie Meyer, who took over command of the Riot Unit, denied that police had only acted against the UDF — Own Correspondent

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# Tutu, P W to meet in secret

(252) CT 21/11/96

## Face to face . . .

**WILDERNESS:** Since the Truth Commission was launched, former state president Mr P W Botha has refused to have anything to do with it. Now he is to meet its chairman privately today. Special Writer **ROGER FRIEDMAN** reports.

**A** RCHBISHOP Desmond Tutu holds face-to-face talks today with former state president Mr P W Botha at a secret venue on the Garden Route to try to persuade him to co-operate with the Truth and Reconciliation Commission.

The venue is so secret that it is known only to Botha and his inner circle. Tutu will be told where it is when he arrives at George Airport this morning. The reason for the secrecy, Tutu said, was that Botha wished to avoid the media.

It is exactly a year ago today that, in his first public encounter with President Nelson Mandela, Botha threw down the gauntlet.

"I am not going to the Truth and Reconciliation Commission. I am not going to repent, I am not going to ask for favours. What I did, I did for the country, my God and my people, and all the peoples of South Africa," he told Mandela.

Since then the commission has travelled the country, hearing of atrocities, many of them committed in the Botha years, from 1978 until 1989.

Under Botha the "total strategy" was developed and applied in response to the perceived Soviet-inspired "total onslaught". Under him consecutive states of emergency were imposed, during which tens of thousands of people were detained.

Since the TRC's Human Rights Violations Committee began its

public hearings in April, the "Botha word" has cropped up from time to time, but Botha has seemingly remained defiant.

When Mr F W de Klerk delivered the National Party's submission to the commission in August, he said he had made "unsuccessful attempts to enlist the co-operation of my predecessor, Mr P W Botha".

Then, giving evidence in mitigation at his trial in September, hit-squad killer Eugene de Kock, said Botha had had knowledge about gross human rights violations.

Botha had been chairman of the State Security Council when hit-squads from Vlakplaas were activated, he said.

De Kock also said Botha had given direct orders that Khotso House in Johannesburg — where the South African Council of Churches had its offices — should be blown up.

Last month, former police commissioner under Botha, General Johan van der Merwe, seemed to corroborate De Kock's story, saying he had been instructed to destroy Khotso House by then police minister Mr Adrian Vlok, who allegedly told him the order had come from Botha.

Throughout all this, the commission has grown increasingly anxious to interview Botha.

Tutu has repeatedly said he would prefer not to have to subpoena Botha out of respect for his age and reported ill health.

Through all this Botha has

doggedly stuck to what he told Mandela a year ago — that he would not engage the commission.

Now he has agreed to meet Tutu.

Last night Tutu confirmed that he would be talking to Botha today, but asked that the media respect Botha's wish that they be allowed to meet privately in the interest of reconciliation.

"The main reason we've adopted the approach of my going to see him is that the stakes are pretty high. Our main purpose is seeking to help the country towards reconciliation," he said.

"If I am able to persuade Mr Botha to co-operate voluntarily with the commission that would be prize number one.

"It would be awful to be forced to invoke the other options available to us (subpoena)."

There was little to report yesterday from Botha's Wilderness home, Die Anker, with Botha maintaining his silence when questioned by the media.

His secretary, Mrs Margarete Hartmann, said Botha was preparing for the "big meeting coming up" though she could not say where and when it would take place.

"What he's doing (meeting with Tutu), he's doing on his own. He hasn't seen anybody, he's just been with his family. He's held no meetings with members of the National Party at all," she said.

A spokesman in De Klerk's office, Mr Fanus Schoeman, confirmed that Botha would be talking to Tutu "not as part of a National Party submission, but as an individual who was at one stage president of the country".



STAKES ARE HIGH: TRC chairman Archbishop Desmond Tutu



I WON'T REPENT: Former president Mr P W Botha PICTURE: BENNY GOOL

# Talks continue as truckers stand firm on demands

Renée Grawitzky

THE truckers' strike — the first major countrywide strike under the new Labour Relations Act — started slowly yesterday with indications that it could accelerate today, industry sources said last night.

The conciliation process chaired by Gavin Hartford, a senior commissioner on the Commission for Conciliation Mediation and Arbitration, continued last night and was expected to go on late into the night, especially in view of the decision taken by striking workers to reject

any move away from a 14% demand. Before the conciliation process began, the seven unions party to the dispute had tabled an unmandated reduced demand of a 12.5% across the board increase.

Close to 2 000 workers gathered at the Library Gardens in Johannesburg rejected this move and said that 14% was the final demand.

Transport and General Workers' Union national co-ordinator Thulam Dlamini said workers had indicated that now that they were on strike they were not prepared to compromise on 14%.

Despite fears of blockades, no incidents of violence were reported.

The major financial institutions indicated that cash deliveries were not disrupted as those security companies affected by the strike used non-union members for deliveries. First National Bank said some disruptions with cash delivery were experienced but contingency plans had been put into place.

The strike began with union claims that employers were trying to underplay the total impact of the strike, with poor turnouts to some of the mass meetings blamed on em-

ployer intimidation.

Employer sources confirmed that some used various tactics to ensure workers did not go out on strike.

Other industry sources attributed the poor turnout to the failure of the leadership of the seven unions party to the dispute to mobilise properly.

They also pointed to a lack of coordination between the unions and their members. One employer said there appeared to be some confusion as to when the strike was supposed to start.

Dlamini said last night that he expected more people to join the

strike today while union federation Cosatu had agreed to embark on sympathy action from Monday if the dispute had not been resolved.

The jurisdiction of the industrial council for the motor transport undertaking is a central aspect of the dispute with security companies such as Springbok Patrol claiming that the council has no jurisdiction over employees involved in the transport and delivery of cash (cash in transit).

The council and other security employers, however, argue that the council does have jurisdiction.

## IFFP leader mobbed at hearing

Farouk Chothia (252) BD 21/11/90

DURBAN — Inkatha Freedom Party (IFP) KwaZulu-Natal midlands leader David Ntombela was escorted by police from a Maritzburg truth commission hearing yesterday after African National Congress (ANC) supporters threatened to kill him, IFP spokesman Philip Powell said.

Commission spokesman Mdu Lembede confirmed that police threw a "ring of steel" around Ntombela, who is a provincial MP, because of concerns for his safety. Lembede said he did not know anything about death threats being made.

Lembede said Ntombela initially asked his lawyer Petrus Coetzee to read a statement on his behalf to the commission, and remained in an adjacent room. This led to the crowd shouting that if Ntombela refused to appear before the commission, Coetzee should not be allowed to make a submission.

A crowd of more than 1 000 had arrived to hear Ntombela testify on the 1990 "seven-day war" in the midlands in which at least 80 people died and thousands were left homeless. The ANC regarded Ntombela as a warlord

who had been a key figure in the conflict, observers pointed out.

Lembede said that after negotiations it was agreed that Ntombela would accompany Coetzee to the stage. Police were "all over" Ntombela, he said. Coetzee then read the statement in which Ntombela criticised the commission.

IFP defence spokesman Philip Powell said that Ntombela later left under heavy police guard, but was followed by the crowd. He was whisked into the nearby KwaZulu-Natal legislature building, and the gates locked. Powell claimed the crowd shouted that Ntombela "must die".

He said ANC KwaZulu-Natal safety and security spokesman Bheki Cele appealed to Ntombela to leave in an armoured police vehicle. He eventually left escorted by six police vans.

Powell said the incident showed that the commission, which the IFP had initially opposed, had the potential to "rekindle civil war" in KwaZulu-Natal. Lembede said he was "more than satisfied" that the commission was bringing about reconciliation. ANC spokesmen could not be reached for comment last night.



Hundreds of striking transport sector workers gathered at Library Gardens in Johannesburg yesterday to receive a report back on the conciliation process. Picture TREVOR SAMSON



STAR

252

22/11/98

I have nothings

to apologise for

—PW

22/11/98

STAR

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BENNY GOOL



Seeking the truth ... former state president P W Botha and TRC chairman Archbishop Desmond Tutu after their meeting in George, during which Botha said he was not guilty of any offence for which he should either apologise or seek amnesty.

MON 22/11/90

## Former state president denies ordering Khotso House bombing, agrees to assist TRC but has no intention of seeking amnesty

SAPA  
George

**A**partheid-era state president P W Botha has indicated a willingness to assist the Truth and Reconciliation Commission in its continuing probe into human-rights abuses, but said yesterday that he had nothing to apologise for and would not seek amnesty.

In two hours of talks with TRC chairman Archbishop Desmond Tutu, Botha denied ordering the 1988 bombing of Khotso House, then headquarters of the SA Council of Churches.

He said allegations by the then national police commissioner, Johan van der Merwe, implicating him in the attack were untested and unsubstantiated hearsay.

"I am, in any event, advised that the damage to property caused by the Khotso House incident does not constitute a gross violation of human rights and consequently falls outside the scope of the jurisdiction of (the) commission."

Botha said he was not guilty of any offence for which he should either apologise or seek amnesty. "I therefore have no intention of doing this. I have nothing to hide."

As a Christian and an Afrikaner he could not, and never had, associated himself with "blatant murder", he said.

The talks were held at the home of Botha's eldest daughter, Elanza Maritz, in George.

Tutu asked for the one-to-one meeting after testimony by former senior policemen, in court and before the commission, that

Botha had ordered a string of political atrocities during his presidency in the 1980s.

Tutu said later that Botha had received him with warmth and friendliness and treated him to rooibos tea and sausage rolls in the "voorstuif" (parlour).

He described the meeting as a breakthrough, saying it signalled a softening in Botha's stance on the commission.

In a statement presented to Tutu, Botha said he was willing to co-operate with the commission and suggested the body compile a comprehensive list of matters on

“  
**Also probe  
violations by  
the ANC ...**  
”

which it needed his comments.

Former police chief Johan van der Merwe has told the commission that Botha had authorised the Khotso House bombing. Van der Merwe said he believed Botha might also have been behind the murder of several anti-apartheid activists killed by booby-trapped grenades.

Tutu said the commission's investigative unit and research department would be asked to draw up a list of questions for submission to Botha. "We will be (assessing) the responses we will be getting from him. That will determine which way we go."

He defended the commission's "softly-softly" approach to the former state president, saying the body was obliged to follow the route which had the greatest potential for providing the truth.

During the meeting, Botha said he was willing to do all in his power to persuade former cabinet colleagues to co-operate with the commission.

However, he warned Tutu not to limit the commission's investigations to the actions of functionaries of the previous government, but to also probe the gross violations of human rights committed by ANC members.

"The activities of the commission should also not be permitted to develop into a persecution and a series of Nuremberg-type trials," Botha said.

He added that, as head of a legally elected and internationally recognised government, he accepted full political responsibility for his government's policies as well as the reforms it had introduced.

But he could not be expected to take responsibility for those individuals who had exceeded the limits of their authority during the apartheid conflict.

"I stand, however, without any qualification behind all the thousands of members of the security forces who, in the lawful execution of their duties, bravely fought the revolutionary onslaught of Soviet imperialism."

He asked for a six-month extension of the December 14 deadline for amnesty applications.

► **Revenge campaign**

# Truth commission tacks on education

(252)

M+G (BM) 22-28/11/96

## Colleen Lowe Morna

**A**MID a storm of protest by right-wing parties, the Truth and Reconciliation Commission (TRC) will hold its first hearings on socio-economic rights violations under apartheid next week.

Praising the decision by the TRC sub-committee on human rights to hold hearings on the past denial of universal education on November 25, former National Literacy Co-operation (NLC) director Kumi Naidoo said this would mark the first investigation by the TRC into systematic, as opposed to individual, human rights abuses:

In its letter to TRC chair Desmond Tutu requesting the hearings, the NLC stated that "justifiably, up to now, the TRC needed to focus on the physical abuses and atrocities of the past. We now write to you to make an appeal for the TRC to examine the systematic under-development of the human potential of our nation "

In a sharp response to a letter sent out to all political parties, ministers and provincial premiers by the NLC, the National Party's education representative, Renier Schoeman, accused the NLC of "playing political games".

Freedom Front leader General Constad Viljoen said he was "astonished" that the NLC "put so much hatred into one letter supposed to canvass support for this national goal"

He questioned if, in the presentation before the TRC, the NLC would also "ask the truth about misuse of education for revolutionary purposes? Do you remember the cry: revolution before education?"

In a 19-page response to the NLC's letter, the Herstigte Nasionale Party said it "denied that under the Verwoerd government there was a gross and planned violation of educational rights"

But in a strongly worded letter of support for the initiative, Minister of Public Works Jeff Radebe said his "personal history of the Bantu education system in Kwa Mashu all those years back indicated very clearly how state policy was indeed designed to produce limited literacy in the context of voluntary education".

According to Naidoo, who is now executive director of the National NGO Coalition, 15-million South Africans are illiterate to varying degrees. One of the most heart-wrenching projects the NLC had carried out, he said, was a book called *Dear President* in which newly literate South Africans described to President Nelson Mandela the agony of illiteracy.

By having illiteracy declared "a gross violation of human rights", the NLC hopes to raise support for its work. At present, only 2% of the education budget goes towards Adult Basic Education.

# Seven day war probed

(252) Sowetan 22/11/96

**T**HE RELEASE OF President Nelson Mandela and the unbanning of the liberation movements in February 1990 was celebrated across South Africa. But, in KwaZulu-Natal, it marked an escalation of violence which exploded in the seven day war in rural areas around Maritzburg between March 25 and March 31 1990.

The Truth and Reconciliation Commission examined the reasons for this conflict at a hearing in the Maritzburg City Hall this week and listened to victims, former policemen, violence monitors and academics give their perspectives.

Inkatha Freedom Party leaders Mr David Ntombela and Mr Phillip Zondi refused to testify on the grounds that the TRC was not independent and they had not been properly informed of the allegations against them.

Their appearance at the hearing showed how close to the surface tensions between members of the African National Congress and IFP are as commissioners battled to control a 1 000-strong crowd when Ntombela's supporters forced their way into a packed hall.

Much of the testimony before the TRC this week implicated the police, particularly special constables, in supporting IFP attacks which led to the March conflict and which continued beyond 1990.

Former policemen gave convincing accounts of how they had instigated violence and routinely tortured and killed non-IFP members in the Midlands.

Evidence is mounting that the police were not a peacekeeping force in the war-torn region, but instead played a major role in contributing to the cycle of violence in KwaZulu-Natal.

Take the stories of former riot policeman Mr William Harrington and former special constable Mr Philemon Madlala, both now imprisoned for killing a member of the United Democratic Front in 1991.

They never expected to be convicted of this murder as the assault and elimination of UDF members was common among the police and was usually concealed, with policemen protected from prosecution.

Harrington struggled to tell the whole truth to the TRC since it meant exposing his former colleagues and he said "we trusted each other with our lives".

He admitted that he only decided at the last minute to reveal names and details, effectively breaking the unwritten police code of secrecy and exposing himself to revenge.

"I will leave here as a marked man because I have made a confession as from today I will live in total fear inside and outside prison. I will be branded a traitor," Harrington said.

Chilling details of police complicity in the gruesome seven day war in rural KwaZulu-Natal have emerged at the TRC, once again refuting the black-on-black violence myth. **Claire Keeton** explains why ...



The arrival of IFP induna David Ntombela at the Truth Commission's Maritzburg hearing this week caused an uproar.

But he is not the only one speaking out about the damage he did and the horrors of his police duty. "I will never forget what I have seen in my police career and my part in the events in the war against the ANC," he said.

Harrington said there could be members in the hall whom he had injured. "Maybe it was you I assaulted and dropped by the side of the road without looking back. I would like to say that I am sorry."

## Shot at fleeing villagers

He estimated that he alone could have assaulted about 1 000 supporters of the UDF during his three years as a policeman with Riot Unit 8 because "on each shift there were assaults".

Harrington described how an activist was tortured and suffocated with a tyre tube, and how he followed orders to shoot at fleeing villagers during his first week with the unit.

"It was as if I was seeing a movie unfolding before my eyes. I saw some people falling and they were picked up by their comrades."

He said he did not know if he had killed more than one person since he never looked back at those he assaulted and their bodies were taken away during raids on villagers.

A 20-year-old constable at the time,

Harrington said his superiors must have "known exactly what we were doing" and had promised to cover up for him.

He spoke of former unit commander Captain Deon Terblanche with affection and it was clear that Mr Richard O'Connell, now a police superintendent, trained him to take ruthless action against non-IFP members.

"I regarded what I did on shifts as lawful," Harrington said, even though this included raids on UDF strongholds using vehicles with false number plates and confiscating illegal weapons to pass on to IFP members. He gave lifts to armed IFP groups on their way to and from

attacks on UDF-ANC villages and supported them by giving ammunition to special constables who fought alongside Inkatha.

"I continued my war against the ANC after it was unbanned," Harrington admitted. He allowed special constables to fire from his vehicle during the March 1990 attacks in which at least 100 villagers were killed.

Former special constable Mr Nhlanhla Madlala testified that he was recruited by an IFP chief and trained in Cape Town for six weeks "solely for the purpose of killing and wiping out all UDF elements in the country".

He said when he served in Unit 8, they killed many UDF members while assisting IFP members, and the corpses would be removed by police vans to mortuaries. No one was charged.

Madlala said after attacks on UDF strongholds they knew they had succeeded in wiping out "our enemies" because there would be many funerals every time they attacked.

He fought with the IFP during the seven day war, which was more like an invasion, acting on directions from Ntombela.

He said he was armed and transported to an ANC area with IFP warriors in a KwaZulu government vehicle.

# PW to face TRC

*Lawyer 22/11/196 (252)*

**By Wagheid Mishbach and Sapa**

**I**n a dramatic change of heart former state president Mr PW Botha has agreed "to cooperate" with the Truth and Reconciliation Commission and to urge his former cabinet colleagues to do the same because he is a law-abiding citizen.

However, Botha did not consider the 1988 bombing of Khotso House a gross violation of human rights, as defined in the TRC Act.

This was said by TRC chairman Archbishop Desmond Tutu yesterday after a two-hour meeting with the former apartheid leader at his home at the Wilderness, George.

Botha was named by former

police commissioner General Johan van der Merwe as the person who gave the order, via former police minister Mr Adriaan Vlok, for the bombing of Khotso House.

Tutu said Botha told him he was still opposed to the commission and would not apply for amnesty.

The meeting with Botha had taken place in "a good spirit", with Botha referring to a written statement.

Botha has asked the TRC for a comprehensive list of matters to which he will respond and on which he will comment because he could not respond to "ad hoc allegations" on his term of office from 1978 to 1989.

"He is willing to do everything in his power to persuade his former cabinet colleagues to cooperate similarly

with us. He has indicated that he is ready to make available to us all his documentation and to hold further meetings of this kind should they prove necessary."

This is a dramatic new development because Botha had steadfastly refused to meet the commission.

Botha said claims of his involvement in the bombing of Khotso House, then the Johannesburg headquarters of the SA Council of Churches, were incorrect and based on untested, unconfirmed and unsubstantiated hearsay.

"I am, in any event, advised that the damage to property caused by the Khotso House incident does not constitute a gross violation of human rights and consequently falls out-

side the scope of the jurisdiction of your commission."

Botha said he was not guilty of any deed for which he felt he should apologise or seek amnesty.

As a Christian and an Afrikaner, he could not and never had associated himself with "blatant murder", Botha said.

He warned Tutu not to limit the commission's investigations to the actions of previous government functionaries but to also probe gross violations of human rights committed by African National Congress members.

"The activities of the commission should also not be permitted to develop into a persecution and a series of Nuremberg-type trials."

He also advised Tutu to meet for-

mer defence minister General Magnus Malan and former-law and order minister Mr Adriaan Vlok. "In the same way and spirit as we have met today."

"Neither I, nor these ministers, can reasonably be expected to continually react, on an ad hoc basis, to unsubstantiated and untested allegations concerning myself and themselves and the security forces."

As head of a legally elected and internationally recognised government, he accepted full political responsibility for his government's policies - as well as the sweeping reforms it had introduced.

Botha said the Afrikaner had not invented or imported racial discrimination into South Africa - Sapa

# More generals to seek amnesty

## Human rights abuses disclosed to TRC in secret

(2/52)

Apr 22 11:46

JOHN YELD  
IN THE TRUTH COMMISSION

More former police generals will apply for amnesty for gross human rights abuses committed during the apartheid era.

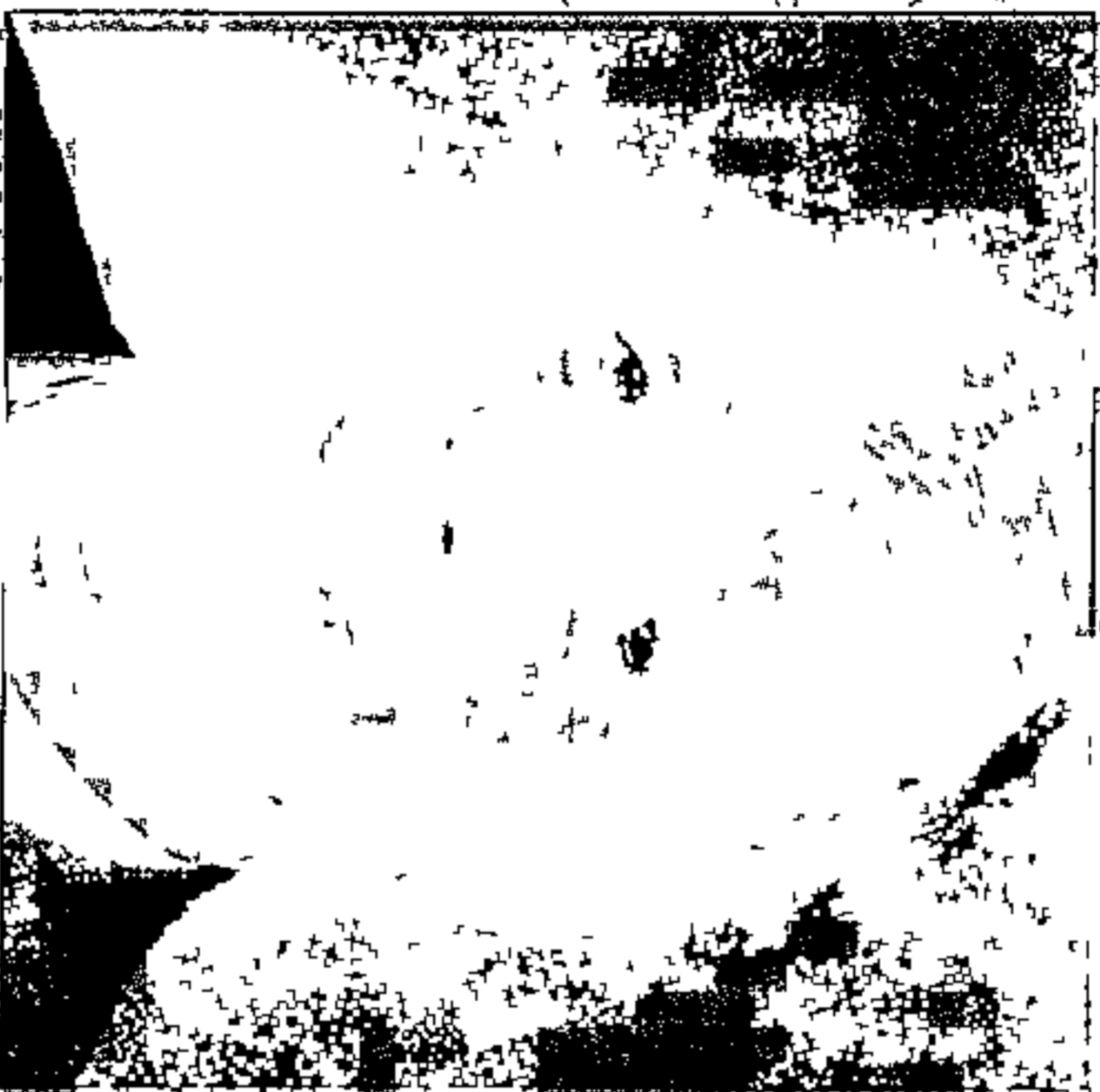
They are among six former top police officers subpoenaed by the commission's national investigative unit and who made their disclosures at in-camera inquiries of the commission in Cape Town over the past few weeks.

Alex Boraine, deputy chairman of the commission, this week described the information the former officers had given as "extremely useful" and said this had resulted in some of them deciding to apply to the commission for amnesty.

Dr Boraine did not disclose how many would do so.

Others of the six will be recalled by the commission to answer more questions, after further investigations by the commission's detectives. Several people named by the former police officers during the inquiries will be invited to testify and/or will be subpoenaed.

The information they provide may be released, possibly at public hearings, but no decisions in this regard have been made



Alex Boraine: 'inquires extremely useful'

yet Dr Boraine revealed this after the last of the six, former major-general Nic van Rensburg, appeared on Wednesday.

Earlier this week, former police commissioner Johann Coetzee and former brigadier Willem Schoon testified at the closed hearings.

Previously, generals Johan le Roux, Krappies Engelbrecht and Basie Smit appeared at similar inquiries, most of

which lasted all day.

The six were subpoenaed by the national investigative unit to answer questions about their possible involvement in gross human rights violations.

Former police commissioner Johan van der Merwe was also on the list to be subpoenaed, but after his appearance and testimony at an amnesty hearing for five former security policemen in Johannesburg three weeks ago, his subpoena has been held over. General van der Merwe has indicated he will seek amnesty for his role in the Khotsa House bombing in 1988 and for supplying boobytrapped hand-grenades to activists, which resulted in several deaths.

Dr Boraine said the subpoena inquiries, conducted in terms of section 29 of the Truth Commission's founding act, had been "extremely useful".

"In some ways they exceeded our expectations. The fact that we've been able to get a lot (of information) we didn't have is indicative of the usefulness of the (subpoena) mechanism and this exercise.

"In some instances, we've decided to continue the inquiry by recalling some, while in other instances some have decided to apply for amnesty, so the process will continue in public," he said.

All amnesty applications were being

heard in public by the commission's amnesty committee.

Dr Boraine said the commission had not yet decided whether the information provided by the six former policemen would be made public.

"But clearly we do have that right (to release the information) in terms of the Act, and we may well do so if it seems helpful to our work and if it fits with the transparent approach we've tried to adopt so far," he added.

Dr Boraine said the commission had not yet had time to reflect on the new information gleaned during the inquiries.

"I think we've discovered it takes a long time to get through - it's not a quick hour's job."

Several of the six had provided lengthy submissions at the beginning of their inquiries and these all needed to be analysed and investigated.

Following the former policemen's testimony at the inquiries, the commission would be contacting "a number of people" whose names had been mentioned, Dr Boraine said.

"We will either invite them to come to us or inquire whether they intend applying for amnesty, and if need be, we will subpoena them as well," he said.

# 'Nothing to hide': PW tells Tutu he was not involved in murder

(252) ARG 22/11/96

**JOHN YELD**  
ON THE TRUTH COMMISSION

**Former state president P W Botha has denied any involvement in the 1988 bombing of Khotso House and has told Truth Commission chairperson Desmond Tutu he is not guilty of any deed for which he should apologise or seek amnesty.**

During a friendly two-hour meeting at the George home of his eldest daughter, Elanza Maritz, yesterday morning Mr Botha told Archbishop Tutu that, in any event, he had been advised the bombing was not a gross human rights violation, as defined in the Truth Commission's founding Act. Mr Botha said he had no intention of applying for amnesty and had "nothing to hide".

As a Christian and an Afrikaner, he could not - and had never associated himself with "blatant murder", he said.

Archbishop Tutu confirmed at a later press conference in Cape Town that Mr Botha had not made any confessions or "dramatic revelations".

In spite of Mr Botha's denial of any wrongdoing, Archbishop Tutu said he "felt good" about their meeting and that there was "a very great possibility of arriving at substantial truth".

This was because Mr Botha,

who had previously told President Mandela he would have nothing to do with the commission, had agreed to their meeting and to co-operate in future.

Also, Mr Botha had agreed to do all in his power to persuade his former cabinet colleagues to also co-operate with the commission.

"We believe the meeting was a very considerable plus for the commission," said Archbishop Tutu. "Firstly, in view of his opinions on the commission and its establishment, his agreement to see me was a breakthrough for us. Secondly, we did not expect that he would come to the meeting saying that the policies and actions of his government had been wrong."

"Given our expectations, we are encouraged by his willingness to continue to interact with us and to urge his former cabinet colleagues to do likewise."

Archbishop Tutu said Mr Botha had indicated he could not be expected to react to ad hoc allegations, and had asked the commission to prepare a comprehensive list of questions.

"He has indicated that he is ready to make available all his documentation and to hold further meetings of this kind should they prove necessary."

Mr Botha told Archbishop Tutu that a manuscript on his life had been compiled from all available information by a "respected,

independent researcher" appointed by the government of F W de Klerk. "I am prepared to make this manuscript available to you or anybody who wishes to publish it as written."

All his official records and documentation had been lodged for safekeeping with the Institute for Contemporary History in Bloemfontein, and were made available to the researcher for more than two years.

Mr Botha said he was "deeply concerned about the fierce and unforgiving assault which is being launched against the Afrikaner and his language at all levels of society".

He warned the archbishop not to limit the commission's investigations to the actions of previous government functionaries, and said it should also probe abuses by African National Congress members. "The activities of the commission should also not be permitted to develop into a persecution and a series of Nuremberg-type trials," said Mr Botha.

Archbishop Tutu said Mr Botha had also suggested a six-month extension for the amnesty application cut-off date of December 15 - something the commission had itself asked for. The government had not yet responded to his (Archbishop Tutu's) request to address the Cabinet on the issue of an extension.



# 'Need' tips scales

Stephané Bothma

PRETORIA — White male state attorneys in line for promotion had been considered for 30 vacancies in the justice department, but the pressing need for affirmative action tipped the scales against them, the Transvaal Supreme Court heard yesterday.

Wim Trengove SC, representing Justice Minister Dullah Omar in a matter in which 16 white male state attorneys are questioning the constitutionality of the justice department's affirmative action programme, told the court that Omar was under a constitutional injunction to promote broader representivity in his department.

The attorneys applied for senior vacant posts last year, but claimed because of discrimination they had not even been called before a selection panel. Less experienced women and people of colour had been appointed.

"The department did in fact consider all the applications received, but the need for wider representivity was stronger. The department had to put a thumb on the scale in favour of affirmative-action appointments," Trengove argued.

Omar denied agreeing to implementation of a quota system of two or three affirmative-action appointments for every one other appointment. Trengove said the department last year was in a position where many vacancies had to be filled urgently.

"But the minister was faced with a dilemma. In terms of the constitution and the Public Service Act he was obliged to pursue and promote a greater representivity within his department, and this could be done only by taking the race and gender of applicants into account."

However, the directives of the Public Service Commission on the

other hand obliged the minister to ignore race and gender.

"Minister Omar found himself between the devil and the deep blue sea," Trengove told the court. Omar turned to Public Service Minister Zola Skweyiya for "help", the court heard.

Skweyiya then issued a special directive stating that affirmative-action candidates would be preferred and not that other candidates would not be considered, which directive Omar followed "exactly as requested", the court heard.

"Whether the directive is valid or not, as far as the justice department is concerned, it acted at all times as it was obliged to do under the constitution and the directive," Trengove said.

Jeremy Gauntlett SC, representing Skweyiya, told the court there was no need for the matter to be brought to court and structures existed where the issues could have been dealt with.

The matter continues.

BD 22/11/96

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# Mandela regrets PW's TRC stance <sup>(252)</sup>

Star 23/11/96  
By ELLIS MNYANDU

Durban - President Nelson Mandela said yesterday he regretted the "uncompromising stance" of former president P W Botha.

Mandela also urged Botha to go before the Truth and Reconciliation Commission to explain crimes committed during his term of office.

"It is regrettable he has made a statement of that nature," Mandela said.

"His duty is to go to the TRC and give his own version of what happened," said Mandela. The president went on to say that, as things stood, the evidence seemed to point to former president Botha having knowledge "about some of the gross violations which we are complaining about".

Botha said, after two hours of talks with Truth Commission chairman Archbishop Desmond Tutu on Thursday, that he had nothing to apologise for or seek amnesty for.

"I am not guilty of any deed for which I should apologise or ask for amnesty. I therefore have no intention of doing this," the 80-year-old ex-president said in a statement after talks with Tutu, who set out to seek Botha's co-operation in uncovering the past.

Mandela said Botha was an old man, no longer well, who might expect to be honoured as a former statesman.

TO PAGE 2

# Red tape stymies fight against crime <sup>(38)</sup>

Star 23/11/96  
By CRAIG URQUHART

The Johannesburg CBD's safety lung - a core community policing project to stamp out crime in the city - is in danger of collapsing as red tape prevents its full implementation and morale among policemen on the streets shows signs of reaching new lows.

The concept, which should have been up and running this month, has now been delayed until February and all the current role-players agree that without its full implementation, it simply cannot work.

Still, police claim they have gained the upper hand in their fight against crime, and official figures show that crime is, indeed, down in the city centre. Whether these statistics indicate a long-term downward trend or an expected reaction to Operation Urban Strike remains to be seen, but problems in the police force remain deep-rooted.

"We are gradually implementing the safety lung but it is very difficult to assess its successes so far because of the role Urban Strike has played," said Gauteng safety and security deputy director for policy Sylvester Rakgoadi.

He said Urban Strike, which has seen an extra 1 000 policemen deployed in Gauteng, would gradually be phased out over the next few months and the Safety and Security Department was currently working on contingency plans to replace the extra personnel.

TO PAGE 2

## ◆ PW's stance <sup>(262)</sup>

Star 23/11/96  
But he added, "When he makes a statement which is regarded by the majority of the country as being provocative, and which might lead to the conclusion that he has no interest in the lives of hundreds of people who died as a result of gross human right violations, people may not appreciate whatever service he may have given."

Former police chief Johan van der Merwe said in an amnesty application last month he had been instructed to blow up the headquarters of the South African Council of Churches "harbouring" anti-apartheid groups in 1988. He said the instruction had come from then law and order minister Adriaan Vlok, who told him the order had come directly from Botha.

Botha, in a document handed to Tutu, suggested that the TRC provide him, ex-minister of defence Magnus Malan and Vlok with a document detailing all those aspects on which they required comment. Alex Boraine, deputy chairman of the TRC, said the Khotso House bombing would obviously be one of them. "We have already handed over his response to our investigative unit and research department, which will draw up a full list of issues we would like his response to."

Botha suggested to Tutu that they communicate directly with each other, rather than by means of press releases. Reuters

BLACK 3894  
E T U R N S.

(252)

By CRAIG DOONAN

A PROMINENT Inkatha member's refusal to testify before the Truth and Reconciliation Commission has threatened to wreck a peace pact brokered in some of the Kwazulu Natal Midlands's most dangerous areas.

"Only God knows what will happen to the peace process now," IFP leader David Ntombela said after police were forced to protect him from angry ANC supporters outside a truth commission hearing in Maritzburg on Wednesday. Ntombela — who, with ANC Midlands leader Sifiso Nkabinde, has been calling for peace and unity in their visits to flashpoints in the Midlands — refused to testify about the "seven-day war", in which 80 people were killed in and around Maritzburg townships in 1990.

Witnesses, including policemen, had earlier linked Ntombela to the fighting.

On Wednesday the Maritzburg city hall was packed to capacity in anticipation of his evidence. Ntombela finally appeared on stage with several IFP colleagues.

But the crowd inside and outside the hall was incensed when his lawyer, Petrus Coetzee, said Ntombela would not be testifying because he objected to the way the commission had been constituted.

Coetzee said that one of the truth commissioners, Ilan Lax, had been an ANC member during 1990 and "was actively involved in assisting ANC members who became embroiled in the so-called seven-day war. Mr Ntombela regards Mr Lax not as an independent person presiding over this hearing but as a political opponent of himself and the IFP."

Ntombela also took exception to having been referred to as a "well-known warlord" by the truth commission's media spokesman, Mdu Lembede, in a statement announcing the Maritzburg hearing.

Ntombela left the hall to heckling from the crowd, which spilled into the streets shouting obscenities and "kill him".

Policemen with rifles at the ready escorted Ntombela into the Maritzburg parliamentary complex, where he has an

## Midlands peace in the balance after drama at truth hearing

ST 24/11/96

office. Angry youths surrounded the premises, demanding that Ntombela come out and "tell his story".

Ntombela was escorted away by police. He later slammed the truth commission for "digging up graves of the past. They are digging up all the things which were forgotten by the people."

He said he was uncertain whether the peace initiative he and Nkabinde had embarked on could now be pursued following the outburst.

"Everyone saw the ANC completely failed to control their followers. My body is full of swelling because they said I must be killed. Only God knows what will happen to the peace process now," he said.

He couldn't say whether he would continue joint meetings with Nkabinde.

Nkabinde, who after frantic intervention managed to quell the crowd on Wednesday, was later overheard telling an ANC colleague "This almost messed up everything."

He said he was afraid the conflict "might send a wrong signal to the people on the ground. They might think that all the hard work me and Baba Ntombela started is coming to an end."

"But with the commitment from the ANC and hopefully from the IFP, I think we may survive this week's blow."

The head of the truth commission in Kwazulu Natal, Richard Lyster, said Ntombela would be invited back to give his version of the seven-day war "but if he doesn't come, we'll have no alternative but to subpoena him".

# White men take on Omar in war of experience versus colour

By MARLENE BURGER

(250) ST 24/11/96

**AFFIRMATIVE** action was in the dock in the Transvaal Supreme Court this week. Arguing for it was counsel for the Justice Minister, Dullah Omar. Opposed was counsel for a senior white male employee of the Justice Department and his trade union.

The case, the first affirmative action lawsuit in South Africa, has for the past year held 30 senior posts in state attorneys' offices countrywide to ransom.

Brought a year ago by a senior assistant state attorney, Fame Swanepoel, and the 100 000-member Public Servants Association, the case's outcome will have far-reaching implications for all white male public servants seeking advancement.

It will also serve as an embryonic test of the power of the Constitution to override legislation designed to protect public servants from discrimination on the grounds of race or gender.

The case accuses Omar and the Public Service Minister, Zola Skweyiya, of unlawfully reserving vacant posts for affirmative action appointments, and of doing so without first negotiating with the trade union.

Swanepoel, who has 13 years of experience as a state attorney and was earmarked for promotion, is one of 16 white males who applied for the posts, advertised last November, but were never even called before the selection panel.

Appointments were offered instead to less-experienced women and people of colour, none of whom have so far been able to start work. The appointments were frozen when the court granted the Public Servants Association an interdict in February to halt the process pending the outcome of its lawsuit.

One of those who was offered a post as a deputy state attorney is Gadiya Behardien, who had a total of five years' experience. Nine of her white male colleagues, all senior assistant state attorneys for between eight and 10 years, were overlooked for the post.

The dispute was sparked by a decision taken on October 27 last year that vacant posts in the Justice Department would be reserved on a ratio of two to one for affirmative action appointments, and that all posts which fell vacant this year would be filled according to this quota.

However, legal argument presented before Mr Justice Buddy Swart this week shows that the case has ramifications far beyond the filling of the 30 posts, in Pretoria, Johannesburg, Cape Town, Port Elizabeth and East London.

At the heart of the dispute is the legal interpretation of Section 212 of the

Interim constitution, and the measure of protection of individual rights offered by Section 8.

Section 212 prescribes the promotion of an efficient public administration which is "broadly representative" of the South African community.

Omar's counsel, Wim Trengove SC, argued that this requirement made it incumbent on the minister to ensure that appointments reflect the racial and gender make-up of the population and that, in terms of a special dispensation granted by Skweyiya, he was perfectly entitled to implement his affirmative action policy.

Trengove's argument stands in sharp contrast to Section 11 of the Public Service Act, promulgated by President Nelson Mandela shortly after taking office, which states that "no person who qualifies shall be favoured or prejudiced" in filling government posts.

According to Gerrit Grobler SC, who is acting for the association, Omar and Skweyiya began ignoring the legal provisions governing appointments from July last year, and "jumped the gun" by obtaining dispensation to implement an affirmative action plan without consulting the union.

The outcome will have far-reaching implications for the careers of all white male public servants

and "jumped the gun" by obtaining dispensation to implement an affirmative action plan without consulting the union.

"In a state of transition, where the majority is pressing for the immediate realisation of those ideals for which they have fought so long, a culture of abusive power might easily be created, but this must be resisted with all the guar-

antees offered by the Constitution. This case is not about resistance to affirmative action, it is about whether the state subscribes to the very rules created for the process, and whether the cabinet ministers involved are acting according to the Constitution," Grobler told the court.

The Public Service Act clearly states that only the qualifications, efficiency and suitability of candidates should be taken into account for public service posts. But Trengove argued that this supports Omar's action, since "suitability" of candidates extends beyond such factors as experience and qualifications when seen against the constitutional demand for a "fully representative" public service.

He told the court white male candidates had been considered for the vacant posts, but the urgent need for broader representivity had weighed more heavily than their prospects of advancement.

Judgment in the case is not expected before January, but the matter is unlikely to end there. Whatever the ruling handed down, it is likely the losing side will pursue the matter on appeal. It might ultimately be up to the Constitutional Court to decide the fate of white male public servants seeking promotion.

# Ban 'biased' officials, IFP urges Truth Commission

(272)

By JUSTICE MALALA

Political Staff

May 25/11/96  
The Inkatha Freedom Party has called on the Truth and Reconciliation Commission to withdraw commissioners who presided over stormy hearings in Pietermaritzburg last week, accusing them of displaying bias.

The party also expelled national council member Thomas Shabalala for his involvement in a march in Durban earlier this year protesting against the Government's ban on carrying traditional weapons in public.

In a resolution taken by its national council at the weekend, the party said a letter of protest would be written to the commission. The resolution follows statements by IFP leader Mangosuthu Buthelezi last Thursday that the TRC was not the correct forum to foster peace and reconciliation.

The Pietermaritzburg hearings last week, focusing on the "Seven-Day War" in the region in the early 1990s, were marked by high emotion.

The council, however, also resolved that it still supports "all genuine and sincere efforts to bring about peace and reconciliation between all political parties and communities in KwaZulu Natal".

It also resolved to promote a conference where all stakeholders in education in the province and nationally could discuss the protection and future promotion of education which had "suffered disastrous effects of the ANC's armed struggle policy".

It vowed to organise a workshop next year to "promote a new philosophy based on the shared effort of all stakeholders".

# Tutu decree to TRC : watch what you say

Star 26/11/96

(252)

Commissioners on the carpet following complaints

about their conduct at Pietermaritzburg and Bisho hearings

By ROBERT BRAND

Archbishop Desmond Tutu has sharply rebuked members of his Truth and Reconciliation Commission, ordering them to stop saying things during public hearings which could undermine the commission's effort to appear even-handed.

In a strongly-worded statement after a meeting of the commission's human-rights-violations committee yesterday, Tutu, the commission chairman, said he had "issued a decree" to members to "desist from making statements which could be construed as revealing a particular bias".

This follows complaints that members of the committee had been biased in their questioning of witnesses during hearings in the Eastern Cape and KwaZulu Natal last week.

The Inkatha Freedom Party called on commissioners Khoza Mgojo and Richard Lyster to resign for what the party termed their "biased" handling of the KwaZulu Natal hearing, where IFP MPL David Ntombela was

summoned to explain his part in political violence around Pietermaritzburg.

And in the Eastern Cape, commissioners Bongani Finca and Mapule Ramashala and committee member Pumla Qobodo-Madikizela came under fire for "humiliating" and trying to "force apologies" out of witnesses giving evidence on the Bisho massacre.

National Party secretary-general Roelf Meyer, former Ciskei leader Oupa Gqozo and former Ciskei police chief Johan Viktor were among those who felt the wrath of the commissioners' tongues.

Gqozo was made to stand up and apologise four times to victims of the Bisho massacre, while commissioners openly questioned Meyer's submission that the NP could not have prevented the massacre. Viktor refused to apologise to victims of the massacre and blamed the tragedy on their leaders. Ramashala then called him "callous" and slammed his "disregard" for the suffering of the victims.

Commissioners Denzil Potgieter and Dumisa Ntsebeza have

in the past also been criticised for appearing to favour one version of events over another.

Lyster, Finca, Qobodo-Madikizela, Ntsebeza and Potgieter were present at yesterday's meeting where the criticism was discussed.

Tutu said he had taken a "very strong stand" that the commission should maintain an appearance of independence and even-handedness.

Although he did not single out specific hearings or individual commissioners, he made it clear that he was referring to the Bisho and Pietermaritzburg events.

"We have been concerned at some statements which have occurred in recent times.

"I issued an almost presidential decree to commissioners and committee members that they must desist from making statements that seem to indicate that they had already made a finding.

"It is quite essential that we should demonstrate clearly that the commission is even-handed and independent," he said.

More reports

## Health sectors to be represented on TRC committee

BY DASHY JONES

(252)  
Star 26/11/96

Cape Town - The Truth and Reconciliation Commission has started the ball rolling towards the development of a human-rights culture in the medical profession.

TRC commissioner Dr Wendy Orr said yesterday that "things are so bad (in the health sector) at the moment ... any (organised) body will be an improvement".

Orr was referring to a soon-to-be established dual-function steering committee which will be made up of representatives from various health sectors.

The committee is to assist the TRC by collecting submissions from the various health-care sectors, and also to act as a reference group for TRC researchers.

Its other function will be to start a long-term process to encourage groups, organisations, and the Government to initiate and continue research and transformation in the area of health and human rights.

The TRC hopes the committee will continue to operate beyond the life of the commission, pursuing human-rights issues outside of the TRC mandate.

A task team, to make arrangements for the election of the steering committee in January, was elected at the weekend at a TRC-organised workshop.

The team consists of Orr; Dr Lesley London, of the NGO sector; Rachel Prinsloo, a psychologist from the Psychologists Society of South Africa; Gavin Demster from the Medical Association of South Africa; Linda Bali from the Progressive Primary Health Care Network; Donald Skinner, a psychologist from the NGO sector; and Thembeke Gwagwa from the Democratic Nursing Association of South Africa.

Orr told The Star a body was desperately needed to monitor the actions of health professionals and to discipline transgressors.

Points discussed at the workshop, relating to health professionals who may be granted amnesty, have been referred to the TRC's legal working group.

# Tutu wants leaders to seek amnesty

BD 26/11/96

(252)

Stephen Laufer

ARCHBISHOP Desmond Tutu is to ask leaders of political parties for a meeting at which he will urge them to take advantage of the truth commission's amnesty process

Tutu said in Johannesburg yesterday he hoped a single meeting with senior politicians from all parties could take place within the next few days, but certainly before the cut-off date for amnesty applications on December 14. The commission had received passionate pleas from politicians to leave SA with a relatively clean slate once its work was done, and he wanted them to assist by taking a lead in the amnesty process. The commission had received 3 700 amnesty applications, and was currently fielding about 100 telephone calls, faxes and letters a day inquiring about application procedures.

"Although the figures are mind-boggling, our view is that reconciliation as a primary purpose of the process would be enhanced if top level members were to come forward."

Tutu said he was not satisfied that enough leaders had applied. Government had not responded to the commission's request for the application cut-off date to be moved to end-March. "Therefore we believe the status quo remains." On the commission's request for the cut-off date regarding acts for which amnesty could be granted to be moved to May 10 1994, he said he was "waiting for the time I might be asked to address the cabinet", as discussed with President Nelson Mandela.

Asked whether he felt the amnesty committee could deal with the flood of applications it was facing, Tutu said the group was "facing a serious problem" despite attempts to improve the

flow of paperwork by increasing the number of staff members. It was possible that the five amnesty committee members would split into two groups to hear applications and deal with others administratively at the same time.

Observers said the commission could be forced to ask Parliament to extend the amnesty committee's life beyond the end of next year. The alternative would be a general amnesty.

Tutu said the human rights violations committee would reduce the number of public hearings in favour of obtaining more statements from victims. He warned against complacency among perpetrators. While it had been claimed that incidents like the Khotso House bombing did not involve gross human rights violations, perpetrators and those who gave the orders should

Continued on Page 2

## Tutu

Continued from Page 1

consider the possibility of attempted murder and other criminal charges. Equally, military personnel were under a misconception if they thought that following legitimate orders would safeguard them from prosecution. Only amnesty would provide indemnity.

Responding to public criticism of the way in which former Ciskei military ruler Oupa Gqozo and former Ciskei police chief Jan Viktor had been criticised by commissioners at last week's Bisho hearings, Tutu said he had told commissioners and committee members they should desist from statements that made it appear the commission had made its findings.

Picture: Page 3



# Probe on MP Plain court 'corruption'

## Omar meets magistrates in missing dockets row

AR 473/11/96  
(252)

LINDSAY BARNES

CRIME DESK 1 A 71 4 7

Public Protector Selby Bagwa is to investigate allegations that corrupt officials at Mitchell's Plain Magistrate's Court make police dockets "disappear".

Public fury has been growing over dockets vanishing mysteriously, enabling criminals, including gangsters, to walk free without standing trial.

The issue has been taken up by People Against Gangsterism and Drugs, which believes corrupt officials, including police, remove court dockets deliberately.

Mr Bagwa, whose job is to protect citizens from abuses in the civil service, is investigating the problem of missing court documents at the request of Justice Minister Dullah Omar.

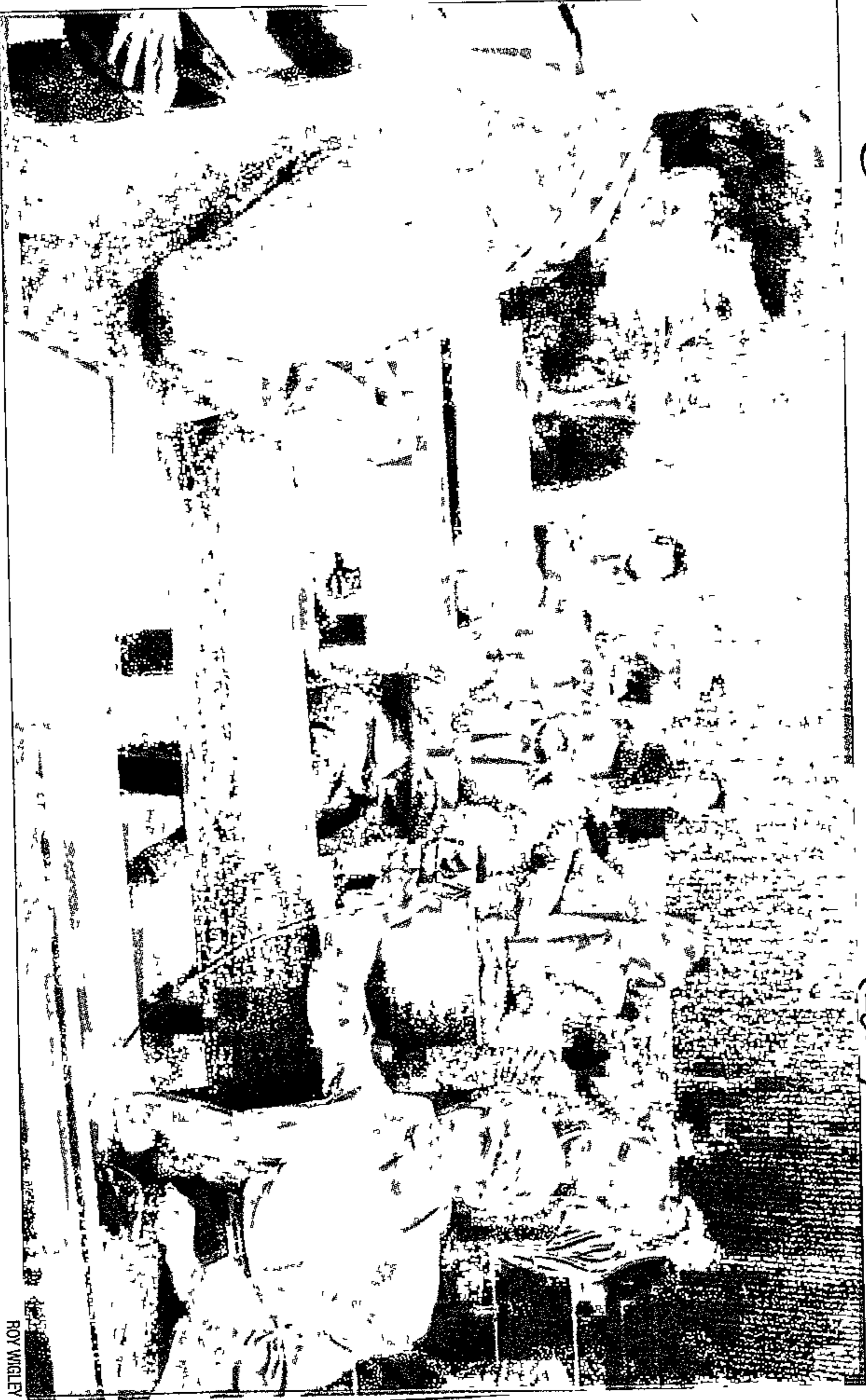
Mitchell's Plain Magistrate's Court has long been plagued by the problem and yesterday Mr Omar met magistrates, assessors, prosecutors and community representatives to seek solutions.

He warned that corruption would not be tolerated in Peninsula courts and that people who were exposed would be charged. He called on magistrates to co-operate with the investigation.

Mr Omar said he realised the Mitchell's Plain court was overcrowded and handled a heavy workload. He would try to address problems and complaints.

Special police units had been set up to deal with corruption, he said. The handling of dockets needed to be tightened.

Magistrates at yesterday's meeting attacked the media for discrediting the Mitchell's Plain court with "scurrilous"



ROY WINGLEY

All ears: Justice Minister Dullah Omar and his Director General Jasper Noeth hear complaints from Mitchell's Plain magistrates reporting and "blowing the problem of missing dockets out of proportion".

Mr Omar said he was to meet Peninsula chief magistrates to discuss court problems and plan more even distribution of

cases. This would ease the tremendous burden on Mitchell's Plain.

He said he was particularly concerned about the problems experienced by women and children at the courts because of the

slow turnover of maintenance cases and he intended to review the system.

The 24 000 maintenance cases being handled at present had not been investigated fully by police, a magistrate said.

# 'Justice for all' is aim of new legal service

(252) Star 28/11/96

## Advice on contentious matters available around the clock

BY LARA SMITH

**B**ringing the justice system closer to the people is one of the key elements behind the launch of a new round-the-clock phone-in legal advice service established under the auspices of the country's 9 000 practising attorneys

For as little as R5 a month, the new "Legal 1" system will give subscribers 24-hour access to legal information and advice and 30 minutes of free consultation with a practising attorney

The service covers all legal matters related to marriage and divorce, retrenchment and dismissals, wills and insolvencies; insurance claims and disputes, business, crime; vehicle-related criminal, civil and insurance matters; and constitutional law

The toll-free telephone lines will be manned by law graduates qualified to give legal advice to subscribers. Should the matter not be resolved over the telephone, subscribers will either be advised on the correct procedure to follow, or be referred to an attorney for a free 30-minute consultation. The subscriber will have to pay for any further legal assistance thereafter, such as instituting or defending an action, or court appearances.

Legal 1 (for legal information) is a Section 21 company founded by the four provincial law societies, the South African Consumer Council, the Black Lawyers' Association and the National Association of Democratic Lawyers

Justice Minister Dullah Omar said yesterday he considered the initiative to be one of the most im-

portant yet undertaken in SA to make the law accessible to the public. "Access to justice is a key criterion for democracy," he said

Many people, especially those in disadvantaged communities, did not have any access to justice, either because there were no legal services, or because they could not afford to pay exorbitant legal fees, he said. This led to many people taking the law into their own hands, an option that usually ended in violence, he added

"It is time to reverse this culture of violence to one where people use the recognised mechanisms available to them," he said

The telephone service will be provided by the Automobile Association, whose legal department already has a similar service up and running, equipped with the necessary electronic equipment.

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REPRESENTATIONS IGNORED

# 'Independence of HRC threatened'

(252)  
CT 28 11 196

**HUMAN RIGHTS** Commission chairperson Dr Barney Pitjana says the interim constitution's provisions for the HRC are preferable to those of the new constitution. Political Writer **BARRY STREEK** reports

THE Constitutional Assembly had ignored representations to protect the independence of the Human Rights Commission (HRC) and it had illegally been made accountable to the Department of Justice, says HRC chairperson Dr Barney Pitjana

In a memorandum, Pitjana said that long before there was an outcry in the press about the precarious position of the Public Protector and the Auditor-General with regard to the inadequate protection granted in the new constitution, the HRC had made its own submission on these issues

It had recommended that HRC members should be approved by Parliament in a resolution adopted by at least 75% of members present

"There was a strong view that the provision of the interim constitution should be retained" The HRC had also recommended that its chairperson should be a member of any committee of Parliament that made nominations for appointment to the commission

Of their own volition, members of the commission had declared at its first plenary session in October 1995 that they would not participate in party political activities and would keep a register of interests so that their interests should not prejudice their judgments

"In all respects, the commission demonstrates what a high premium it invests in the issue of independence

"As far as proposals on appointments are concerned, the commission wished to ensure that the parliamentary process should be overseen by the commission itself to guard against the temptation to do political horse-trading

"Our pleas fell on deaf ears. Instead, we note that the final constitution only requires a simple majority of members of Parliament to appoint and dismiss members of the Human Rights Commission

"What has emerged is a hierarchy of constitutional institutions with some less entrenched than others. What, we ask, does that say about our democracy?"

Pitjana also said that while elaborate provisions existed for regulating the expenditure of the commission, there was no mechanism for agreeing to its budget

The implication of a clause in the act establishing it was that the commission should take part in the budgetary process as if it were a department of state

"So far this has not happened. What, in fact, happened is that the Human Rights Commission was, contrary to the law, made accountable to the Department of Justice

"It should be obvious, that without financial provision, the Human Rights Commission will not be able to carry out its responsibilities



**RIGHTS COMMISSIONERS:** Members of the South African Human Rights Commission in the city yesterday were Shirley Mabusele, Ms Pansy Tlaluka, chairperson Dr Barney Pitjana, Mrs Helen Suzman and Ms Rhoda Kadalle

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# 'We have a duty to build a human rights culture'

CT 28/11/96

(252)

## **POLITICAL WRITER**

THE Human Rights Commission (HRC) was not just concerned about human rights violations, chairperson Dr Barney Pityana said yesterday

It also undertook programmes to raise public awareness on human rights, he said at a press briefing

The commission received four to five complaints a day and about 300 complaints were being investigated

It was obliged to receive complaints of violations of human rights, investigate them and resolve them

If necessary, the commission could litigate either in its own name or in the complainants' to bring those who violated human rights before the law

Pityana said the HRC had a duty "to build a culture of human rights in South Africa"

This was being done through education and training programmes, public awareness programmes and informing people of their rights

The HRC also advised people on their rights, monitored legislation to see that it complied with the bill of rights, advised state organs on how to promote human rights and monitored government departments on the observance of human rights

The commission, which met for the first time in

October and opened offices in April this year, had seven full-time and four part-time commissioners

It had established five committees for policy and planning, liaison with non-government organisations, monitoring of government and Parliament, international co-ordination including South Africa's international obligations under human rights treaties and liaison with bodies such as the UN Commission on Human Rights and the African Commission on Human Rights, and legal and constitutional affairs, including monitoring the Constitutional Court

The commission had hoped to have offices in all the provinces but budget constraints restricted it to offices only in Johannesburg and Cape Town.

"It is a matter of grave concern to us. It affects our ability to be close to people," Pityana said

The HRC hoped to report on its inquiry into prisons in April and was also planning probes into agricultural workers, mental institutions and homeless children

● Human rights education will be introduced into the school syllabus from the beginning of 1998

The training of teachers, the syllabus and the preparation of teaching materials were being discussed with the Department of Education, Pityana said yesterday

"It will not necessarily be an exam subject"

ET 28/11/96

## Help not co-ordinated

If you are black, disabled and pregnant, which institution or government department do you go to if you have a problem?

The answer to this question had become a standing joke in the South African Human Rights Commission (HRC), one of its 11 commissioners, Ms Rhoda Kadalie, said yesterday "Where do you go to?" she asked

HRC chairperson Dr Barney Pitso Moseneke said yesterday there were 16 different government-funded agencies involved in human rights tasks but this was "not co-ordinated in any way".

He added that his commission believed it "should take primary responsibility for co-ordinating human rights activities and programmes and will liaise with all statutory bodies as well as with human rights programmes in all state organs at all levels" — Political Writer

# 16 commissions on human rights

(252)

**BARRY STREEK**  
POLITICAL WRITER

THE government is now funding 16 different commissions and institutions with specific human rights jurisdiction or tasks, according to the Human Rights Commission (HRC). They include:

- Constitutional bodies, such as the HRC itself, the Commission on Gender Equality, the Public Protector and the Commission for the Protection and Promotion of the Rights of Cultural, Religious and Linguistic Communities

- Transitional bodies, such as the Truth and Reconciliation Commission, the Land Restitution Commission, and the Independent Broadcasting Authority

- Department-specific institutions such as the Inde-

pendent Complaints Directorate for Police Services, the Independent Inspectorate for Correctional Services, the Inspector-General for Intelligence, the Commission for Conciliation, Mediation and Arbitration (CCMA) and Nedlac

- Generic commissions, such as the Office on the Status of Women in the Deputy President's Office, the Youth Commission, the Pan South African Language Board (Pansalb) and the proposed Disability Board (there is already a disability desk in the Deputy President's Office).

In a recent paper, the HRC chairperson, Dr Barney Pitso Moseneke, also identified two other government-funded institutions involved in human rights tasks — the Auditor-General and the Electoral Commission.

REFUSAL TO PROSECUTE HIT-SQUAD CASES ANNOYS OMAR

Threat to override McNally

(252) CT 28/11/96

**JOHANNESBURG:** Justice Minister Mr Dullah Omar has threatened to have a special attorney-general appointed in Kwazulu-Natal to prosecute hit-squad cases.

**CONTROVERSIAL** Kwazulu-Natal attorney-general Mr Tim McNally, who has been accused of impeding hit-squad investigations in the province because of his refusal to prosecute high-profile cases, is in the firing line again.

Justice Minister Mr Dullah Omar said yesterday that McNally's conduct illustrated the need for a national director of prosecutions — his ministry was considering appointing a special attorney-general for Kwazulu-Natal to take hit-squad prosecutions out of McNally's hands.

The Investigation Task Unit, probing Third Force cases in the province, has decided to ignore McNally, preferring instead to take cases to the Truth and Reconciliation Commission.

The convener of the Investigation Task Board, which oversees the investigative unit, Mr Howard Varney, said in an

interview that his working relationship with McNally had become "difficult".

"We have been unable to push successfully through his office key hit-squad cases where we believe the evidence should have been tested in court."

After his failure to obtain a conviction in the Malan trial, McNally has refused to prosecute four out of five Third Force cases presented to him by the Investigation Task Unit, Varney said.

The most recent of these involved former Kwazulu-Natal police commissioner General Roy Dunning, who allegedly obstructed an investigation into the discovery of an arms cache at the provincial parliament.

Omar has reacted angrily to McNally's reluctance to prosecute hit-squad cases, calling for a report from the unit and demanding an explanation from McNally.

He said President Nelson Mandela had the right to appoint "special attorneys-general in specific circumstances" and that this option would be considered in the case of Kwazulu-Natal.

"This problem would not arise if we had a national director of prosecutions or national attorney-general."

Yesterday McNally hit back at his critics. He said Varney had worked "side-by-side" with him on the Malan prosecution. "If he is criticising me, he is criticising himself."

He said the appointment of a special attorney-general to Kwazulu-Natal was "not an option". The Attorneys-General Act, as it stood, allowed for the appointment of "non-territorial" attorneys-general, but did not give them the power to override decisions by provincial attorneys-general, he said.

He said the appointment of special prosecutors to investigate and prosecute hit-squad cases, the option advocated by Varney, was possible, but the appointments would have to be made by him. McNally said he had already second-

ed two prosecutors from his office to Varney's Investigation Task Unit, where they have been working as investigators. McNally first rose to prominence in 1989 when, as Free State attorney-general, he investigated hit-squad claims made by a former Vlakplaas policeman, Almond Nofemela and dismissed the claims.

Months later, McNally was appointed to lead evidence before the Harms Commission into alleged state-sanctioned murders, including the allegations by Nofemela. He was criticised by human rights lawyers for accepting the appointment after already having made a finding with respect to part of the investigation. The Harms Commission also dismissed the police hit-squad allegations.

In a shock move earlier this year, McNally charged Nofemela, Dirk Coetzee and three other former policemen with the murder of Durban attorney Griffiths Mxenge. In his earlier investigation, he refused to believe Nofemela's claim that police had killed Mxenge. — Owen Correspondent

# Guguletu Seven 'executed'

CT 28/11/94

(262)

**THE TRC HEARING** into the "Guguletu Seven" killings was old that three witnesses claimed that a man was shot with his hands held up in surrender. **EUNICE RIDER** reports.

**W**HEN the Cape Times reported that police had "executed" unarmed Guguletu men in full view of residents of a nearby hostel, the crime reporter and later other reporters were banned from police press conferences

Cape Times journalist Chris Bateman yesterday told the Truth and Reconciliation Commission, which is holding a two-day hearing on the killing of the "Guguletu Seven" by police on March 3, 1986, that according to three witnesses, one man was shot with his hands in the air in surrender. Most were shot at close range. Bateman, who was the crime reporter at the time, said that according to his witnesses one man was "finished off" by a policeman where he lay, severely wounded, on the ground. Bateman said the witnesses had been adamant about what they

told him had happened and he had believed them.

After the witnesses' account and the police version were published on the front page the following day, the police asked him to sign an affidavit. When he refused he was served with a Section 205 subpoena to reveal the identities of the witnesses he had spoken to.

He then found the by-then terrified witnesses again to obtain affidavits and they told him police had already approached them, asking one why he had "led" to the Cape Times.

Bateman said he was then banned from the daily police press conferences and the ban was later extended to all Cape Times reporters.

Some weeks later, after debate in Parliament and complaints to the Newspaper Press Union, the ban was rescinded. But Bateman said he had remained "unwel-



**TESTIMONY:** Chris Bateman

come" at the crime press conferences and was effectively prevented from doing his job as the Cape Times crime reporter.

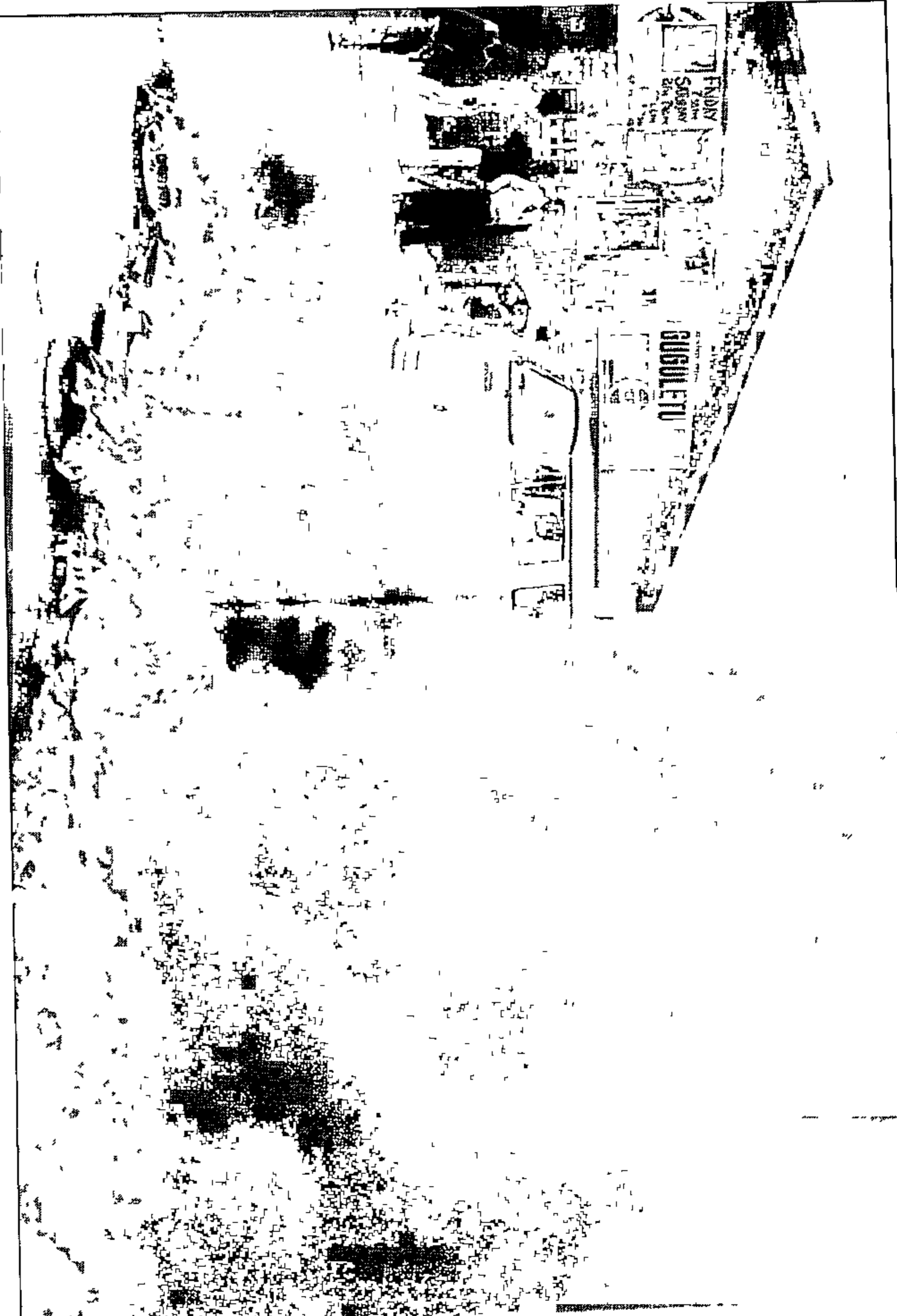
Bateman, who now covers the provincial legislature, said it was the first time he had attended a hearing of the TRC and he had been surprised at the strength of his emotions on hearing evidence from the parents of the slain men. He said if people living in plush suburbs "really listened" to the evi-

dence the TRC heard, it would go a long way towards reconciliation in South Africa.

One of Bateman's witnesses, Mr General Sibaca, told the commission that when police came to him after he had spoken to Bateman, they threatened to arrest him for having said that he saw an execution. "They wanted to ascertain whether I was a genuine witness or whether the Cape Times had paid me to lie," he said.

The "Guguletu 7" were Mr Christopher Piet, Mr Alfred Zola, Mr Zambonke John Konile, Mr Themba Mhlu, Mr Mandela Mximwa, Mr Zamsile Zenith Mjobo and Mr Godfrey Celani Myya.

At the time of the shooting, police denied that the men were shot in cold blood, saying they had received information that a police vehicle was to be ambushed by ANC guerrillas on the morning of the shooting and that they had retaliated when a handgrenade was thrown at them. Two consecutive inquests cleared the police of any blame in the shootings.



**BURNING PROTEST:** A taxi drives past a flaming barricade in Guguletu after the March 7, 1986, burial of seven alleged guerrillas who were shot by police in an ambush.





# Mothers recall Guguletu shootings

## Women tell of trauma of sons' deaths and funerals

JOHN YELD  
ON THE TRUTH COMMISSION

The pain of parents discovering their sons had been shot dead by police in controversial circumstances and their subsequent harassment by police - particularly during the funerals - was recounted in grim detail at a special Truth Commission hearing in Cape Town.

Five of the mothers of the seven men shot dead by police in Guguletu in March 1986 - known as the "Guguletu Seven" - testified yesterday before the commission's human rights violations committee about their trauma.

Several broke down in tears at the painful memories.

Irene Mkhinwa told the committee she searched hospitals and prisons for a week before finding the body of her son Simon Mandla in the mortuary.

"My husband had also died recently. I had not yet healed and I was still very weak," she said. "I would like to know why it was that my son was shot. I do not know. I ask myself this question. It is still not answered," she said.

Edith Mjubo said police had been searching for her twin sons Zandisile and Arthur for several months before Zandisile was shot dead in Guguletu.

Police had harassed the family at their Paarl home and placed restrictions on the

funeral. "We didn't want to bury him that day but we were forced by police. After that there was no peace at my home, we were suffering."

"The police were rude. They were beating us and assaulting us all the time." Police had arrested and severely tortured her husband while searching for the boys, Mrs Mjubo testified.

"They used to cover his face with black plastic bags and they were torturing his genitals."

"He became sick because of all this and couldn't continue working. One day his ears were bleeding. He suffered a lot until he died."

Elsie Konile also broke down and wept as she recalled that police had interfered with the joint funeral of six of the seven men, including her son Zabonke.

"The Boers came and pointed their guns at all of us and we could not continue with the funeral. People were running away. I didn't think I would break down (at this hearing) but I have a problem because Zabonke was my only child."

"He worked for me and supported me, he was like my husband. I was never happy in my spirit again," she said.

Truth Commission chairman Desmond Tutu, clearly moved, paid tribute to the role women played in the struggle for justice and peace.

"We are engaged in a very delicate ministry. We have said we hope we will be able to open wounds so they can be cleansed and this has to be done with great sensitivity," Archbishop Tutu said.

"If it was not for your strength and power, I know we would not be here today. So if the pains you've suffered will be healed, we will appreciate that, and we hope others will be touched by your pain."

## Man 'executed' in front of bus driver and 13 children

JOHN YELD  
ON THE TRUTH COMMISSION

New evidence suggesting police forged a document and submitted it to the official inquest on the "Guguletu Seven" has emerged during the Truth Commission investigation into the shootings in 1986.

At the time, police claimed they shot the seven young men, all allegedly ANC guerrillas on their way to a mission to attack a police bus, in self-defence after a handgrenade was thrown at them.

But this version was contradicted by wit-



Irene Mkhinwa, mother of one of the "Guguletu Seven", testifies at the Truth Commission hearing

LEON HANLIER

He saw a man, one of the guerrillas, stopped by two white men in plain clothes and uniformed police. "I saw them pulling a gun from his (the guerrilla's) waist. By this time the man had his hands above his head. I heard one of the white police shouting 'Shoot him!' One policeman grabbed the man by the neck from behind and knelt him on his back. Another policeman fired at the man from the front as he was going down. A second shot was fired while he was lying on the ground, and he died."

Another witness, bus driver Ronald Bent-

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the news with my daughter and that is when we realised he had passed away. That is all I have to say," she said.

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Tears: Irene Mxinwa, mother of one of the "Guguletu Seven", testifies at the Truth Commission hearing

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At the time, police claimed they shot the seven young men, all allegedly ANC guerrillas on their way to a mission to attack a police bus, in self defence after a hand grenade was thrown at them.

But this version was contradicted by witnesses who repeated their claims at a hearing of the commission's human rights violations committee yesterday that several of the guerrillas were "executed" by police.

They testified that at least one of the seven was unarmed and had his hands in the air when shot and that another was shot twice in the head as he lay on the ground.

This shooting was witnessed by the driver of a bus for disabled schoolchildren and his 13 young passengers, one of whom was severely traumatised by the sight.

Rudolf Lazaro of Mitchell's Plain told the committee yesterday he had been robbed in Swartklip Road near Guguletu the day before the shootings. Several weeks later, detectives from the Murder and Robbery Unit took him to Bishop Lavis police station, showed him pictures of people who had been "brutally



Eye-witness: dairy worker General Sibaca

shot" – the seven – and tried to get him to confirm these were the men who had robbed him.

Although he recognised two of the men as having lived in Guguletu, they were definitely not those who had robbed him and he had stated this emphatically, he testified.

This year, Truth Commission investigators showed him a statement, "signed" by him and submitted to the inquest on the Seven. It was to the effect that he had positively identified some of the men in the pho-



Traumatic sight: bus driver Ronald Benting

tographs as those who had robbed him.

"This is not my signature, not at all," Mr Lazaro told the committee. Asked how he felt about the forged signature, he replied: "I was very surprised. I feel astonished because I never knew I was used like this. I could have lost my life."

One of the witnesses to the shooting of the Seven, dairy worker General Sibaca, told the committee he watched from his room in a hostel overlooking the scene of the confrontation.

He saw a man, one of the guerrillas, stopped by two white men in plain clothes and uniformed police. "I saw them pulling a gun from his (the guerrilla's) waist. By this time the man had his hands above his head. I heard one of the white police shouting 'Shoot him!' One policeman grabbed the man by the neck from behind and knelt him on his back. Another policeman fired at the man from the front as he was going down. A second shot was fired while he was lying on the ground, and he died."

Another witness, bus driver Ronald Benting who was transporting disabled pupils to school, said he had just crossed the bridge into Guguletu when his vehicle was stopped by police.

"There were a lot of police standing in the road and I stopped the bus. There was a man lying in the road. According to me he was alive, but he never moved. A policeman came out of the crowd (of policemen) and approached the man on the ground. He took out a pistol or a revolver and shot him twice in the head, in front of me and the 13 children in the bus."

Mr Benting's evidence was confirmed by Pat Smith, a housemother of Astra School (for disabled children), who was also on the bus. She told the commission she was still too traumatised by the event to testify personally, but submitted a written statement saying she had witnessed the shooting.

## Police 'lawlessness' in W Cape of mid-eighties

JOHN YELD

There was a "general air of lawlessness" about the police in the Western Cape in the mid-1980s and, by 1985, the brutal methods of the Koevoet unit in Namibia were being applied in townships.

This was evidence to the Truth Commission's human rights violations committee yesterday by freelance journalist Tony Weaver who, as a senior Cape Times reporter, was unsuccessfully prosecuted under the Police Act for his reports on the police shooting of the "Guguletu Seven" on March 3 1986.

Mr Weaver told the committee he had learned about Koevoet while he was a newspaper correspon-



Police target: Tony Weaver

dent in Namibia in the early 1980s.

Interrogation techniques used by the unit, which served as a training ground for police officers, included torture, beatings and rape, he said.

New Koevoet recruits were "blooded" by killing Swapo guerrillas in battle or by executing prisoners with guns in front of fellow officers and their commanders, Mr Weaver said.

The "execution" – and he said he used the word deliberately – of at least three and possibly four of the "Guguletu Seven" bore all the hallmarks of Koevoet-type operations.

The inquest had been a whitewash but much of the truth had come out during his trial.

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# Top cops storm out of hearing into Guguletu 7

JOSEPH ARANES AND JOHN YELD  
ON THE TRUTH COMMISSION

ARG 28/11/96  
Two senior policemen walked out of the Truth Commission hearing in Cape Town today after an angry woman threw a shoe at them.

The drama happened while harrowing police video footage was shown of the scene of the 1986 shooting of seven alleged African National Congress guerrillas known as the Guguletu Seven.

The video at the commission's special event hearing caused family members of the dead to break down in tears.

The mother of one of the seven threw her shoe at the nine policemen subpoenaed to appear before the commission today, hitting Leonard Knipe, head of the police Violent Crimes Unit, on the head. The shoe also hit police director Johan Kleyn, station commander of Mitchell's Plain police station. Director Knipe and Director Kleyn then left the room.

After the outburst, the commission adjourned and several relatives of the Guguletu Seven were helped out of the room by commission staff.

After a five minute adjournment, Director Knipe and Director Kleyn sat in a press room watching the proceedings on a television monitor.

The footage showed the bodies of the seven after they were shot by the police outside a hostel in Guguletu on March 3 1986.

From the video it seemed as if most of the suspects had been shot in the head and face and all seemed to have been armed.

One was on his back with his arms outstretched. A revolver was on his chest.

Another was lying on his stomach with an AK-47 rifle sticking out at his shoulder while another was shown with a hand grenade between his legs.

Close-up shots showed clearly the bullet wounds in their faces and heads and this



LEON MULLER

To page 5 Walkout: Leonard Knipe, head of the police violent crimes unit, leaves the TRC hearing followed by Mitchell's Plain station commander Johan Kleyn

# 32 Battalion to

# come clean on

# train violence

Former 32 Battalion members have approached the truth commission with information on the bloody pre-election train violence. **Peta Thornycroft** and **Eddie Koch** report

M+G 29/11-5/12/06 252

**M**ORE than a dozen battle-hardened members of the former 32 Battalion are applying for amnesty for their role in the grotesque violence on South Africa's commuter trains in the run-up to the 1994 elections

Members of the former battalion, which was the old South African Defence Force's battering ram during its wars in Namibia and Angola, have approached the Truth and Reconciliation Commission with information about train violence

Hundreds died at that time on the Witwatersrand's rail network. Most victims were first stabbed and then flung from speeding coaches

The killings were random and singled out no political party. Among those thrown to their death was a priest, a man because he spoke Xhosa, women singing hymns, office workers, elderly men and unemployed youths. The indiscriminate attacks were a particularly brutal tentacle of the "third force's" destabilisation strategy

While much is now known about the police's hit-squad activities, the Inkatha Freedom Party's paramilitary force and the SADF's covert operations, the wild violence on the trains eluded any coherent explanation

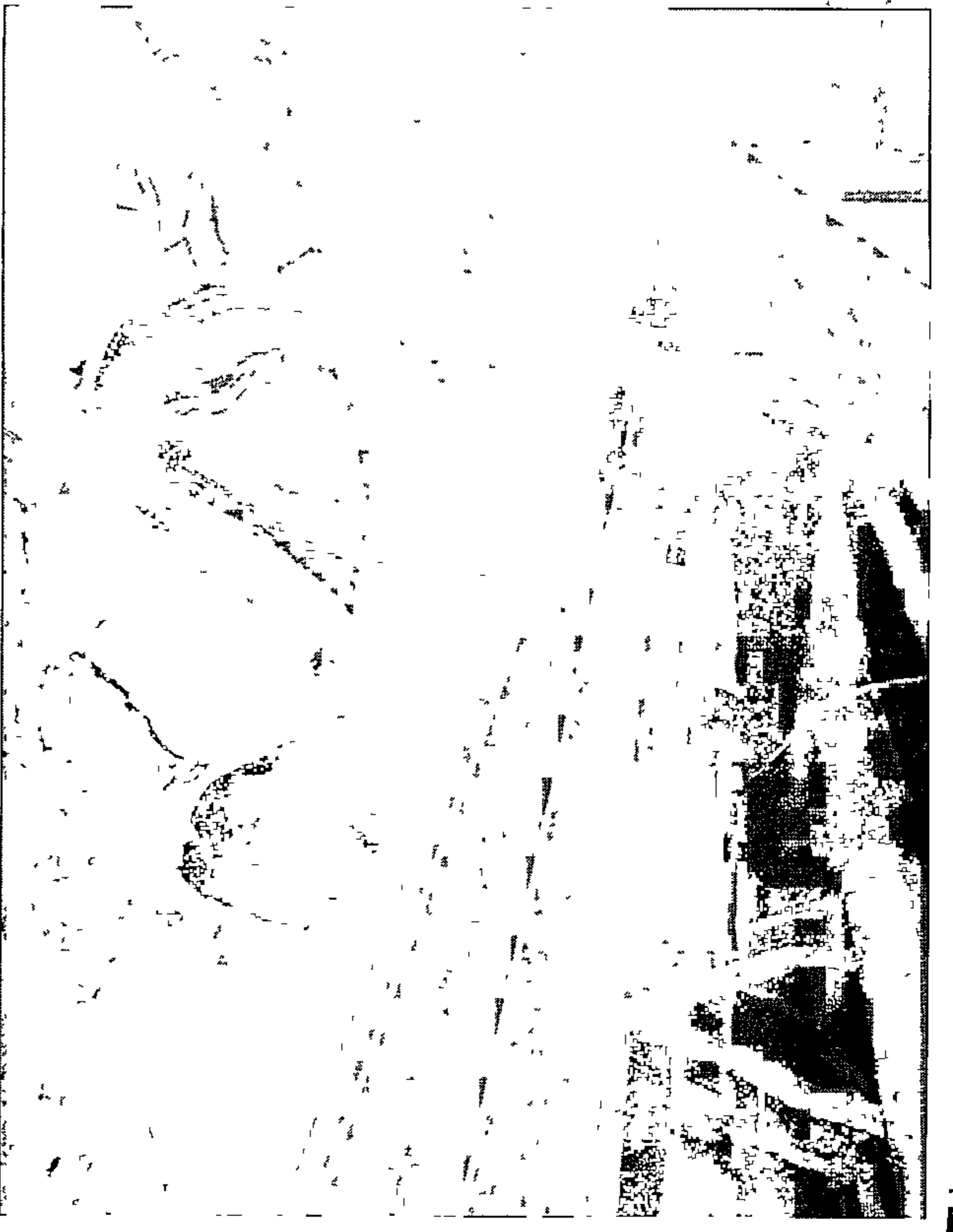
This is a major breakthrough for the truth commission and is the first crack in the SADF's denials of any human rights abuses or participation in "third force" violence which at the time threatened the transition to democratic elections

Investigators at the truth commission would neither confirm nor deny the breakthrough this week. But the *Mail & Guardian* has established that the approaches about amnesty have been made by mostly black members of the disbanded battalion, and a major announcement can be expected before the cut-off date for amnesty in two weeks' time

The 32 Battalion included many Angolans who had fled to Namibia when the Portuguese abandoned their colony and the Marxist MPLA took over in Luanda. The men who had fought against the MPLA were absorbed into the SADF, but operated very much as a separate unit in covert operations against their countrymen in Angola and later against Swapo in Namibia

Unita's battlefield successes were often attributed to the logistical and physical support given by 32's unconventional fighters, many of whom became devoted arms bearers for their white officers

Many of them were later transferred to, or volunteered for service in the



**Wanton killing. Hundreds died in the wild violence on the Witwatersrand's rail network**

PHOTO AP

Civil Co-operation Bureau (CCB), the SADF's covert operation which operated mostly outside South Africa

After 32 Battalion was disbanded, members were redeployed into the new South African National Defence Force while others joined their former white officers in Executive Outcomes, which helped the MPLA to defeat Unita. Some of them are now deployed by Executive Outcomes on behalf of the government of Sierra Leone. A few have returned to Angola

After the CCB was disbanded, many of the white officers received huge payouts, but the black members, mainly from 32 Battalion, were abandoned. They were finally secretly paid out a proportion of what they claimed they were owed after their commander, Joe Versler, took court action against the

former government

In 1992, as train violence was terrorising millions of Highveld commuters, ANC leader Nelson Mandela claimed the random killings were part of the vortex of "third force" strategies. It remained the unsolved mystery of the early 1990s, and it was this episode in South Africa's spiralling violence which finally nudged the mainstream press to take on board the possibility of the existence of a "third force"

When Transvaal Attorney General Jan D'Oliveira returns from an overseas visit next week, he will decide if he is going to initiate any prosecutions of high-profile cases before the courts go into Christmas recess, or whether he will wait for confirmation that the final cut-off date for amnesty applica-

tions remains December 14

The M&G understands D'Oliveira is in a position to prosecute scores of high-profile cases, including some involving senior former members of the SADF, but will wait to see who applies for amnesty before committing tight legal resources to drawing up prosecution indictments

The carrot-and-stick strategy which has emerged in Gauteng has eluded Kwazulu-Natal, where almost no one involved in human rights abuses has come forward for amnesty

Truth commissioner Richard Lyster said this week there was a direct connection between Kwazulu-Natal Attorney General Tim McNally's decision not to prosecute hit-squad cases and the few applications for amnesty

ASKARIS LINKED TO GUGULETU SEVEN KILLING

# Vlakplaas network in W Cape exposed



TO HELP ME: Retired Lieutenant Colonel Dolf Odendal being sworn in



TO SWEAR: Superintendent William Liebenberg takes the oath

PICTURES: BENNY GOOL

**THE AUDIENCE** threw objects at subpoenaed policeman after a police video was screened during yesterday's Truth and Reconciliation hearing into the deaths of the Guguletu Seven. **ROGER FRIEDMAN** reports.

(252) CT 29/11/96

**V**LAKPLAAS operatives were often deployed in the Western Cape from 1985 to deal with "difficult terrorists" local police were unable to "sort out", and were centrally involved in the killing of the Guguletu Seven, it emerged yesterday.

The former commander of the Cape Town security police's "Terrorist Tracking Unit", Superintendent William Rudolph Liebenberg, told the Truth and Reconciliation Commission in the city that Vlakplaas was involved "on a regular basis".

Vlakplaas involvement began when cases could not be "sorted out" locally and an appeal for help was made to security police headquarters in Pretoria.

Liebenberg had been subpoenaed — with eight of his colleagues — to give evidence or answer questions at a special public hearing on the 1986 massacre, and was rigorously cross-examined by a panel of commissioners, including lawyers Mr Dumisa Ntsebeza and Mr Dennis Potgieter.

His evidence followed the screening of a police video of the scene of the shooting, which included close-up footage of the remains of the dead — some of whom, it has been alleged, were executed in cold blood.

The video caused several family members of the victims to break down in tears. During the confrontation objects were thrown from the audience at some of the subpoenaed

policemen, who then walked out the auditorium and took shelter in a press room.

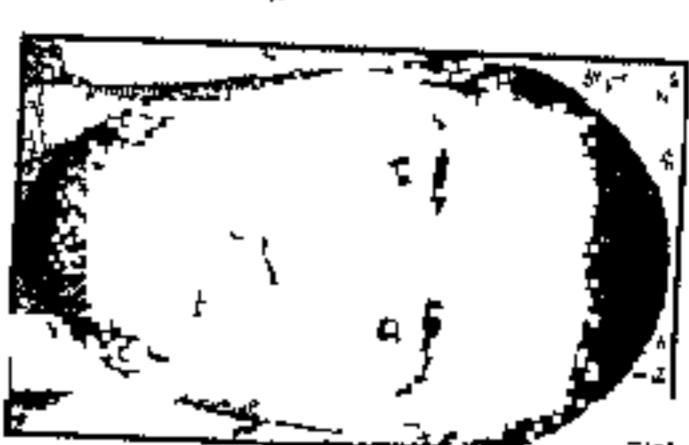
The Guguletu Seven were Christopher Piet, Zola Alfred Swelani, Godfrey Jabulani Mitya, Zabonke John Komle, Themba Mhifi, Zenith Mjobo and Mandla Simon Mxunwa.

During cross-examination Liebenberg revealed that the two "sources" referred to in his evidence as having infiltrated the KTC-based African National Congress cell — which included the Guguletu Seven — were in fact askaris (turned ANC cadres) from Vlakplaas.

He also said that a Sergeant W R Bellingan and a Constable Thabalo Johan Mbele — whom he placed at the scene of the massacre — were also from the farm; that Bellingan was the two askaris' handler, and that he "presumed" Bellingan reported directly to then-Vlakplaas boss Eugene de Kock.

But Liebenberg said he could not remember if any other Vlakplaas operatives took part in the operation that culminated in the massacre on August 3, 1986 — although "there were others operating in the Cape". The security police C1 unit, which acted as a base for hit-squads, was housed at the farm Vlakplaas.

"I did not know what or where Vlakplaas was at that time. According to my information Sergeant Bellingan was stationed at security police headquarters in Pretoria. The word Vlakplaas and the



place Vlakplaas only recently came to light. We did not use the name Vlakplaas or the word askari, we called them 'rehabilitateds'," said Liebenberg, his foot tapping furiously under the witness table.

Liebenberg commanded a unit based at Koebeg "for tracking foreign-trained terrorists".

He did not rule out that the Guguletu Seven were led into an ambush "I can say with all honesty here that there was no plan by us to ambush them, and if any such plans were made we were not informed". Liebenberg said the askaris infiltrated the Guguletu Seven's cell in February 1986, and informed the police that the "guerillas" planned to attack a police bus at the intersection of NY1 and NY111 in Guguletu early on March 3.

The seven could not be captured before that because, the askaris allegedly said, they were not sleeping at the same place each night.

But in the days before the attack Liebenberg lost contact with the askaris.

At a planning meeting hours before the attack — attended by Liebenberg, then-head of the riot unit Major Dolf Odendal and Bellingan — "our big problem was that the sources made contact with us so long ago, we did not know whether to proceed or not".

It was evidently decided to proceed with the operation to "arrest the terrorists".

"The plan was to have so many people there that it looked like a massive operation and would discourage them from shooting".

Odendal said he had "no knowledge whatsoever" of the involvement in the Guguletu Seven killings of Vlakplaas operatives.

"As far as I can remember members were instructed to prevent the

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CT 29/11/92

# Policeman: 'We were used'

ONE of the policemen involved in the shooting that killed the Guguletu Seven reacted with apparent anger and dismay to revelations by a colleague that Vlakplaas operatives were involved.

Senior superintendent Johannes Kleyn, one of nine policemen subpoenaed to give evidence on the incident to the Truth and Reconciliation Commission yesterday, told

the commission, he had discussed the revelations with his fellow-subpoenaed policeman Senior Superintendent Leonard Knipe and if they were true "we were used as pawns". Kleyn said he did not know of any Vlakplaas involvement until yesterday. "It is tragic if it is true, but you must remember I was attacked (with a grenade)

# Commission calls sergeant

ONE of the Vlakplaas operatives implicated in the deaths of the Guguletu Seven at yesterday's hearing has been served with a subpoena to appear before the Truth and Reconciliation Commission.

He is Sergeant Thabelo Johan Mbelo, a member of the Criminal Intelligence Service based in the Free State. Mbelo must appear on December 6 at

an in-camera inquiry to give evidence and/or to answer questions on the August 1986 shootings.

He was implicated during cross-examination of Superintendent William Rudolph Liebenberg, the former head of the Cape Town security police's "Terrorist Tracking Unit". Liebenberg now commands the Cape Town detective branch.

# Witnesses get death threats

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Sametari 29/11/96

By Russel Molefe

**T**HE Truth and Reconciliation Commission is to investigate death threats against some of the witnesses who yesterday related how their relatives were brutally killed during the political violence that engulfed Tembisa on the East Rand in 1993.

Miss Phumzile Ntombane told TRC commissioners that she had received a telephone call from an anonymous caller warning her that if she gave testimony about the killing of her brother Vusi, who was a member of the African National Congress' military wing Umkhonto we Sizwe, she would be killed.

Commissioner Mr Hugh Lewin warned that threats would not be tolerated and anyone found responsible would be dealt with severely.

"The TRC was set up unanimously by Parliament, which represents all the people of South Africa. We function independently and we will not allow ourselves to be intimidated.

"We are going to make sure that this kind of incident does not happen again. Those responsible will be dealt with severely," Lewin said.

Ntombane said her brother was killed by a Mr Eli Khumalo, apparently in retaliation for an attack on his (Khumalo's) house.

"Earlier that day Samuel Mthlane, who was a member of the self-defence unit in the township, was shot dead by Lucky Khumalo, the younger brother of Eli Khumalo. Vusi went

to guard his body.

"I overheard police in a Casspir talking with Eli Khumalo in Afrikaans and Eli later stated that he was going to kill Vusi. Vusi was killed later that evening as he returned home," Ntombane said.

Lewin assured her that the commission had an investigative unit and that the matter would be thoroughly looked into.

Another witness, Mrs Pauline Mogale, related how she and her three young children had survived an attack on a minibus taxi in which more than 12 passengers were hacked, shot and burnt beyond recognition by a group of hostel dwellers at Vusumuzi Hostel near a BP garage.

"I was with my husband and child in a taxi. As the taxi was approaching the BP garage, we saw a group of about 100 men and we started to scream, begging the driver not to stop.

"But the driver stopped, grabbed his money, opened the door and ran away. The taxi came under heavy gunfire and I hid under the seat," Mogale said.

However, she managed to grab her child and also pulled another man out of the taxi and ran away. As she looked back, she saw the taxi in flames.

"My husband and others were burnt beyond recognition.

At the mortuary I saw human intestines and a heart. Every time I pass that place I remember the attack. The mark where the taxi was burnt is still there, even today," Mogale said.

# TRC: black police fear for lives

(252)

ARG 29/11/96

## *Talks plea to Fivaz*

ARGUS CORRESPONDENT

**Pretoria - Senior black police officials, including former security policemen, are unwilling to appear before the Truth and Reconciliation Commission because they fear for their lives.**

In a letter sent to national Police Commissioner George Fivaz, a group of senior black officials said they feared being killed by white former colleagues if they told the TRC about past atrocities under apartheid.

They also feared being ostracised by their communities if they went public with their past deeds.

The letter says that although white security police managed "processes" in pursuit of apartheid, the field operatives in many instances were black police.

The black officials requested an urgent meeting with Commissioner Fivaz to clear up these issues.

A previous meeting dealing with the TRC and amnesty issues had been ineffective, "as many black officers who might have an interest in the matter were not informed" about the meetings.

The black officials say the police internal process "excludes black people as a target group who might also require assistance from the SAPS"

The previous meeting on November 17 had been marred by the "visible absence of the SAPS top management" and Commissioner Fivaz's absence was cause for concern, they said.

The officials asked Commissioner Fivaz to make a public announcement about new steps concerning black officers.

They feared "reprisals by communities in the event of black members speaking out".

Commissioner Fivaz's spokesman, Joseph Ngobeni, said "Police officials are free to report their concerns or fears to the TRC, as the issue of amnesty is dealt with by the TRC."

Commenting on the request for a meeting with Commissioner Fivaz, he said "The SAPS does not do things according to race and colour any more."

"Legal advisers have met members wanting to apply for amnesty and workshops are currently being held in all the provinces to further spread information at ground level."

Director Ngobeni said proper channels existed within the police through which black officers could have their fears addressed.

See page 5



# Grenade blast at Guguletu recalled

## Policeman admits statement on action 'contained falsehoods'

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MIN YIELD  
THE TRUTH COMMISSION

policeman who had a hand grenade thrown at him during the Guguletu even incident in 1986 has told the Truth Commission he would feel "abused" if the police action proved to be part of a deliberate Vlakplaas "death squad" operation.

He admitted signing a statement about the incident, written by a senior colleague, which contained falsehoods. He had not read it before signing but a later statement he had written himself was accurate.

Johan Kleyn, now station commissioner at Mitchell's Plain, told the "special vent" hearing yesterday that he was a captain in the Peninsula murder and robbery unit at the time of the incident in which seven young African National Congress guerrillas were shot dead by police.

He had found out only at the hearing about the Vlakplaas operatives and said it would have been "very, very tragic" if some of the guerrillas had been executed during the police operation, as suggested

by evidence to the commission.

"If this really happened, we will feel so abused," he said.

Director Kleyn said he was the leader of a three-man "stopper" group about 400m from an intersection where, an informer had told police, guerrillas planned to attack a police minibus transporting clerical staff to Guguletu police station.

The attack did not materialise, but soon afterwards the three detectives saw a group of five "suspicious-looking" men near the alleged ambush point.

He said he jumped from his car to confront the men, but before he could do anything one of them threw a grenade at him.

"I dived and stayed flat on the ground. I didn't have any idea where the hand grenade landed and, after what seemed like an eternity, I turned and looked in the direction of the intersection.

"The hand grenade exploded about three metres from me. Considerable shooting broke out almost immediately."

Director Kleyn said he then fired with his 9mm service pistol at the man who had thrown the handgrenade.



Subpoenaed policemen: from left, William Liebenberg, Cornelius Oerndal, Andre Grobbelaar, John Stierenberg, Bertrum Moggjee, Johan Kleyn and Leonard Knipe

LEON MULLER

# Fivaz to meet black police who fear for lives over TRC

(252) ARG 30/11/96

Pretoria - Police commissioner George Fivaz has said he intends to meet black police members who fear white reprisal if they testify before the Truth and Reconciliation Commission.

Mr Fivaz will also contact commission chairman Desmond Tutu to discuss how to deal with the matter.

"Utilising secure channels and mechanisms . . . which would neutralise the obstacles to them approaching the TRC should be a priority," he said in a statement.

Mr Fivaz confirmed reports that he had received a letter on behalf of concerned black SA Police Service members.

"This letter follows my recent public appeal to all serving SAPS members - irrespective of race - with knowledge of human rights abuses to approach the TRC

"Naturally nothing should be allowed to stand in the way of any such official who wishes to approach the TRC."

Mr Fivaz said the claims should be viewed seriously, and the matter should be dealt with without hampering personal relations in the police service.

He said proposals to this end had been made and were now being investigated.

"I now intend inviting the concerned black police officials to a meeting with me as soon as possible."

Senior black police officials, including former security policemen, reportedly expressed fears of being killed by their white former colleagues if they appeared before the commission. -

Sapa

# Malan trial: Why the State failed Lawyers say incompetence, deception to blame

OWN CORRESPONDENT

Two prominent human rights lawyers have pointed to what they perceive to be fatal flaws in the way the trial for former defence minister Magnus Malan and his co-accused was conducted.

They believe the prosecution, led by KwaZulu Natal Attorney-General Tim McNally, made a number of serious errors. Further, the authors contend the court itself failed to play a sufficiently proactive role, which it could have done. Mr Justice Jan Hugo presided over the trial.

The lawyers are Howard Varney, convenor of the Investigation Task Board which did the groundwork that led to the State's case, and Jeremy Sarkin, Associate Professor of Law at the University of the Western Cape and national chairman of the Human Rights Committee of South Africa.

They critique the Malan judgment in an article that will appear in the December edition of the South African Journal of Criminal Justice.

Mr Varney and Mr Sarkin say the case - *S v Peter, Msane and nineteen others* - was the most significant trial of politicians and security force members for apartheid crimes.

They say the result of the trial - the acquittal of all the accused - will have major consequences for the criminal justice system, the Truth and Reconciliation Commission and attempts to end the cycle of impunity for criminal acts.

Equally serious, say Mr Varney and Mr Sarkin, is the fact that the result of the trial has strengthened the opinion of many South Africans that the existing system of criminal justice is deeply flawed because of its heritage as an apartheid institution.

In the article, they say a number of factors contributed towards the acquittals

unlikely to mislead a court, where evidence was tested "by documents or by cross-examination." But Mr Varney and Mr Sarkin say that deception on a spectacular scale is precisely what occurred.

The case arose from the massacre of 13 people at the home of United Democratic Front activist Victor Ntuli at KwaMakhutha, south of Durban, in January 1987.

The massacre took place in the context of increasing rivalry and bloody conflict in KwaZulu Natal between Inkatha, led by Chief Mangosuthu Buthelezi, and the UDF, which was aligned to the ANC. The court made the finding that "There can be little doubt that the deceased at KwaMakhutha were gunned down by people who were members of the trainees recruited by Inkatha and trained in the Caprivi."

According to military documentation, this training and deployment followed requests from Chief Buthelezi for a paramilitary capacity, with an offensive component, "to act against the ANC." The response of the government was Operation Marion, which involved the SADF training and giving ongoing support to a paramilitary unit.

## 'It has left many South Africans feeling that the legal system is deeply flawed'

Mr Varney and Mr Sarkin say it is evident from the documents that the offensive paramilitary capacity of Operation Marion was cleared at the "highest political level." General Malan, then minister of defence, was tasked by the State Security Council (SSC) with supplying the top secret paramilitary support. The project was managed by the Directorate of Special Tasks.

The picture presented by investigators to the Attorney-General was a simple one. Chief Buthelezi requested a paramilitary capacity with an offensive component, the State Security Council authorised the military to supply such a capacity, and the SADF executed the plan. The Investigation Task Unit



Opponents: Magnus Malan and KwaZulu-Natal Attorney-General Tim McNally

As was eloquently argued by defence counsel, if the State conceded that Chief Buthelezi had requested nothing unlawful, and if the State conceded that the SSC had authorised nothing unlawful, it could hardly argue that the military's execution of the same plan was unlawful.

There were two key sources of evidence before the court - the documentary evidence and the oral evidence of witnesses. The documents before the court set out the purposes behind Operation Marion and provided excellent corroboration for the oral evidence given by accomplices who were called as State witnesses. Mr McNally, however, failed to call key witnesses who he believed to be unreliable.

Although the accomplice witnesses performed poorly in court, it was quite evident from the doc-

ument sent a case for liability based on foresight. The court criticised the Attorney-General for raising the question of foresight in passing in his closing argument. Yet the court itself failed to focus any attention on this central aspect. Given that the court directed numerous questions to the accused on other points of clarification, this was a remarkable omission.

The fact that unlawful conduct was foreseen was apparent from the earliest documents, in which the military warned that indemnity from prosecution was required. That the Caprivi trainees would use their deadly skills proactively against their political enemies was more than apparent from the evidence. Yet the court failed to see this.

## 'The military's greatest deception occurred in the Durban Supreme Court in 1996'

Judge Hugo even described the training in the Caprivi as no more sinister than the training of guards for an agricultural society. Astonishingly, the court failed to appreciate certain basic facts which were common cause and which made such a comparison incomprehensible.

Mr Varney and Mr Sarkin say the court found the evidential probabilities were in favour of the defence version. In so doing, it drew conclusions and made specifications that were in themselves highly improbable. The court found that the accomplice witnesses "must have had backing from somewhere. The question is from where or from whom?" The court made no attempt to answer this question. The only version before the court was that the backing came from the SADF's Directorate of Special Tasks.

The defence claimed the massacre was a "private frolic," a theory the court dismissed. Under the circumstances, it was quite remarkable that even if the court was unable to link the accused beyond a reasonable doubt to the massacre, it did not find that the backing must have come from the

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SADF and Inkatha

The court accepted the defence contention that since the attack in KwaMakhutha did not accord with the precision of a military operation, that it was unlikely the SADF had anything to do with it. The State, however, did not claim it was a military exercise, but rather an action of Inkatha supported by the military.

This modus operandi was consistent with the documents and in line with classic counter-revolutionary warfare principles adopted by the South African state in the 1980s.

The argument of the military and Inkatha accused was that the purposes of Operation Marion were entirely protective and lawful. The defence claimed that the only reason for keeping the operation secret

was to protect the political image of Chief Buthelezi and to prevent a connection being made between the state and the support provided to Inkatha. The court accepted this version, although it was highly improbable. If only lawful and protective services were being provided, there was no reason why this could not have been done openly.

In conclusion Mr Varney and Mr Sarkin say the acquittal of General Malan and his colleagues reflects the on-going crisis in the criminal justice system. They say the fact the Malan case was wrongly decided suggests the criminal justice system is ill equipped to handle cases of this nature and makes a strong argument for the setting up of specialised prosecutorial teams.

Judge Hugo's claim that the testing of evidence in court prevents those trained in deception from successfully exercising their skills, did not prove to be true. The military's greatest deception was not practised on the battlefield or in the political arena of the apartheid era, it occurred in the Durban Supreme Court in 1996.

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Serious errors by the prosecution included its failure to maximise the evidence available to it, its exclusion of crucial elements of the conspiracy from its presentation, its failure to present documentary evidence coherently and systematically, its failure to call key witnesses, and its failure to raise key aspects of the case

The authors contend that the court did not play a sufficiently pro-active role. Although South Africa has a system in which the opposing parties are adversaries in court, the role of a criminal court is not one of a mere referee, as in a civil court.

The court was alert enough to see that the prosecution had fallen short in key aspects and it was highly critical of the prosecution. Nevertheless, the court failed to apply its own mind to these matters and failed to intervene where the interests of justice required it. The court also failed to pay sufficient attention to evidential detail and to critically analyse the documents in relation to the oral evidence. This shortcoming led the court to draw certain conclusions which were highly improbable.

The authors say that, among other findings, Judge Hugo stated that while the military had carried out deceptions in the course of its work, officers would be

recommended that there was sufficient evidence to prove murder and conspiracy by members of the military and Inkatha beyond a reasonable doubt.

It was accordingly recommended that criminal cases be brought against the 20 accused.

It was suggested that although there was a case against Chief Buthelezi and members of the SSC based on inference and by reference in the documents, their prosecution ought to be considered at a later stage after further evidence had come to light.

Nonetheless, the part played by Chief Buthelezi and the SSC in Operation Marion was central to the charge of conspiracy. Despite their necessary implication in the conspiracy, the Attorney-General excluded Chief Buthelezi and the SSC from his description of the conspiracy.

In his presentation to the court, Mr McNally ascribed innocent roles to Chief Buthelezi and the SSC members, even though he acknowledged they had played key roles in Operation Marion. From this moment on, the case began to crumble.

uments that the "offensive" capacity requested and supplied was intended in its primary attacking meaning. The authenticity of the documents was not challenged.

Mr Varney and Mr Sarkin say references in the documents clearly illustrate the unlawful intention behind Operation Marion. Proving the unlawful intention should have been elementary. But the Attorney-General tied the cut-off date of the conspiracy charge to the incorporation of many of the trainees into the KwaZulu Police in

June 1989. This was notwithstanding the fact that many of the most incriminating documents were produced after this date.

The failure of the prosecution to present a thorough analysis of the documents permitted them to be seen separately from the oral evidence. Only two passages in the documents appeared to be favourable to the defence version. One contained a reference to the offensive capacity and the other a reference to Chief Buthelezi's intentions. The State failed to place these passages in context.

***'The court failed to acquaint itself with the detail in the documents'***

# TRC staff struggles to cope with flood of amnesty-seekers

(252) ARG 12/96 #12/96 30/11/96  
Johannesburg – The Truth and Reconciliation Commission's amnesty committee has been overwhelmed by amnesty applications and its staff cannot cope, said chairman Desmond Tutu.

The archbishop told a media briefing in Johannesburg yesterday that a task group headed by commission deputy chairman Alex Boraine was investigating the problem and would propose solutions.

"We have already resolved to supplement the (amnesty committee's) staff with three senior appointments," Archbishop Tutu said.

These would be an executive secretary,

an additional leader of evidence and an extra secretary.

The committee had so far received about 3 500 amnesty applications and more were expected as the December 15 cut-off date approached. So far hearings have been held for 47 applicants.

About 800 applications have been referred back to the applicants because they did not disclose a political motive for their crimes.

About 100 have been referred back for more particulars, about 200 because the acts fall beyond the cut-off date of December 6 1993 and about 500 because the acts fall outside the ambit of the Promotion of

National Reconciliation Act

Archbishop Tutu said the commission was still waiting for the Cabinet to set a date for a discussion with the commission on a proposal that the cut-off date for amnesty be extended to May 10 1994.

Archbishop Tutu encouraged security force members to apply for amnesty.

The Promotion of National Reconciliation Act specifically envisaged amnesty for members of the security forces for bona fide actions carried out in the course and scope of their duties and under authority, he added.

"People who do not apply for amnesty do so at their own peril" – Sapa

TRUTH COMMISSION

# ABERRANT COMMISSIONERS CALLED TO ORDER

PM 29/11/96

(252)

**T**ruth & Reconciliation Commission chairman Desmond Tutu has ordered his commissioners to desist from making statements which contradict the commission's oft-repeated commitment to even-handedness. His exhortation — described by the prelate as "almost a presidential decree" — comes after complaints about the demeanour and utterances of commissioners at hearings in East London and Maritzburg.

Tutu's intervention is welcome, unfortunately it may be too late. The commission is already perceived by a substantial segment of public opinion as politically partisan. It is widely, though not universally, seen as pro-ANC or, more disparagingly, as an extension of the ANC.

Former President P W Botha has described it as a "witch-hunt" against Afrikaners. While there may be debate about whether it is anti-Afrikaner or pro-ANC, his view cannot be dismissed as the paranoia of a disgruntled politician. His perceptions of bias are echoed across a wide political spectrum, stretching from Constand Viljoen's Freedom Front through Mangosuthu Buthelezi's Inkatha to Tony Leon's Democratic Party.

Judging from televised footage on and reports of the hearings at East London — where the commission heard evidence from the National Party and General Johan Victor on the Bisho massacre of September 1992 — the commissioners behaved, at times, like commissars. They gave the impression that their purpose was not to discover the truth but to hector witnesses into confirming their version of the truth or, failing that, to admonish them for failing to do so.

Thus after NP secretary-general Roelf Meyer submitted a carefully considered and well-researched document on the Bisho massacre, he was chastised by commissioner Bongani Finca for regurgitating "the same denials, the same selective choosing of facts, the same propaganda we heard under apartheid."

Meyer, while not exonerating the Ciskei government for the massacre which ensued when its soldiers opened fire on ANC protesters, laid a portion of the blame for the tragedy on the "irresponsible and reckless" ANC leaders who led the march, including Deputy Defence Minister Ronnie Kasrils. He

quoted from the Goldstone Commission's report on the bloodbath in support of his conclusion.

Finca, however, apparently wanted Meyer to cry *Mea culpa*. His critical attitude was, judging from media reports, singularly absent when Kasrils and former ANC secretary-general Cyril Ramaphosa testified during an earlier session on the events of that tragic day.

Victor, who served as Ciskei police commissioner at the time of the killings, was attacked by commissioners Pumla Gobodo-Madikizela and Mapule Ramashala for being without remorse and accused of cold-hearted callousness. He had been asked whether he had a message for the relatives of the 28 marchers who were killed on that day. He replied "Once you choose your leaders, see that they act responsibly."

At a separate hearing in Maritzburg, Inkatha leader David Ntombela was heckled by the largely pro-ANC crowd when he refused to testify because of his belief that he would not get a fair hearing.

He charged that one of the commissioners, Ilan Lax, had been involved on the ANC's side during the "seven-day war" in 1990 outside Maritzburg between ANC and Inkatha cadres. The purpose of the hearing was to establish "the truth" about the war. Ntombela objected, too, to being described as a "well-known warlord" by commission media spokesman Mdu Lembede.

A statement was read on his behalf by his lawyer, a move which so incensed the crowd that Ntombela had to be escorted from the hall by armed police. Ntombela, who has been working with his ANC counterpart in the Natal Midlands, Sifiso Nkabinde, to restore peace in the region, remarked afterward "Only God knows what will happen to the peace process now."

These events do not inspire confidence that the commission is involved in a dispassionate search for truth, particularly in the context of earlier reports of commissioners switching off microphones when witnesses told of torture and brutality in ANC detention camps during the armed struggle. Commissioners who give vent to their prejudices are mirroring SA in the murky past, not liberating us from it. ■



# State agrees to pay for legal expenses

Kevin O'Grady

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BD

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1996

APPROVAL has been granted for members of the SA National Defence Force and former members of the non-statutory forces, the SA Defence Force and the SA Police to obtain legal representation at state expense if they choose, or are subpoenaed, to appear before the truth commission.

SANDEF spokesman Col John Rolt said yesterday the approval stemmed from a successful application to the Transvaal Supreme Court earlier this

year by former SADF chief Gen Jannie Geldenhuys in which he asked that government be forced to make a decision on the matter

Rolt said that in terms of the court decision, there were three categories of people affected by government's decision to approve state-paid legal representation. These were people employed by the state in the SADF, the SAP, or other state departments before April 27 1994, members of liberation move-

Continued on Page 2

## Expenses

Continued from Page 1

ments before the same date, and private individuals

Those in the first category, who were employed by the state, were entitled to legal representation by the state in terms of provisions in the State Attorney's Act, Rolt said

Those in the other categories could be represented by the state attorney if,

in his opinion, to do so was in the interests of the state, or they could have legal representation appointed on their behalf by the commission in terms of the Promotion of National Unity and Reconciliation Act

Rolt said the state attorney had prescribed fees and certain limitations on the legal representation, but details of these could not be obtained yesterday.

Commission spokesman John Allen said he was unable to comment on the development until the commission received final details from government

## SANDF to pay costs of members subpoenaed to appear before TRC

By **NORMAN CHANDLER**  
Defence Correspondent

The South African National Defence Force has decided to pay the costs of any of its members who are subpoenaed to appear before the Truth and Reconciliation Commission

This follows a decision handed down

*Star 2/12/96 (252)*  
by the Transvaal Supreme Court in Pretoria last week after an urgent application was brought by a former chief of the South African Defence Force, General Jannie Geldenhuys, to force the Government to take a decision on the issue

In terms of the court ruling, the court order applies to people who were employed by the SADF, the South African

Police or other state departments before April 27 1994

People who were members of liberation movements before that date or private individuals can also be represented by the state attorney if it is in the interests of the state

The TRC is also empowered to appoint legal representatives



# Amnesty deadline turns up the heat

(252) ET 3/12/96

## OWN CORRESPONDENT

**JOHANNESBURG:** With the deadline for applications only 12 days away, the Truth and Reconciliation Commission is seeking an urgent meeting with leaders of political parties to urge them and their followers to apply for amnesty.

The meeting is expected to take place this week.

The commission is concerned that political leaders and their supporters do not fully understand the implications of their failing to apply for amnesty for what they may consider to have been legitimate actions.

Perpetrators of human rights violations have until December 14 to hand in amnesty applications.

With the exception of former Minister of Law and Order Mr Adriaan Vlok and former police commissioner General Johan van der Merwe, no top political, military or police leaders have applied.

At media briefings last week, TRC chairman Archbishop Desmond Tutu and his deputy, Dr

Alex Boraine, emphasised that former security force members should apply for amnesty even for actions carried out in the line of duty.

Tutu said the Promotion of National Unity and Reconciliation Act specifically envisaged amnesty for members of the security forces for actions carried out in the course of their duties and under authority.

"People who do not apply for amnesty do so at their own peril," he said. "If they are in doubt about whether they can be charged, it is obviously safer for them to apply."

Boraine specifically called on Inkatha Freedom Party leader Chief Mangosuthu Buthelezi to encourage his followers to apply. The TRC has not received any applications from IFP members.

It has asked President Nelson Mandela to consider postponing the deadline to March 14.

Tutu said the commission was also waiting for the cabinet to set a date for a discussion of a proposal that the cut-off date for amnesty be extended from December 6, 1993, to May 10, 1994.

# 'Don't apply for amnesty at your peril'

(2/12) Star 3/12/96

TRC concerned that political leaders and their followers do not understand the implications as deadline nears

BY ROBERT BRAND

With the deadline for amnesty applications only 12 days away, the Truth and Reconciliation Commission is seeking an urgent meeting with leaders of political parties to urge them and their followers to apply

The meeting is expected to take place this week. The commission is concerned that political leaders and their followers do not fully understand the implications of not applying for amnesty for what they may perceive to have been legitimate actions

Perpetrators of human rights violations have until December 14 to hand in amnesty applications. With the exception of former law and order minister Adriaan Vlok and former police commissioner Johan van der Merwe, no top political, military or police leaders have applied yet

Last week TRC chairman Archbishop Desmond Tutu and his deputy, Dr Alex Boraine, stressed that former security force members should apply for amnesty, even for actions carried out in the line of duty - an issue, they said, about which there was still much confusion.

Tutu said the Promotion of National Unity and Reconciliation

Act specifically envisaged amnesty for members of the security forces for bona fide actions carried out in the course and scope of their duties and under authority

"People who do not apply for amnesty do so at their own peril," he said. "If they are in doubt as to whether they can be charged or sued, it is obviously safer for them to apply and we urge them to do so"

Boraine specifically called on Inkatha Freedom Party leader Mangosuthu Buthelezi to encourage his followers to apply for amnesty

**“If people are in any doubt, we urge them to apply”**

The commission has so far not received any amnesty applications from IFP members

The commission has asked President Mandela to consider an extension of the application deadline by

three months, to March 14 next year. However, a postponement of the deadline would require an amendment to the amnesty legislation, which could be effected only when Parliament resumes in February

Tutu said the commission was also waiting for the Cabinet to set a date for a discussion on a proposal that the cutoff date for amnesty be extended to May 10 1994. Currently, only acts committed between March 1 1960 and December 6 1993 qualify for amnesty

# Mamasela lifts lid on more police violations

OWN CORRESPONDENT

252 ET 4/12/96

JOHANNESBURG. Former Vlakplaas policeman and self-confessed killer Joe Mamasela has given the Truth and Reconciliation Commission new details about gross violations of human rights by the police

Members of the commission's investigative unit and commissioners questioned Mamasela for two days in camera, the commission's national director of investigations, Mr Glen Goosen, said yesterday.

"Mamasela made a sworn statement about more than 25 gross human rights violations involving both himself and others. Some of these have not previously been admitted publicly

"Under oath, he further expanded on his activities prior to his recruitment by the security police, the

method of such recruitment and operations conducted by operatives of Vlakplaas, where he was based until 1985," Goosen said.

Goosen said Mamasela had volunteered to provide information and pledged to continue assisting the commission

Present at the discussions were commissioners Mr Dumisa Ntsebeza and Mr Denzil Potgieter and senior members of the investigative unit.

Mamasela has admitted his role in the killing of Durban attorney Griffiths Mxenge and a number of other operations, including the murder of 18 Mamelodi activists after "recruiting" them, ostensibly for training abroad

Some of them were drugged and blown up in a minibus near the Botswana border, and others were shot in a house in KwaNdebele

Sowjetan 4/12/96

# Mamasela cooperates with TRC

FORMER Vlakplaas police operative Joe Mamasela has given the Truth and Reconciliation Commission details of more than 25 gross human rights violations by himself and his former colleagues

Members of the TRC's national investigative unit and TRC commissioners have concluded two days of in-camera discussions with Mamasela, the unit's national director. Mr Glenn Goosen, said yesterday

Some of the violations had not previously been admitted to publicly, he said

Under oath, Mamasela had further expanded on his activities prior to his recruitment by the security police, the method of such recruitment and opera-

tions conducted by operatives of Vlakplaas

Goosen said Mamasela had come forward voluntarily and pledged to continue to assist the TRC. So far he had been cooperating fully - *Sapa*

(252)

# Majority of applications for pardon from those in jail

The State Department announced today that more than 800 applications for pardon were filed last week, a sharp increase over the 200 applications filed the week before. The majority of the applications were from those in jail, according to a spokesman.

The State Department spokesman said that the increase in applications was due to a number of factors, including the fact that many prisoners are now eligible for pardon after serving their sentences. He also noted that the State Department has been receiving a large number of applications from prisoners who are serving life sentences and are seeking a chance to be released.

The spokesman said that the State Department is currently reviewing the applications and will be making a decision on each one in the next few weeks. He added that the State Department is committed to a fair and equitable process and will be working to ensure that all applications are handled in a timely and efficient manner.

The spokesman also noted that the State Department is currently receiving a large number of applications from prisoners who are serving life sentences and are seeking a chance to be released. He added that the State Department is committed to a fair and equitable process and will be working to ensure that all applications are handled in a timely and efficient manner.

Mar 5/11/96

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# Seven categories qualify to be heard by the commission

(252)  
Nov 5/12/96

In terms of the Promotion of National Unity and Reconciliation Act, the amnesty committee "shall grant amnesty" for acts, omissions or offences "associated with a political objective committed in the course of the conflicts of the past"

There are seven broad categories of people who may apply for amnesty for any act or omission which constitutes an offence and which was "advised, planned, directed, commanded, ordered or committed within or outside the Republic of South Africa" between March 1 1960 and December 6 1993

They are

■ Members or supporters of a "publicly known political organisation or liberation movement", who acted on behalf of or in support of the organisation or movement in furtherance of a political struggle waged against the state or another political organisation or liberation movement in conflict with their own,

■ Employees of the state or the security forces who acted in the course and scope of their duties and on express or implied authority against a publicly known political organisation or liberation movement engaged in a political struggle against the state, or against members or supporters of such an organisation or movement. The action had to have been committed with the bona fide objective of countering or resisting the struggle

■ Employees of the state or security forces who acted in the course and scope of their duties and with authority against a homeland government or security force, or

employees of a homeland government who acted against the South African state,

■ Employees or members of a political organisation or liberation movement who acted in the course and scope of their duties and on express or implied authority against the state, a homeland government, or against members of other political organisations or liberation movements in conflict with their own

■ People involved in a coup d'etat or an attempted coup d'etat against a homeland government,

■ People from the above categories who on reasonable grounds believed they were acting in the course and scope of their duty and on express or implied authority, and

■ People who associated themselves with such an act

**A**mnesty will be granted if the application is correctly filed, if the act is found to have had a political objective, and if the committee is satisfied that the applicant has been truthful

If the act for which amnesty is sought is a gross violation of human rights - murder, attempted murder, assault, severe ill-treatment, rape, kidnapping or torture - a hearing will be held. If not - for instance in the case of illegal weapons charges or bombing of an empty building - an applicant could be granted amnesty without holding a hearing

If the act does not relate to a political objective or falls outside the declared period, the committee may refuse amnesty without holding a hearing.

# Floodgates open on amnesty pleas

By ROBERT BRAND

Up to 100 people are phoning the TRC offices daily, says Boraine

(252) Mar 5/12/96

**W**ith only seven working days left to apply for amnesty, the Truth and Reconciliation Commission (TRC) is struggling to deal with a flood of last-minute applications.

Up to 100 people are phoning the commission's offices every day with inquiries about amnesty, according to TRC deputy chairman Dr Alex Boraine. Already, the commission has received more than 3 000 applications.

Thus sudden flood reflects two things as expected, many perpetrators have waited until the last moment before deciding to apply for amnesty and many people, especially members and former members of the security forces, are still confused about whether they should apply for amnesty.

The answer, according to the IRC chairman Archbishop Desmond Tutu, is simple: anyone who is vulnerable to prosecution or liable for civil damages should

apply for amnesty. And this includes members of the security forces who were involved in bona fide military or police operations such as cross-border raids or dispersal of rioters during township unrest.

The Promotion of National Unity and Reconciliation Act, in fact, specifically envisaged amnesty for members of the security forces for bona fide actions carried out in the course and scope of their duties and under authority.

"People who do not apply for amnesty do so at their own peril," Tutu told a media briefing last week. "If they are in doubt as to whether they can be charged or sued, it is obviously safer for them to apply and we urge them to do so."

The act sets out categories of people who may apply and provides a set of criteria to judge

whether an action could be classed as "political", but in practice the only reason to seek amnesty is to avoid prosecution or civil damages claims, or to get out of jail.

In fact this has been the main motivation of almost every person who has applied for amnesty so far. The vast majority of applications are from people serving jail sentences. The only ones which are not are from former or serving security force members who fear prosecution.

The commission's amnesty breakthrough was a direct result of the investigations of Transvaal Attorney-General Jan D'Olivera the five former security policemen who confessed to heinous crimes before the amnesty committee in October did so only because they were about to be ar-

rested and charged for those crimes.

They, in turn, put pressure on many of their former colleagues who had a hand in their crimes. Dozens of other former policemen are displaying a sudden interest in the amnesty process.

Although the commission is not a court and cannot prosecute offenders, Boraine points out that one of the commission's functions is to establish the identity of people involved in gross violations of human rights, and that these people would be named in the commission's final report.

There is nothing to stop attorneys-general from initiating prosecutions against those named in the report - another powerful incentive to apply for amnesty. The commission is hoping the high-profile amnesty cases heard in October and November, together with the uncertainty in the

minds of many perpetrators about whether they may in future be implicated by a former colleague, will lead most perpetrators to apply for amnesty rather than run the risk of prosecution.

But while that would be encouraging in terms of the commission's mandate, it would increase the workload of an already overburdened amnesty committee.

Three new staff members have been appointed to the committee to help ease the burden, and the commission is investigating other ways of speeding up the processing of applications, such as asking for an amendment to the legislation allowing the amnesty committee to split up so that some committee members could hold hearings while others deal with administrative matters.

Even so, the commission has conceded, the committee may not be able to complete its work before the end of next year, when the commission has to wrap up a task group headed by Boraine has been appointed to investigate the problem and propose solutions.

The current flood of applications is partly due to the December 14 deadline for applications. The commission has proposed that this deadline be shifted three months to March 14 next year to give offenders more time to make up their minds. Cabinet has to approve this recommendation before it can be gazetted.

The other issue still facing the commission is the so-called cutoff date for amnesty. Currently, offences committed after December 6 1993, do not qualify. The commission has recommended that this date be shifted to May 10 1994, the day of President Mandela's inauguration.

Again, this is a decision which requires the Cabinet's consent and it has to be legislated by Parliament. This could only happen when Parliament resumes in February next year.

The granting of amnesty to former security policeman Brian Mitchell is not an automatic precedent for other political killers, who will still have to satisfy six strict criteria before they are allowed to walk free, writes CARMEL RICKARD

# The truth may not be enough to set them free

#1 ST15/12/96

WHEN Brian Mitchell, then still a long-term prisoner, asked for amnesty before an audience including many of his victims, it was not only high drama. It was also the Truth and Reconciliation Commission at its best.

The commission and its component committees must ensure that the truth they unearth leads to reconciliation.

Mitchell, a former police officer, planned an attack on United Democratic Front activists at the Trust Feeds settlement in 1988, hoping that the Inkatha Freedom Party would be strengthened as a result. His plan went awry when the wrong house was hit and women and children at a prayer vigil were mown down.

Mitchell's evidence at the hearing left no doubt as to its truth. His emotional plea for forgiveness, and the community's response that they would support his amnesty application if he agreed to work for reconstruction, gave clear promise of reconciliation.

But repentance and community forgiveness are not the criteria by which the amnesty committee makes its decisions. In fact Archbishop Desmond Tutu, who heads the commission, recently emphasised that the law does not require amnesty applicants to express remorse.

"Indeed, you are able to tell the amnesty committee that you are proud of what you did, albeit that it constitutes an offence under law," he said.

Instead of remorse, the amnesty committee looks at whether the applications meet the clearly defined standards laid down in the law.

First, the person applying for amnesty must have been a member of the state security forces or a member or supporter of a "publicly known political organisation or liberation movement." The act for which they are seeking amnesty must have been carried out to further a political struggle and they must make a full disclosure of the relevant facts.

Otherwise, their application will automatically fail.

In deciding whether the act involved was "associated with a political objective", the amnesty committee must consider six factors: the motive in committing the act, the context in which it was carried out, the gravity of the act, its objective and whether it was aimed primarily at a "political opponent" or against private individuals, whether it was carried out with the approval of the organisation supported by the person seeking amnesty, and whether there is suitable "proportionality" between the act and its aim.

A crop of decisions, released this week, throws new light on how the amnesty committee is interpreting the law.

Two of these applications came from members of the Nasionale Socialistiese Partysane, who committed a string of murders and other crimes allegedly to further their political aims.

Their applications were refused, mainly on the ground that the NSP, which consisted of only four people, did not fit the definition of a "publicly known political organisation." The applicants, therefore, did not even get through the door to be considered for amnesty.

They made another attempt to be included in the definition by saying they were supporters "of the rightwing movement as a whole" but the amnesty committee rejected this bid, ruling that the law requires the person being given amnesty to have supported "a definite and identifiable political organisation or liberation movement and not a mere trend or school of thought."

This shows the committee looks closely at the nature of the political organisation which applicants supported. Merely holding extreme racist views, as the two NSP members did, will not be

enough to gain amnesty. Mitchell clearly belonged to the former government security forces and so passed the first test which the NSP members failed. Through the local joint management committee, he had access to secret government documents alleging a total onslaught. He believed it his duty to contain what was presented to him as the UDF-ANC threat in his area, and devised the plan to attack a UDF homestead.

When the amnesty committee worked through their list of criteria, they would have considered the context in which the act was committed. It was 1988 and the height of political conflict between the government, and its allies, and the ANC and its allies.

Next, they would have considered the gravity of the act, clearly such a killing was a very grave matter. The third criterion relates to whether the act was primarily aimed at a political opponent in this case it was directed at ANC-UDF members, who were political opponents of the government at the time. The fact that a genuine mistake was made and that the wrong house was hit, did not detract from Mitchell's intention when he planned the attack.

The committee would have then considered whether he acted with the approval of the organisation to which he belonged. Evidence emerging at the truth commission increasingly indicates the government culture would have encouraged and approved of such an act.

Finally, there is the question whether the act was in proportion to Mitchell's objective. Perhaps this would have been the most difficult criterion to satisfy, but his instructions to hit only males between 16 and 35 who were "involved in the violence in the area" indicated he tried in his planning to keep the attack in proportion to his objective.

Among those closely studying the committee's decisions for guidance about how it will interpret the law must be Clive Derby-Lewis and Janusz Walus, jailed for the murder of SA Communist Party leader Chris Hani.

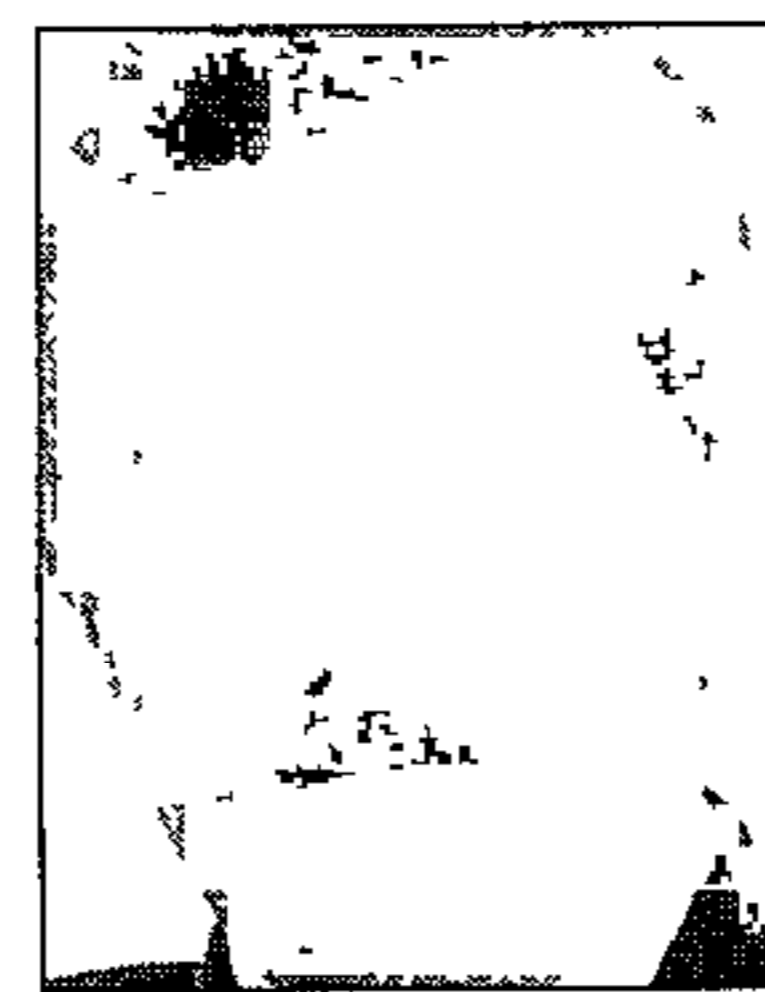
Their approach to the hurdles raised in the committee's decisions will be known only when their application is argued, but it is already clear they face a number of obstacles in satisfying the law.



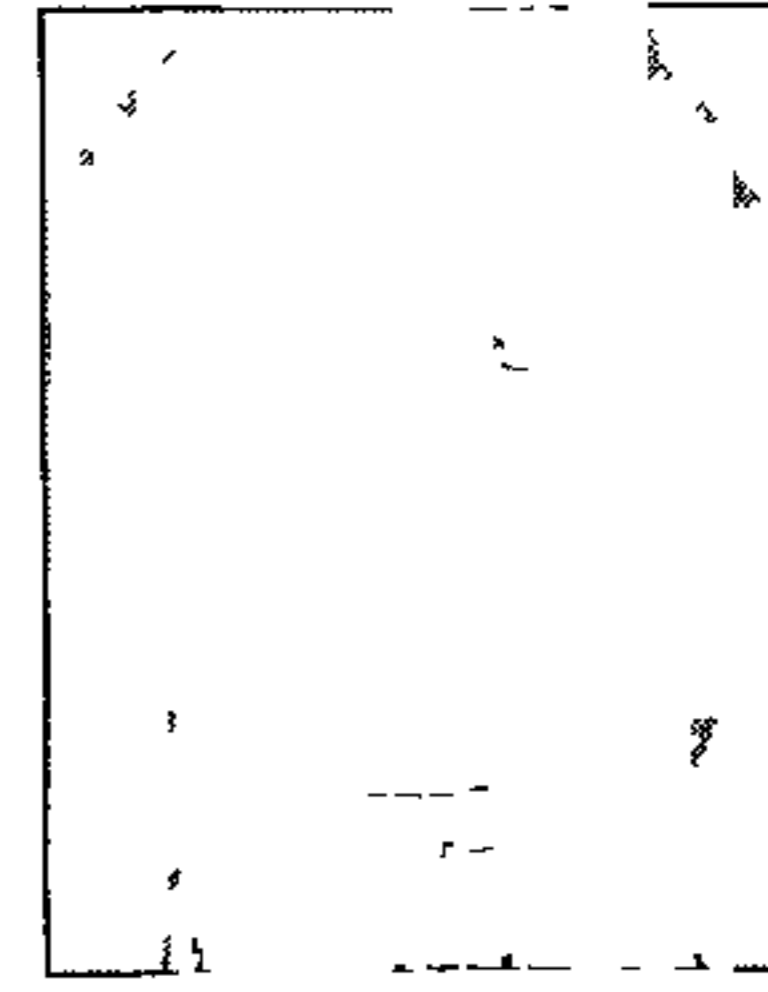
JUSTICE ON DEMAND... ANC and SA Communist Party sympathisers march through Johannesburg after the assassination of Chris Hani in April 1993



BRIAN MITCHELL



CLIVE DERBY-LEWIS



JANUSZ WALUS

simply "following a political trend".

But the most obvious difference between their case and Mitchell's lies in the context, another potentially insurmountable problem. The political climate had changed completely from 1988 when Mitchell planned his attack, with the government and the ANC-SACP engaged in peace talks by the time Hani was assassinated in 1993.

Derby-Lewis's and Walus's alleged motive in killing Hani will become known only at the hearing, but it will be crucial to answer whether the act was "proportional" to their objective.

Perhaps, for example, they expected that killing Hani would result in real revolution. They may have wanted to provoke civil strife by Hani's supporters, compelling the government to use the defence force in reaction, and thus reduce the country to chaos. Or they might have had a far more limited objective.

In either case, they will have difficulty convincing the committee that their target was a "political opponent", since Hani, like other ANC negotiators, had joined the peace process and was no longer a political opponent against whom using violence might have been justified.

Clearly there are fundamental differences between the cases so the Mitchell decision should not unduly raise Hani-killers' hopes. Without prejudging the hearing, it is obvious major difficulties lie ahead for Derby-Lewis and Walus. Persuading the committee that they satisfy the law and should be granted amnesty



# Malan, Van der Merwe at odds over need for amnesty

Stephen Laufer

THE split between the old defence and police forces over amnesty applications to the truth commission widened at the weekend as former senior officers took opposite public positions.

Former SA Police commissioner Johan van der Merwe said yesterday that it would be "very stupid" for anyone involved in gross human rights violations or other illegal acts not to apply for amnesty. He was responding to a call by for-

mer defence minister and SA defence force chief Magnus Malan to soldiers who served before 1994 not to apply to the truth commission for amnesty. Malan was reported in the Sunday newspaper, Rapport, as saying he would not seek amnesty and that former SADF personnel should take their chances with the courts.

Malan's hardline position had the support of two other former SADF chiefs, Gen Janne Geldenhuys and Gen Kat Laeбенberg, and of former SAP commissioner Mike Geldenhuys.

Van der Merwe said it was "irresponsible" to give anyone advice without referring the particular circumstances of the acts they had been involved in to legal advisers. He had asked his legal adviser to examine the details of his activities as head of the security branch and later as SAP commissioner, he said. Once clarity had been achieved on which acts or omissions fell within the commission's ambit, he would apply for amnesty. Amnesty had to be viewed differently if acts by the security forces were

within the law, or the rules of self defence applied, Van der Merwe said, but some acts were of a doubtful nature.

Cross border raids might be sanctioned in international law, but it was generally governments which were indemnified and not individuals. Personnel involved in the raids would have to apply for amnesty or the attorneys-general would be forced to prosecute.

Several members of the Civil Co-operation Bureau, an offshoot of the SADF's special forces which operated as a hit squad, are understood to have

applied for amnesty. But former defence force soldiers have been more reluctant than their police counterparts about getting involved in the process.

The stance taken by Malan, Geldenhuys and Laeбенberg is in contrast to this week's confirmation by Defence Minister Joe Modise that he intends submitting an application before Saturday's cutoff date. It is understood that Deputy Defence Minister Ronnie Kasrils, other former Umkhonto we Sizwe commanders, and several hundred cadres will also ask for amnesty.

15/11-084

applications

# If in doubt apply for amnesty, Tutu urges

(250)

By ROBERT BRAND

With only five days left for people to apply for amnesty, Truth and Reconciliation Commission chairman Archbishop Desmond Tutu has appealed to political leaders to stop confusing their followers about the amnesty process.

"We urge (individuals) to realise that people who do not apply for amnesty may be criminally charged or be liable for civil damages. If they are in doubt it is better to be safe and to apply," he said.

The deadline for amnesty applications is midnight on Saturday. The commission has asked the Cabinet to extend the deadline, but no decision has been taken yet. Presidential spokesman Parks Mankahlana said yesterday that consideration was still being given to allowing Tutu to address the Cabinet on why he wanted it extended to March 14 1997.

Tutu also wants the cut-off for offences for which amnesty may be granted shifted from December 6 1993 to May 10 1994, the day President Mandela was inaugu-

rated.

Tutu's appeal yesterday to political leaders to stop confusing their followers came after public announcements by former defence minister Magnus Malan, former president FW de Klerk and former SADF chief Constand Viljoen that they would not apply for amnesty.

Malan advised soldiers who had served under him to rather take their chances in court. He also said he regarded all military acts authorised by him as legitimate in the course of a battle against the ANC and communism.

This was bad advice, Tutu said. Individuals should apply for amnesty if they had done anything which might result in a prosecution or a civil action.

"The moral quality of the act is irrelevant for the purposes of the Amnesty Committee. To apply for amnesty is not necessarily to admit you have done something wrong. There is no requirement in the law that applicants should express remorse," he said.

Referring to former president PW Botha's statement recently that he would not have to apply for amnesty for the Khotso House bombing be-

cause it was not a "gross violation of human rights", Tutu said this could influence individuals to their detriment.

"Amnesty is not only for those who have committed gross violations of human rights. Misconceptions on this issue can be gravely prejudicial to individuals.

"(Botha's statement) could lead people who were involved in bombings of buildings where there was no loss of life to assume that they need not apply for amnesty."

"Yet the bombing of a building is certainly something that can be the subject of criminal charges."

Former police commissioner Johan van der Merwe told the TRC in October the order to bomb Khotso House had come from Botha. He has denied this.

Tutu said there also appeared to be a misconception that amnesty was only for those who had committed acts which fell outside officially sanctioned orders or policy. In fact, he said, the law specifically made provision for acts carried out by security force members or members of liberation movements.

"We cannot force anyone to apply for amnesty, the process is voluntary. However, we believe our leaders will be squandering an opportunity for putting the past behind them if they do not participate," Tutu said.

**5**  
**DAYS TO GO**  
Phone Johannesburg  
(011) 323-1230  
**TO AMNESTY DEADLINE**

Star 10/12/96

# Killer pardoned

By Shimon Zwane and Sapa

**F**ormer policeman Brian Mitchell was released from Maritzburg Prison yesterday after serving just five years of a 30-year sentence for his role in the 1977 Trust Feed massacre in which 11 people were killed.

Mr Mitchell left the prison with his name widely reported in the media.

Prison official Mr Colin van der Merwe said Mitchell appeared pleased at the news that he had been released on parole by the Truth and Reconciliation Commission.

Van der Merwe said Mitchell was released on Monday night by his lawyer, Mr Eugene Nysschen, who

had requested the amnesty by the TRC. Mitchell was released, though his lawyers, including former security force members who had come under the former apartheid government to apply for amnesty for the massacre.

The amnesty commission said in a statement yesterday that Mitchell was granted amnesty for his role in the killings, which was a political objective.

The application of the amnesty



Brian Mitchell - released

was sentenced to death in April 1992 on 11 counts of murder and to imprisonment for three years on 11 counts of attempted murder.

Part of the court's role was to identify and prosecute those responsible for the 1977 massacre. Mitchell was charged with the murder of 11 people and the attempted murder of 11 others.

ANC spokesman M. Dlamini said Mitchell's release was a reward for his role in the struggle against the apartheid regime. He said Mitchell's release was a sign of the government's commitment to the truth and reconciliation process.

The former apartheid state president P. W. Botha and F. W. de Klerk, the first and last apartheid presidents, were also granted amnesty for their roles in the apartheid system.

ANC calls on those who were involved in the apartheid system to come forward and seek amnesty. The ANC said that the amnesty process is a necessary step towards healing the wounds of the past.

*252 Jonathan 11/12/96*

# Ultimately, the people do the healing

*Prosecution or reconciliation are just frameworks for the process*

ART WILLIAMS

(252)

AS THE TRUTH AND RECONCILIATION COMMISSION HEARINGS HELP SOUTH AFRICA COME TO TERMS WITH THE PAST, GERMANY – AND MANY OTHER COUNTRIES – ARE GOING THROUGH THE SAME PAINFUL PROCESS. DR RALF WÜSTENBERG OF THE PRACTICHES THEOLOGISCHES INSTITUT IN BERLIN AND VISITING PROFESSOR IN SYSTEMATIC THEOLOGY AT THE UNIVERSITY OF CAPE TOWN COMPARES THE SHARED EXPERIENCE OF MOVING FROM AUTHORITARIAN RULE TO DEMOCRACY

the fundamental problem of what to do about the past is not unique to South Africa

Germany has faced it twice in recent history – after World War 2 and again after the fall of the Berlin Wall in 1989 with the reunification of East and West Germany. It has been faced in South America by Argentina, Chile, Uruguay, and El Salvador

It is now being faced in eastern Europe as a consequence of the collapse of the Soviet Union in countries such as Russia, Hungary, Poland and Bulgaria

Looking at the process of reconciliation in South Africa from the perspective of a Berliner, I made a number of striking comparative observations

Firstly, the commission charged with discovering the truth and reconciling this country has an extremely Christian foundation, since most commissioners belong to the church and the term “reconciliation” has religious connotations

cal than positive assessments of the commission’s work so far

As with many issues, it is easier to criticise than to defend. However, one question often has been left out

Is there an alternative to the TRC and the process that the commission enables?

Basically, there are two fundamental possibilities on how to deal with the crimes of the past in the transition to a democratic system, namely, punishment or amnesty

On the one hand, it is argued that the perpetrators of egregious violations of human rights should be prosecuted, because

- truth and justice require it,
- prosecution is a moral obligation owed to the victims and their families,

- democracy is based on the law, and the point must be made that neither high officials nor the military nor the police are above the law, and

- prosecution is necessary to deter future violations of human rights

On the other hand, those opposed to prosecution, in favour of amnesty, counter with the arguments that

- democracy has to be based on reconciliation, on the major groups in society setting aside the divisions of the past,

- amnesty is necessary to establish the new democracy on a solid basis of expertise,

- the crimes of authoritarian officials were justified at the time by the perceived need to suppress dissidents, and

- in many cases, both opposition groups and government forces grossly violated human rights

Let’s focus on a comparison of how South Africa and Germany deal with the



mission in Germany, where the church is in a far weaker position politically, and the secular human rights organisations would be up in arms against the democratic state using religious vocabulary as it tries to deal with its past

Secondly, to push the argument a little further, the interpretation of the conjunction "and" is remarkable. Truth 'and' Reconciliation

Does it mean 'Reconciliation Through Truth', as the editors of the recently published book on the TRC understood it?

The Catholic Church in Germany would be happy about an understanding which requires a deed before actual forgiveness takes place

This is, of course, not what the book is about

Thirdly, to leave the role of the Church side, one is struck by the work of the amnesty committee

How can it be that prominent politicians, who played a leading role in the partheid era go on to receive good pensions, while their victims are given nothing but an opportunity to tell their story and forgive?

It is easy to ask such questions, and the media in South Africa is full of more crit-

Notwithstanding different approaches to bringing the truth to light, it seems evident that both countries chose a "middle way" between the two extremes of prosecution or amnesty

Both the reunified Germany and the New South Africa would agree with the

argument set forth by those who want the persecutors to be punished, "democracy is based on the law"

At the same time both South Africa and Germany felt that "democracy has to be based on reconciliation"

Despite these similarities it is also important to note a difference

The policy behind the TRC is more strongly allied with the position of forgiveness, whereas the German Gauck-Behörde leans toward prosecution

Unlike the Nuremberg Trials after World War 2, which focused basically on persecution and were established by the victors, the Gauck-Behörde was established by the German government in an effort to personalise guilt

How does the unified Germany deal with its past? Unlike South Africa, Germany has not established a truth commis-

sion

People, especially victims, cannot tell their stories. Persecutors cannot apply for

amnesty

Germany, that is to say the Deutscher Bundestag, established the so-called "Gauck-Behörde"

It is named after and headed by the former East German Pastor Joachim Gauck

Unlike the TRC, it is not primarily concerned with people telling stories, but with exposing documents filed in the former Stasi-Zentrale

The Stasi, or "Staatsicherheit", was the secret police force of the East German communist dictatorship and oppressed all those who had democratic views in East Germany, particularly Christians who fought for human rights

The Stasi documents include informer reports, "Spitzelberichte", and "Protokolle", transcripts of interviews of Stasi officers. Friends, relatives and neighbours were used as "Inoffizieller Mitarbeiter", unofficial (secret) workers for the Stasi

Nobody could trust anybody, pupils not their teachers, employees not their employers, neighbours not each other, sometimes even parents not their children

Nobody knew whether or not the person they spoke to worked for the secret force and would report on what they had said

The task of the Gauck-Behörde is to provide the victims of such treachery with the documentation on record about them

Individuals discover who betrayed them, they learn the "truth" about what

was going on

years to see the requested documents

This is as close as the process gets to resemblance to the South African Truth and Reconciliation Commission, to acknowledging victims' rights

Once you are allowed to come forward to read your document, you will sit in a reading room as in a library, supervised but otherwise unsupported and alone, there to see evidence of your past

When finished, you move out of the Gauck-Behörde - that's it

You might have discovered that your friend with whom you went out yesterday once wrote a "Bericht" (report) about you. But what happens then? Nothing. You are left alone

The process of healing has been individualised in Germany. Everyone reads his own story in silence, alone

There is no mediation between victim and informer, no mutual support among victims

Can healing of a nation work, in such isolation? How long shall nations look to the past?

In South Africa the TRC is going to do its work within a certain time limit

There has been discussion in Germany

as to whether or not the Stasi-Akten should be closed after a period of time

Those who have committed crimes which have not yet come to light are quick to say that it is necessary to lay the past behind

So far, Germany has made the wise decision to leave the Stasi-Akten open until everyone who wants to see their documents actually has the chance to do so

Coping with the past cannot be institutionalised

Neither the TRC in South Africa nor the Gauck-Behörde can bring healing to the nation on their own

It is not the institution, but the people that actually bring healing

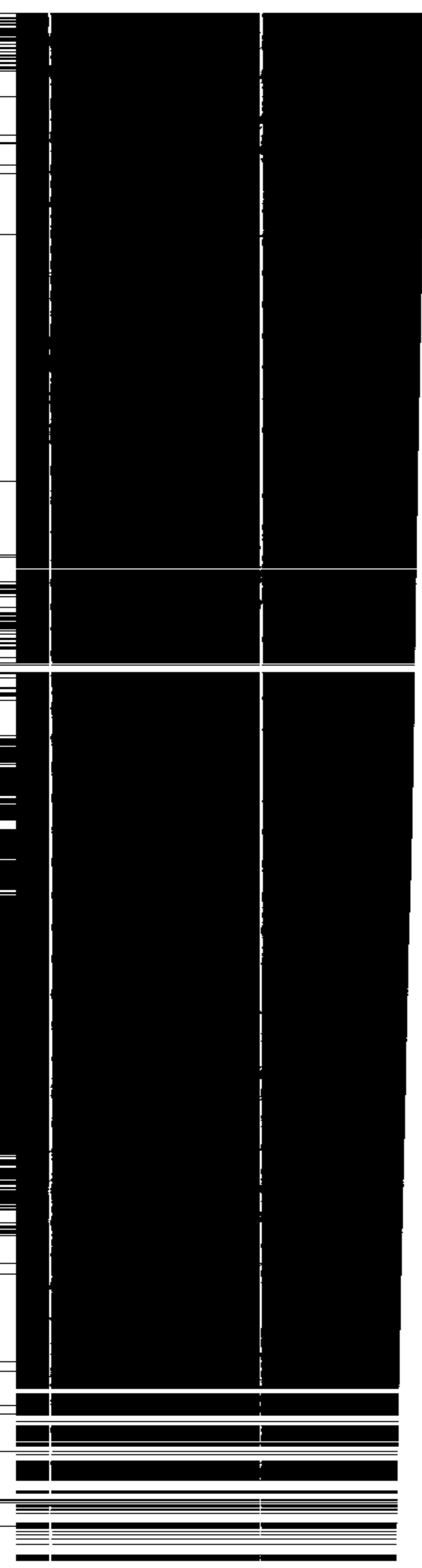
Reconciliation is concerned with human beings and not with institutions. Laws and settlements can only provide the framework in which healing can happen

The task of working through the past is bigger than the TRC or the Gauck-Behörde and will take longer

In both cases, long after the institutionalised processes of discovery are over and the official reports have been published, the real business of healing continues on a personal basis, face to face, at the informal level of home and community

## ***'The policy behind the Truth and Reconciliation Commission is strongly allied with the position of forgiveness'***

## ***'The Gauck-Behörde's task is to provide victims of treachery with the documentation on record about them'***



# Apla top brass, Tutu in amnesty talks

JOSEPH ARANES  
ON THE TRUTH COMMISSION

ARG 11/12/96

(252)

Officers of the high command of the former Azanian People's Liberation Army (Apla) are to meet Truth Commission chairman Desmond Tutu today to discuss the amnesty process.

The delegation will be led by Dan Mofokeng, now a brigadier in the SA National Defence Force

Pan Africanist Congress justice spokesman Khaliphile Sizani said other issues to be discussed included legal representation for amnesty applicants and the cut-off date for amnesty applications

He said Apla, former military wing of the PAC, wanted to explain problems with getting former cadres to apply for amnesty and recording all the facts about their activities

"A number of our campaigns were carried out by people using different names as a precaution to avoid being caught, and it is now difficult to locate them

"We need to speak to the commission about these problems, as we want to affirm that we are part of the truth and reconciliation process and that we will get our members to apply for amnesty," Mr Sizani said

The PAC agreed with the proposal by the TRC to extend the amnesty cut-off date and the deadline for submission of amnesty applications, which expires at



LEON MULLER

**Shake on it:** Archbishop Tutu with Apla commanders Dan Mofokeng, left, and Mosoou Magalefa

midnight on Saturday

■ President Mandela has agreed to hear a final plea on Friday for an extension of the December 15 deadline for amnesty applications, reports Reuter

Presidential spokesman Parks Mankahlana said today that Mr Mandela

would meet a representative of the TRC, Justice Minister Dullah Omar and Freedom Front leader Constand Viljoen

"The president is still not persuaded that he should extend the deadline, but it is his prerogative to make up his mind even on Friday," he said.

# Mitchell vows to serve community he wrecked

ARG 11/12/96

(252)

## *PAC slams 'unjust' amnesty for killer*

ARGUS CORRESPONDENT AND SAPA

**Durban** - Former police captain Brian Mitchell spoke out today as he walked free after being granted amnesty for his role in the Trust Feed massacre.

Mitchell, the first member of the former security forces to be granted amnesty for apartheid crimes, had served four years of a 30-year sentence for murder and attempted murder.

He called on other serving and former members of the security forces who had committed crimes to apply for amnesty and "become part of the reconciliation process".

And he vowed to play a constructive role in rebuilding the Trust Feed community, where 11 people died in an attack in 1988 near New Hanover in KwaZulu Natal.

But the Pan Africanist Congress today attacked the Truth Commission decision

to grant amnesty to Mitchell, calling it "disturbing" and unjust.

In an interview after he left Pietermaritzburg prison with former wife Karen last night, Mitchell described his amnesty as the "greatest Christmas gift imaginable".

He added he had made no immediate plans for the future and would spend a few weeks on vacation with his family before deciding on his future.

Mitchell wanted to continue theological studies, his attorney, Eugene Nysschen, said today. While in jail, Mitchell joined the Rhema Church. He said during his amnesty hearing that he wanted to be an evangelist.

Meanwhile, PAC deputy president Motoko Pheko said in Johannesburg that hundreds of former members of the PAC's armed wing, the Azanian People's Liberation Army, were rotting in South African prisons for their armed anti-apartheid

activities while the perpetrators of apartheid were granted amnesty.

"It is ludicrous and unjust that it is now the people against whom this crime (apartheid) was committed who are imprisoned, and its perpetrators are enjoying freedom and the fruits of their crimes against humanity."

Stiff sentences had been imposed on former Apla fighters.

"This is naked injustice for these victims of apartheid crime," Mr Pheko said.

The Truth and Reconciliation Commission's amnesty committee yesterday said it was satisfied Mitchell's crimes were committed with a political objective and in the course of his police duties.

The committee also took into account that the four special constables who had carried out the killings at Mitchell's command had already been freed under earlier amnesty legislation.

# Truth Commission explains why it freed Brian Mitchell

Full text of the TRC's statement on the granting of amnesty to former policeman jailed for the Trust Feed massacre

(2092) *Star* 11/12/96

On April 30 1992 Applicant was sentenced to death on 11 units of murder and to imprisonment for three years on each of 10 counts of attempted murder

The offences arose out of a simultaneous incident on the night of December 2-3 1988 when the occupants of House No TF83 in the Trust Feed area in the district of Zw Hanover were attacked by armed men. The names of the deceased and the victims will appear hereunder

On April 24 1994 the death sentences imposed on the Applicant were commuted by the State President and a sentence of 30 years' imprisonment was substituted

The Applicant now applies for amnesty for those offences and for further offence of arson which related to the burning down of the house of Mr Mbongwe, which offence was committed at about the same time on the instructions of Applicant

Annexed to his written application are a number of documents which include the judgment of a trial court, presided over by Judge Wilson. The record is 857

pages long

Applicant joined the police force on the December 31 1975. He completed a Diploma in Police Administration towards the end of 1983 and a year later he was promoted to the rank of lieutenant

He was trained to quell or limit unrest situations and had received counter-insurgency training at Milnerskop, which was a counter-insurgency training base for the South African Police.

In 1987 he commenced work as a staff officer at the Divisional Headquarters in Pietermaritzburg

It was at that time that he came into contact with Captain, later Major, Terblanche, who was then the head of Riot Unit 8

The function of this riot unit was the combating of unrest and the maintenance of law and order within the political sense of the word

It was at that time that he came into contact with what was called the Joint Management Committee System which had been set up throughout the country as the government's counter-revolutionary strategy.

He said that political violence had escalated to such an extent that in Natal there was virtually a civil war going on. Many policemen were killed and their homes burnt down

The ANC/UDF was not looked upon as being anti-government or anti-state, but as the enemy. The IFP was regarded as

## Mitchell made 'full disclosure' of the facts'

an ally of the government and was therefore to be assisted in its fight against the ANC/UDF

Applicant says that he soon was made the secretary to the Joint Management Committee in Pietermaritzburg

By virtue of his position he had access to secret government documents which dealt with a counter-revolutionary strategy against the total onslaught which was being conducted by the UDF, which the police regarded as the

internal arm of the banned African National Congress

Part of the strategy of the Joint Management Committee System was to train special constables who would be trained and sent back into their community to act as a physical force or wedge against the activities of the comrades of the UDF

These special constables were attached to the riot units in the national Joint Management System.

The police force was responsible for implementing the government's total strategy

He found the work of the Joint Management System to be very interesting and therefore applied to be transferred to the Security Branch but was persuaded by the divisional commissioner to accept the post of station commander at New Hanover in January 1988

During October 1988 Inkatha youth were attacked by UDF supporters and this incident started the violence in the area. The Inkatha supporters attacked the UDF and vice versa

He found the Inkatha leadership in his area to be weak and vulnerable, needing assistance

He considered it to be his duty to see to it that the UDF/ANC were countered effectively within his area

He discussed the matter with Terblanche who decided to make special constables available to render military and offensive assistance to Inkatha. Terblanche arranged a meeting at Morawa House in Pietermaritzburg

This meeting was attended by Mr Gabela, an Inkatha leader and a youth brigade leader as well, and was addressed by David Ntombela, an important Inkatha leader

It was decided that the special constables would come to Trust Feed and assist in an attack which would be launched against UDF activists in the area

That evening the special constables arrived in New Hanover in an unmarked Kombi

They wore civilian clothes and were not known in the area. Applicant says that on the instructions of Terblanche he transported the special constables to Gabela's house and left them there

Their instructions were to target male persons between the ages of 16 and 35 years who were

involved in the political violence in the area. The Applicant says that he instructed the special constables to burn down the house of Mbongwe, because that house had been used by the activists to store petrol bombs and other weapons

In the early hours of the morning, the special constables

## 'Majority of victims' claims were settled'

launched the attack on house No TF83. They shot and killed 11 people and wounded two others

Applicant was not at the scene and did not take part in the actual attack, but it is quite clear that the execution of the whole plan was directed by him in his capacity as the station commander of the area

It is also clear that the special constables acted, on his instructions and were accountable to him. Within a short while after the

incident it was discovered that the special constables had attacked the wrong house and that the people who were killed and injured were not the intended victims. Thereafter frantic and feverish attempts were made by some of Applicant's superiors in the police force to cover up this colossal blunder

But as it turned out, these attempts did not succeed and Applicant and the four special constables were brought to justice

Applicant stated that he had no personal motive in committing the offences

In his judgment, Judge Wilson accepted that this was so. Applicant's offences were part of the counter-revolutionary onslaught against the ANC and UDF activists and he had acted within the course and scope of his duties as an officer in the South African Police force

We are satisfied that Applicant has made a full disclosure of all relevant facts and that the offences committed by him were associated with a political objective as defined in section 20 (2) (b) of the Act

We note that the special con-

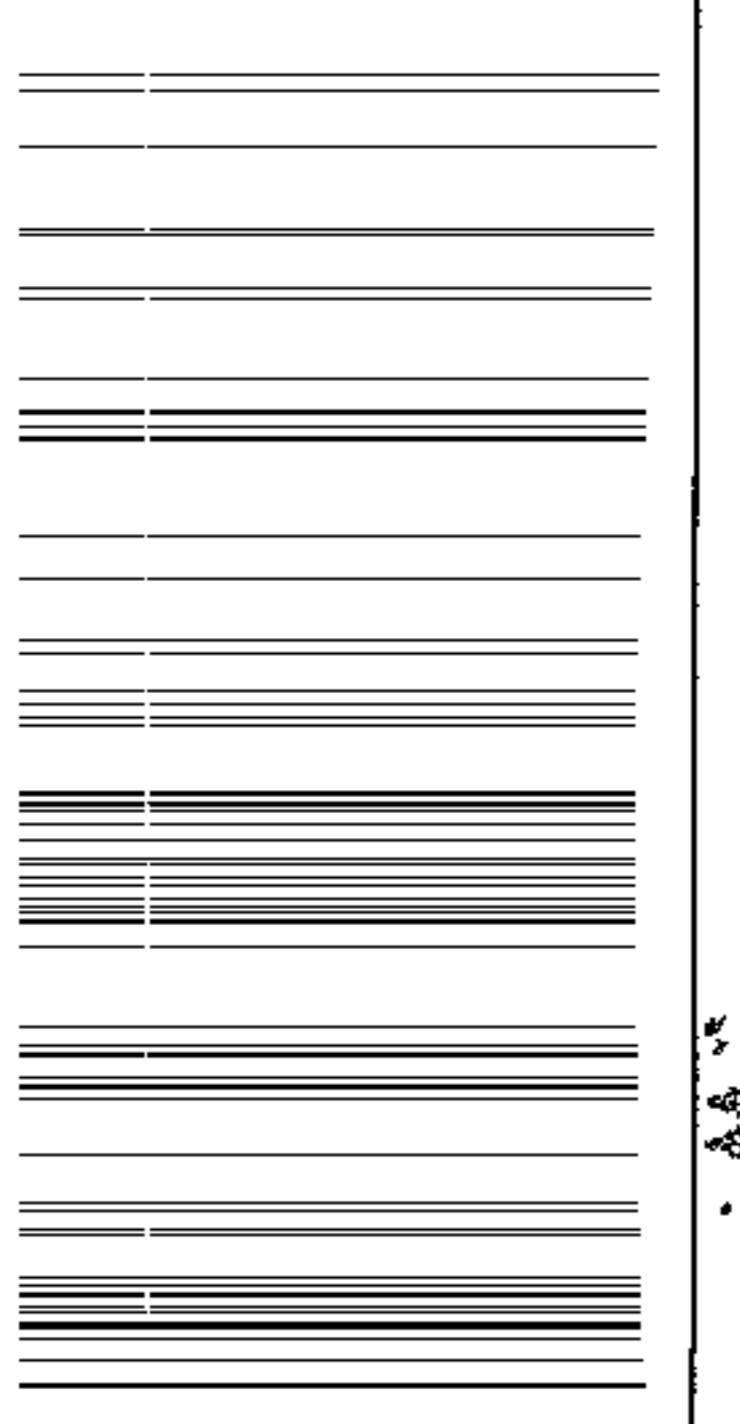
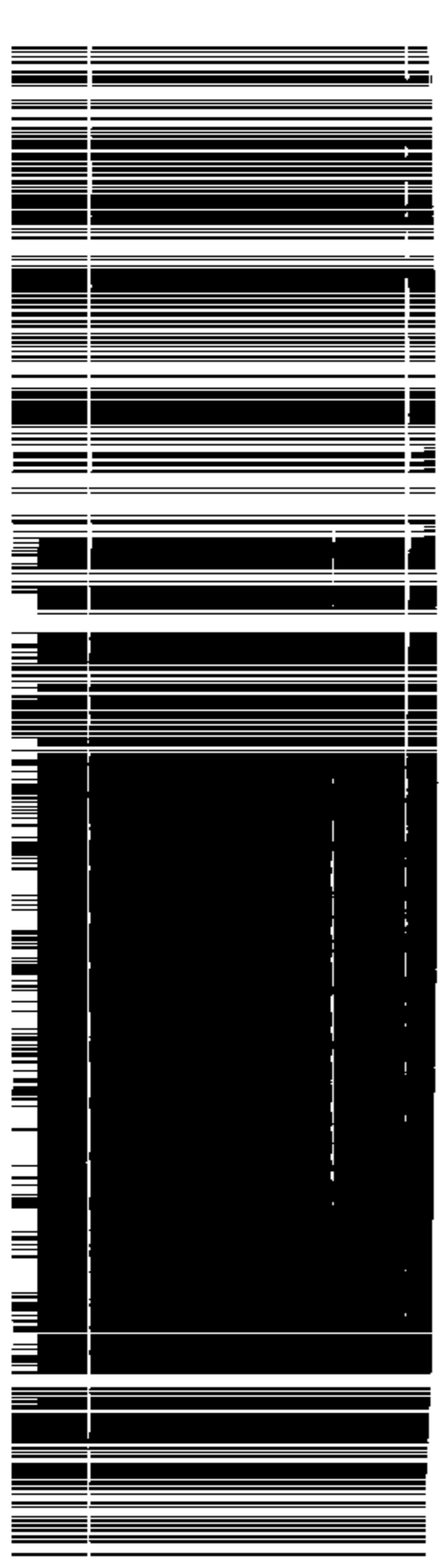
stables who were convicted with the Applicant and sentenced to the same terms of imprisonment were granted amnesty and released under the provisions of the Further Indemnity Act, No 151 of 1992

In all the circumstances we have come to the conclusion that amnesty be granted to the Applicant for

- (a) the murders of:
  - (1) Mselemu Nhuli
  - (2) Dudu Shangase
  - (3) Zetha Shangase
  - (4) Nkonyeni Shangase
  - (5) Muzi Shangase
  - (6) Filda Nhuli
  - (7) Fikile Zondi
  - (8) Mantz Xaba
  - (9) Sara Nyoka
  - (10) Alfred Zita
  - (11) Sisedewu Sihole
- (b) the attempted murder of Ida Hadebe and Nomagoli Zuli,
- (c) The crime of arson relating to the destruction by fire of the property of Mbongwe

Annexed hereto is a letter from attorneys Caye and Associates, dated November 11 1996, which relates to the claims for compensation by those directly affected by the offences committed by Brian Victor Mitchell

The majority of the claims have been settled and a couple are in the process of being finalised."





# Killer Brian Mitchell

(252)

## granted amnesty

BO 11/12/96

Stephen Laufer

TRUST Feeds killer Brian Mitchell yesterday became the first security force operative to receive amnesty from the truth commission in a decision announced five days before the amnesty application cut-off date.

Mitchell left Maritzburg prison yesterday after serving just more than five years of his 30-year sentence for the killing of 11 people in the KwaZulu-Natal hamlet of Trust Feeds in December 1988. His original death sentence had been commuted by state president FW de Klerk three days before the 1994 election.

Announced as pressure mounts on participants in the apartheid conflict to take a decision on whether to apply for amnesty, the Mitchell pardon is being seen as a signal from the commission to potential applicants that they stand a good chance of being pardoned.

The decision is likely to swell the flood of perpetrators of apartheid-era crimes understood to be coming forward to the commission. They include former SA Police members, some SA Defence Force special forces and Civil Co-operation Bureau soldiers and

members of the liberation forces.

The African National Congress (ANC) in the province said it accepted the amnesty decision. Mitchell's submission vindicated the organisation's long-held view that there was no such thing as black-on-black violence, but that the apartheid security network had been largely responsible for the KwaZulu-Natal carnage.

The national ANC said it hoped the truth commission's final report would find that Mitchell and others had committed crimes against humanity. It called for concrete reparations to victims of gross human rights violations.

Safety and Security Secretary Azhar Cachalia said the decision would allay the fears of many that they might fail the truth commission act's proportionality test, as the committee had interpreted it broadly. The test requires that actions should be proportional to the role of their victims on the other side of the apartheid divide if perpetrators are to qualify for pardon.

The committee found that Mitchell had been a member of the KwaZulu-Natal Midlands joint management committee system and his offences had been part of the counter-revolutionary

onslaught against the ANC and the United Democratic Front.

In planning and carrying out the Trust Feeds attack by a group of special constables with leading Inkatha members, including midlands leader David Nthombela, Mitchell had acted without personal motive, the committee found. They were satisfied that he had made full disclosure of all the relevant facts as required by the act, and that his offences had been associated with a political motive.

Mitchell's lawyer, Eugene Nation, told Reuters that the former policeman was calling on past security force members who might have been involved in human rights violations to apply for amnesty and become part of the reconciliation process because it was the country's future.

Cachalia said he was concerned that there had not yet been enough applications from former members of the liberation movements because their failure to seek amnesty could negatively affect relations between the SA Police Services and communities. Arrests of former Umkhonto we Sizwe and

Continued on Page 2

## Amnesty

Continued from Page 1

Apla members who had failed to apply for amnesty could reverse the hard work put into improving police-community relations since 1994.

There should be no doubt that the police would arrest perpetrators, whether from security forces or liberation movements, Cachalia said. Those trying to hedge their bets or taking a narrow, legalistic view of their past activities should be aware that dockets would be pursued.

Jacqui Pile reports that the Police and Prisons Civil Rights Union has urged its members who could be implicated or have information on third force activities to make submissions to the truth commission before Satur-

day's amnesty cut-off date.

□ Sapa reports that a police officer is to appear in the Worcester Regional Court today on charges of murder after intervention by the truth commission.

He is Insp Michael Phillip Luff and his appearance follows a complaint to the commission at its Worcester hearings on June 24 by the parents of William Dyasi, who was allegedly shot dead by Luff on November 3 1985.

An inquest was held in the Worcester Regional Court between March 1986 and January 1987 into the deaths of Dyasi and Thamsanqa Cecil van Staden in Zwelethemba township on the same day, the commission said yesterday. The inquest found Luff, then a constable, of Worcester police was responsible for the death of William Dyasi and the case was referred to the then attorney-general, Neil Rossouw, who decided not to prosecute.

# SA 'in a strong position to protect human rights'

BD 11/12/96

(252)

Kevin O'Grady

SA WAS in a much better position than most countries to ensure its citizens' human rights were protected because it had a history in which the deprivation of human rights was used as a tool of oppression, constitutional expert advocate Zac Yacoob said yesterday.

Speaking at an International Human Rights Day commemoration organised by the greater Johannesburg council, Yacoob said local government had a vital role to play in making people aware of their rights and in protecting those rights.

Yacoob said there was "an interesting imperialism" evident when it came to international human rights norms "that implies that these norms originated in the US or the UK or Canada and that we in Africa are uncivilised and need to import these rights".

"Nothing could be further from the truth. All these various laws amount to nothing more than lip service. In this country we want to be different. Here we're not going to pay mere lip service to those norms," he said.

Despite the "bizarre" reason given by minorities during constitutional negotiations for wanting a Bill of Rights included in the constitution — that minorities' rights should be protected — "human rights should be important and concrete for the majority, not just the minority".

Because local government was an integral part of government, and the tier closest to the people, it had "a duty to ensure implementation of the constitution, including the Bill of Rights

which must be seen as part of the package of democracy", Yacoob said.

Local government was in a better position to do this than international organisations, the Constitutional Court, national government or the Human Rights Commission, he said. In terms of the constitution, local government was "obliged to take legislative and other measures" to ensure certain rights, such as the right to housing, were met.

Also speaking at the commemoration, Gauteng safety and security MEC Jessie Duarte said the Bill of Rights in the new constitution was not meant to protect criminals.

Sapa reports that she said it provided police with the opportunity to entrench the concept of visible and proactive policing. The way to solve the crime problem in the country was by recruiting more police and educating them on the concept of human rights.

Government had a duty, she said, to enforce and protect the Bill of Rights.

She said people should not be under the impression that government was providing housing, health and education as a favour, but should regard it as government's duty as set out in the Bill of Rights.

In her International Human Rights Day address, Welfare and Population Development Minister Geraldine Fraser-Moleketi said almost all rights had financial implications and the extent to which they could be realised often depended on availability of resources.

Most South Africans were still poor, with very little or no basic education or access to basic services and facilities.

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'CUT-OFF DATE MUST BE EXTENDED'

# Apla cadres want amnesty

(252) CT 12/12/96

**ATTACKS ON** white-owned farms by Apla cadres will be discussed when former operatives testify to the Truth and Reconciliation Commission. **ROGER FRIEDMAN** reports.

**T**HE Azanian People's Liberation Army (Apla) will expose its soul to the Truth and Reconciliation Commission in an effort to assist its cadres to derive maximum benefit from the amnesty process and in the interests of reconciliation — in spite of its having been engaged in a just war

This was the gist of the Apla leadership's message to the media yesterday, after a meeting with commission chairperson Archbishop Desmond Tutu, commissioner Mr Dumisa Ntsebeza and legal adviser Mr Zuko Mapoma

The meeting evidently spent some time discussing amnesties — applications must be in by Saturday, although Apla would like the cut-off date extended — and the fact that the Promotion of National Unity Act (which established the commission) drew no distinction between human rights violations committed by those defending apartheid and those opposing it

"It is not easy to say to one who believed in the justice of the cause that he or she must go and confess and say 'I have done something wrong'," said Director of Opera-



**'NOT EASY':** Apla's Brigadier Happy Mphahlele

tions, Brigadier Happy Mphahlele

Nonetheless, he said, Apla expected at least 600 cadres to apply for amnesty, and the high command wished to make a separate submission to the commission, too

"It is obvious that the Truth and Reconciliation Commission expects full disclosure and that is what we intend to give them"

Mphahlele said the disclosures

would cover such issues as attacks on white-owned farms, the war being taken into white areas, and the work of the so-called Repossession Unit which conducted robberies to finance operations Apla is the armed wing of the Pan Africanist Congress, its high command continues to function, though members have been absorbed into the South African National Defence Force

The Apla Commander, Brigadier Dan Mofokeng, said extending the amnesty application cut-off date was one of the organization's major concerns

Members were distributed throughout the country, and those in prison were experiencing problems in processing application forms and obtaining legal representation

Apla would also like the commission's period of reference, which begins in 1960, to be extended from the present December 1993 cut-off to May 1994 Several Apla operations were conducted in those intervening months and extending the date would open the amnesty door to the cadres who carried them out, he said

Apla veteran and Poqo (Apla's predecessor) founder member Mr Gasson Ndlovu felt the meeting had clarified many issues around

the amnesty process There were many cadres who wanted to know "the exact meaning of amnesty the meaning of truth and for how long the amnesty holds", he said

"I am sure that after the concepts have been explained as they were explained this morning by the Archbishop, things will be much better Applications will be trickling in"

Tutu told a later, separate press conference that the commission fully supported Apla's position on extending the cut-off dates Concerning the period of reference, he said it made sense to extend it as the Human Rights Commission's mandate started in April 1994, not in January

President Nelson Mandela has requested a meeting tomorrow with the commission, and although he did not wish to speculate on the outcome, Tutu said he expected Mandela to clarify his position on the deadline issue

General Constand Viljoen of the Freedom Front, a supporter of extending the dates, had also been invited to the meeting Although the President could not change the law single-handedly, his stance was influential, Tutu said

It could be beneficial if the PAC was invited, he added

# 600 Apla cadres may apply for amnesty

Linda Ensor

CAPE TOWN — The Azanian People's Liberation Army (Apla) had formed "repossession units" during the armed struggle to commit robberies so that it could be self-reliant, operations director Letlapa Mphahlele said yesterday.

After a meeting between Apla commanders and truth commission officials to discuss amnesty, Mphahlele said that Apla wanted to decriminalise its activities and that the robberies had not been for personal enrichment.

About 600 Apla cadres, including all the top leaders, are expected to apply for amnesty tomorrow, joining hundreds of amnesty applications which have been flooding truth commission

offices ahead of Saturday's deadline. A truth commission spokesman said yesterday that 3 750 applications had been received at the amnesty committee's offices by Tuesday afternoon.

Nomavenda Mathiane reports that in response to Mphahlele's admission that Apla turned to armed robbery to raise funds, Pan Africanist Congress (PAC) national executive committee member Morolo Mphahlele said he was aware of this. Although the military had reported to the political leadership, it had not gone into detail on what was going on on the ground, he said.

The matter should be seen in the context of what was going on in SA at the time — that they were operating in a completely "immoral and illegal"

situation

The Apla commanders met the commission officials to appeal for an extension to both the deadline for applications and the December 1994 cut-off period for the amnesty process.

The commanders said they would apply for amnesty individually as most of Apla's activities had been sanctioned by its leaders. Letlapa Mphahlele said he had submitted his application.

"The leadership has to take responsibility for the mistakes of their subordinates," Apla commander Brig Daniel Mofokeng said. He said Apla would also make a formal submission as an organisation on its activities.

Continued on Page 2

## Amnesty

Continued from Page 1

Apla's approach to the commission came as a prelude to Friday's meeting between President Nelson Mandela, commission representatives and Freedom Front leader Constand Viljoen to discuss amending the dates in the amnesty process. Archbishop Desmond Tutu said he would like the PAC to attend the meeting and it was still possible that this might occur.

The commission wanted the cut-off date for amnesty extended from December 1993 to May 10 1994 and the deadline date for applications from December 14 to March next year so that more people could be included in the reconciliation process.

Mofokeng said the Apla delegation had come to the commission to get clar-

ification about the amnesty process which was a source of fear and anxiety among its members.

It had, he said, not been easy to convince cadres who believed in the justice of their cause that they should confess as if they had done something wrong. Sapa reports that amnesty committee administrator Mandisa Dukumbana said the ANC, which had earlier handed in about 300 applications on behalf of ANC members, had promised another batch on Friday.

Many people had called saying they wanted to apply but would be unable to meet the deadline. Their names were entered in commission records and their formal applications would be accepted after the midnight deadline.

The commission's Cape Town, Johannesburg and Durban offices would be open until midnight on Saturday.

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# Top ANC men want amnesty

(252)

Somehan 13/12/97

By Waghied Misbach and Pamela Dube

**F**OUR senior African National Congress Cabinet Ministers are among the people whose names will be among the 60 applications the ANC will submit for amnesty today in addition to the 300 already before the Truth and Reconciliation Commission

ANC leaders who have applied for amnesty include Defence Minister Mr Joe Modise and his deputy Mr Ronnie Kasrils, Safety and Security Minister Sydney Mufamadi and Broadcasting and Telecommunications Minister Jay Naidoo

Mufamadi and Naidoo's lawyer Mr Tefo Raditapole said yesterday their applications related to a 1990 incident in which a man carrying out surveillance of Congress of SA Trade Unions headquarters in Johannesburg was apprehended by Cosatu office-bearers

On Tuesday the high command of the Pan Africanist Congress military arm, the Azanian People's Liberation Army, announced that about 600 of its cadres would apply for amnesty

Of the 300 ANC applicants, 100 were submitted on behalf of former Umkhonto we Sizwe cadres currently serving prison sentences

TRC deputy chairman Dr Alex Boraine said in Cape Town yesterday that amnesty applications now stood at close to 4 000, with more expected today and tomorrow

Meanwhile the TRC yesterday granted amnesty to seven people, including former Conservative Party MP Mr Koos "Bomb" Botha. It refused amnesty to nine others, including Kwane Sebe, son

of the late former Ciskei leader Chief Lennox Sebe. Amnesty was granted to

- Roland Petrus, Machabe Thulo and Paseka Mpondo for their role in killing three members of the notorious Three Million Gang in Kroonstad in 1991 and 1992. The amnesty committee found that the three had acted with a political motive. Botha was pardoned for his bombing of a Pretoria school in 1991 and Cosatu House in Pretoria in 1992.

- Three Boerekommando members, Gerhard Roux, Cornelius Volschenck and Rowland Robinson, for bombing a school in Nylstroom in 1992 and a school in the Volksrust district in 1991

Those refused amnesty include

- ANC Youth League member Molefe Tshuludu for killing Hendrik Grobbelaar in Kroonstad in 1992. The amnesty committee found that the killing was not politically motivated

- Two members of the Nasionale Sosiaaliese Partysane (National Socialist Partisans) Cornelius van Wyk and Jean du Plessis. Van Wyk is serving a life sentence for three murders and Du Plessis 12 years for crimes including robbery, the theft of weapons from the SA Defence Force and illegal possession of firearms. The committee found that the NSP was not a political organisation (it had only four members).

- Sebe, currently serving a 12-year sentence for bombing a house and a bottle store in 1989 belonging to two members of the Sebe regime

- Four brothers, Adriaan, Willem, Gideon and Dawid van Straaten, who were convicted of the murder of two black security guards in 1991, and

- Thamsanqua David Jackson, who is serving 12-years for the murder of a policeman in 1993

# Black lawyers made temporary judges

(252) M+G 13-19/12/96

Mungo Soggot

**T**HE latest batch of temporary judges appointed to the Transvaal Bench includes two leading lights from the Black Lawyers Association, one of whom has seven years' experience at the Bar

Johannesburg advocates say the appointment of Vincent Maleka and Ismail Semanya, who started at the Bar in 1989 and 1986 respectively, confirmed that experience was no longer the main criterion used to determine the make-up of the Bench, as the government strives to transform the predominantly white, male institution

The division's acting judges are selected by Frikkie Eloff, who is viewed as a politically astute judge-president anxious to help transform the Bench. In the past only senior counsel were appointed acting judges, which usually meant a career of at least 20 years at the Bar

The other appointments are Nazir Cassim, a labour law specialist who has practised for 11 years, and Jenny Woodward, who began her career in 1983. The only senior counsel is Wim Trengove, one of the country's most eminent advocates who handles most of the African National Congress's important briefs

The appointment of advocates with relatively little experience has privately unnerved both black and white practitioners, although none would comment publicly. Some said they would decline an invitation to become an acting judge without at least 10 years behind them

But chairman of the Board of Trustees of the Black Lawyers Association, George Maluleke, said the appointments were a "tremendous step in the right direction. Eloff has to be congratulated"

He said it was "a fallacy that experience is the only criterion" and that a candidate's "potential" was equally important. In other countries lawyers fresh from university made excellent judges, he said

Maluleke said it was understandable that some in the profession would complain about the appoint-

ments "Everyone wants to protect their turf but they are being short-sighted and too self-centred"

Maluleke said the government and the profession needed a co-ordinated effort to train new judges. He also called for a re-evaluation of the policy of appointing judges for life — a policy which perpetuated the old order

He said the Judicial Services Commission, which handles the appointment of permanent judges, was treading a "good path" in its efforts to transform the Bench

Hugh Corder, professor of Public Law at the University of Cape Town, said the amount of experience required for judicial office depended entirely on the individual

He said Professor Dennis Davis, currently an acting judge in Cape Town, had probably had less than 10 years' experience at the Bar but had been an excellent choice. "On the other hand, a senior advocate who has conducted a narrowly circumscribed practice at the Bar for 20 years may be flummoxed by a range of cases once he is on the Bench"

But the idea that a graduate straight out of university could be a successful judge in the current South African legal system was "without foundation", he said

● President Nelson Mandela on Wednesday conferred the Order for Meritorious Service (Gold) on outgoing Chief Justice Michael Corbett at a Cape Town banquet held in his honour. Sapa reported that Mandela hailed Corbett, who will be succeeded by Deputy Constitutional Court President Ismail Mahomed, as a champion of truth and an excellent scholar

He said he became better acquainted with Corbett, who has been chief justice since 1989, in the run-up to his inauguration as president and had since noted his valuable contribution to the framing of the interim constitution and the new Constitution, as well as his role as chairman of the Judicial Service Commission

Referring to the many judges present, Mandela joked he was never happy in the presence of judges as the "prospect of spending another 27 years on some island is frightening"

# Three cabinet ministers seek amnesty from TRC

252 CT 13/1796

THREE cabinet ministers are among the people whose amnesty applications will be handed to the Truth and Reconciliation Commission today, hours ahead of the deadline at midnight tomorrow.

It was announced yesterday that Safety and Security Minister Mr Sydney Mufamadi and Posts Minister Mr Jay Naidoo would seek amnesty for the kidnapping of a policeman detailed to spy on Cosatu House in 1990.

Naidoo, who was Cosatu's secretary-general at the time, and Mufamadi, who was his deputy, have appealed against their conviction on the kidnapping charge.

The African National Congress also confirmed that it would hand in amnesty applications by Defence Minister Mr Joe Modise, former commander of the ANC's military wing Umkhonto we Sizwe (MK), and Deputy Defence Minister Mr Ronnie Kasrils.

It was reported earlier that former Law and Order Minister Mr Adriaan Vlok had become the first apartheid-era minister to seek amnesty. He said he did not know of any other National Party politicians who would be applying.

Truth Commission deputy chairman Dr Alex Boraine said it was the commission's policy to release applicants' names only once dates had been set for public hearings, but some of the applications related to very significant events.

Boraine and Freedom Front leader Constand Viljoen are to meet President Nelson Mandela at the Union Buildings this morning to discuss proposals for an extension of the amnesty cut-off dates.

The commission, supported by the FF, has asked that the cut-off date for amnesty offences be extended from December 6, 1993, to May 10, 1994, and that the deadline for applications be extended to March 14 next year.

Boraine said he had been in touch with the President's office to suggest that the Pan Africanist Congress, which also wants an extension, also be invited to the meeting.

Mandela will address a press conference immediately afterwards.

The commission continued to urge the Inkatha Freedom Party to encourage its leaders and members to make use of the commission.

"We will go on doing this as long as we are alive. If the IFP does not make use of that they only have themselves to blame," Boraine said.

The PAC is expected to hand in about 600 applications before tomorrow's deadline, including the entire high command of its military wing, the Azanian People's Liberation Army.

The ANC said yesterday that Truth Commission records showed 300 applications had already been submitted by ANC members around the country.

Of these, 100 had been submitted on behalf of people serving prison sentences.

Party headquarters had received another 60 applications and more were expected. These would also be handed to the commission today.

Applicants included former MK

members who were based at home and abroad, MK field and camp commanders, members of the ANC's former security and intelligence department, and ex-prisoners.

● The government has formally agreed to extend the life of the Truth and Reconciliation Commission by

six months to December 15 next year, Dr Alex Boraine said yesterday.

He said the extension had been granted verbally by President Mandela some time ago. A letter confirming this, from Justice Minister Mr Dullah Omar, had arrived this week.

"So we are now definitely kosher," he said. —Sapa



# R1,2bn boost for justice system

CT 13/1497/2/96 (252)

**OWN CORRESPONDENT**

PRETORIA: Altogether R1,2 billion will be spent to beef up the criminal justice system over the next few years, Safety and Security secretary Mr Azhar Cachalia announced yesterday.

Speaking on behalf of the National Crime Prevention Strategy (NCPS), Cachalia said the money would be used to clear key blockages in departments such as Safety and Security, Justice and Correctional Services.

The money for the NCPS programmes will come from RDP funds as well as the budgets of the Ministries of Safety and Security, Justice, Welfare, Defence, Correctional Services and Intelligence.

Cachalia listed the achievements of the NCPS as the establishment of a unit to co-ordinate interdepartmental NCPS programmes, each department involved had assigned senior



**BEEF-UP:** Mr Azhar Cachalia

staff members to serve as full-time managers of their NCPS programmes.

The NCPS has identified 12 programmes dealing with blockages in the system as priorities. Work has already started, or will start shortly, on the following:

- R168,2 million has been allocated for an integrated information management system for the entire criminal justice system, which should improve and

integrate information from the police to the prosecutor to the prisons and social welfare.

- R211,5m will be spent on a project to improve police fingerprinting with an automatic fingerprint identification system.

- A R20m project for facilities for youth offenders is being led by the Welfare Department.

- Police propose a R5,9-m project to train officers to be more professional at crime scenes.

The other priority projects are accelerated internal training for magistrates, state advocates, state prosecutors and interpreters.

Money will also go towards improving court management, upgrading the infrastructure of the Department of Justice and a victim support programme.

Programmes will also be run on the training and rehabilitation of offenders and training police to handle cases more effectively.



# 4 000 amnesty applications already in as deadline nears

## *Crucial talks today with Mandela on extension*

STAFF REPORTER AND SAPA

Nearly 4 000 people have now applied for amnesty from the Truth and Reconciliation Commission ahead of tomorrow's deadline, and many of the latest applications are from people who are not in jail

This was announced yesterday by commission deputy chairman Alex Boraine, who is meeting President Mandela today to discuss the commission's request to extend the deadline for amnesty applications by three months

Dr Boraine also announced that the commission had prepared a list of questions for former president P W Botha, who has so far refused to testify or to seek amnesty. But Mr Botha told chairman Desmond Tutu at a meeting in George recently that he would cooperate fully with the commission

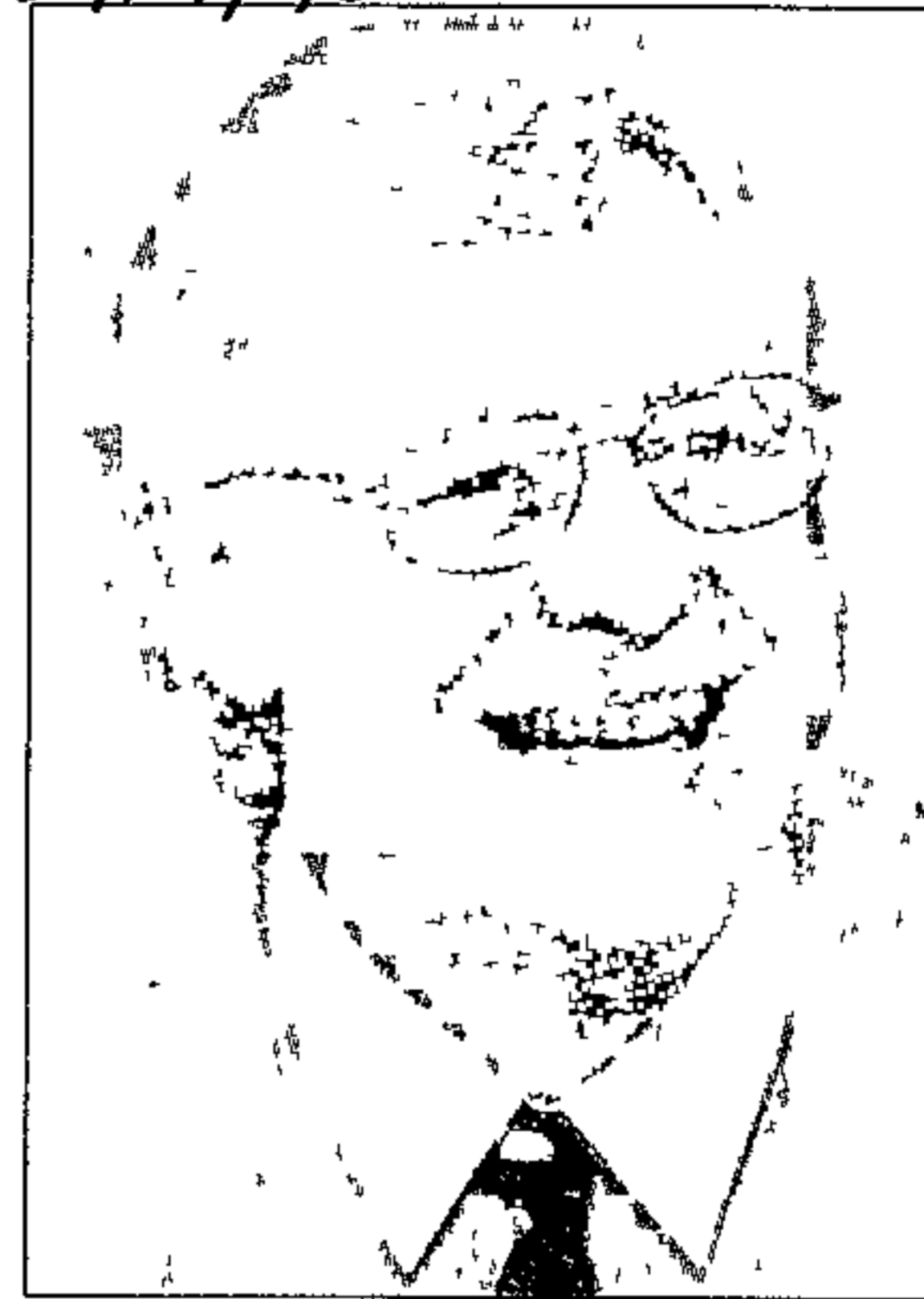
Dr Boraine said yesterday he hoped Mr Botha would change his mind, because he had been directly responsible for, and at the head of, a

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system that had brought about gross injustices

He said that the former president not only owed South Africa an apology, but that it would be in the interest of reconciliation if he applied for amnesty. Moreover, if Mr Botha and others did not seek amnesty, they would expose themselves to possible criminal prosecution and civil claims. Dr Boraine said Conservative Party leader Ferdi Hartzenberg's claim that the commission's sole intention was the destruction of the Afrikaner was not only untrue but extremely destructive

Dr Hartzenberg, who apparently had prior knowledge of yesterday's announcement that rightwingers Jean du Plessis and Cornelius van Wyk were being denied amnesty for the theft of defence force weapons, said this left no doubt that there was no benefit in Afrikaners applying for amnesty

But Dr Boraine said the fact that amnesty was given to former Conservative Party MP Koos Botha and to sev-



Alex Boraine: questions for PW Botha

eral members of the Boerekommando, at the same time it was denied to Du Plessis and Van Wyk, gave the lie to

Dr Hartzenberg's claim

The fact that the commission had granted amnesty to a number of Afrikaners and members of the CP made Dr Hartzenberg look rather foolish, said Dr Boraine

He believed the announcement by former law and order minister Adriaan Vlok that he had applied for amnesty was "a very good move" and he hoped it would encourage other political leaders of his party to follow suit

The number of amnesty applications had rocketed over the past week, Dr Boraine said. The commission's information desk was open 24 hours a day, and tomorrow its Cape Town offices would be open until midnight. If someone phoned tomorrow, he or she could still meet the deadline.

He also disclosed that the Government had formally agreed to extend the term of the commission by six months to December 15 next year, and that the commission would have a further three months from that date to write its report

## Ex-MP pardoned for bombings urges rightwingers to come clean

ARGUS CORRESPONDENT

Johannesburg - Another chapter closed in the colourful political career of maverick former Conservative Party MP Koos Botha when the Truth and Reconciliation Commission pardoned him for a series of bombings in the early 1990s.

Mr Botha - who was kicked out of the CP after the bombings for advocating negotiations, went into business with Gauteng Premier Tokyo Sexwale's brother and now runs a secretarial college with mainly black students - said he was "very relieved" at being granted amnesty

He would try his best to steer clear of politics in future "except for issues in my local community like litter on the pavements and so on" and called on other rightwingers who had committed political crimes to come clean

"The time has arrived for us to admit the things we have done wrong so that we can move forward," Mr Botha said

Mr Botha was expelled from the CP in 1992 after clashing with its leader, Andries Treurnicht, over the party's refusal to engage in negotiations

Soon after this Mr Botha was arrested and charged with the bombing of Hillview Primary School in Pretoria, post offices in Verwoerdburg and Krugersdorp and Cosatu House in Pretoria. No one was injured in the bombings, which were carried out in 1990 and 1991 before he had changed his mind about negotiations

At the time, he said, he believed the Afrikaner nation was under siege and Dr Treurnicht's militant statements had driven him to take drastic action

The Hillview school building, which was not in use at the time, was chosen as a target because it had been

earmarked as a school for the children of returning African National Congress exiles

Mr Botha was charged in 1993 with sabotage and terrorism, but not convicted. The hearing was adjourned in the Supreme Court pending his amnesty application

After leaving Parliament in 1994, Mr Botha launched a low-cost housing development company with Mathabatha Sexwale. The company is still functioning, although Mr Sexwale is no longer a partner

Mr Botha has also converted a disused jail in Marabastad, the predominantly black business district of Pretoria, into a secretarial training college mainly for black students

"I think the time has come to clear our chests, put our shoulders to the plough and work for our country, because the country belongs to all of us," he said

## TRC asked to probe police over missing girl

Pretoria - The mother of one of paedophile Gert van Rooyen's alleged victims says she has asked the Truth Commission to probe claims that police had not investigated the case thoroughly.

Kobie Wapenaar of Johannesburg contends that this amounts to a human rights violation. She declined to elaborate yesterday.

Her daughter Anne-Marie was one of five girls whose disappearance eight years ago was linked to Van Rooyen

National Crime Investigation Services spokesman Reg Crewe said Mrs Wapenaar's decision seemed strange so long after Anne-Marie disappeared

"If she believes her daughter's rights were infringed, it would have been better to approach the Human Rights Commission. There are many other channels available both inside and outside the police" - Sapa

# R1,2-billion to beef up criminal justice system

*State strategy to 'clear key blockages'*

(252) ARG 13/12/96

## ARGUS CORRESPONDENT

Pretoria – Safety and Security Secretary Azhar Cachalia has announced that R1,2-billion will be spent on beefing up the criminal justice system over the next few years.

He said on behalf of the National Crime Prevention Strategy (NCPS) yesterday in Pretoria that the money would be used to clear key blockages in affected departments, including Safety and Security, Justice and Correctional Services

The R1,2-billion allocated for the NCPS programmes by the government would come from Reconstruction and Development Programme funds, as well as from the budgets of the ministries of Safety and Security, Justice, Welfare, Defence, Correctional Services and Intelligence

Extra funding would also be available to accelerate the implementation of the most important projects

The money would be used, for

instance, to provide places of safety for youth offenders and to replace outdated police equipment

Mr Cachalia said "Since the establishment of the NCPS in May we have been activating the state machinery

"We are satisfied that things are going at the right pace"

Mr Cachalia said that each department involved had assigned senior staff members to serve as full-time managers of their respective NCPS programmes

The NCPS had identified 12 programmes dealing with blockages in the system as top priorities. Work had already begun, or was due to begin, soon

A total of R168,2-million has been allocated for an integrated information management system for the entire criminal justice system, which should improve and integrate information from the police to the prosecutor, to the prisons and to social welfare

A further R211,5-million had been earmarked to revamp the entire police fingerprinting system with an automatic system.

A R20-million project for facilities for youth offenders was being led by the Department of Welfare

Police proposed to spend R5,9-million to train officers to handle crime scenes more professionally

The other projects included accelerated internal training for magistrates, state advocates, state prosecutors and interpreters, and meeting demands of the witness protection programmes

Money would also be spent on the improvement of court management, the upgrading of the infrastructure of the Department of Justice and a victim-support programme

Programmes would also be provided for the training and rehabilitation of offenders and an integrated security system for 18 priority prisons, as well as one to train police in handling cases

EIGHT AMNESTIES GRANTED

# Hartzenberg fuelling hatred — Boraine

(252) ET 13/12/96

**EIGHT** amnesties were granted this week — including that of killer policeman Brian Mitchell — and nine applications were turned down. **ROGER FRIEDMAN** reports.

**C**ONSERVATIVE Party leader Dr Ferdi Hartzenberg chose the same day that the Truth and Reconciliation Commission granted amnesties to four right-wing bombers, including a former Conservative Party MP, to lambaste the commission for alleged anti-Afrikaner bias

A clearly incensed commission deputy chairperson Dr Alex Boraine reacted to Hartzenberg's allegation yesterday, accusing him of "fuelling hatred and division" at a time when the country was trying to develop a climate of reconciliation and national unity

Hartzenberg said the commission's sole intention was "the destruction of the Afrikaner" Boraine said Hartzenberg's comments "make him look rather foolish" given that the commission had just granted amnesties to the four bombers

Eight amnesties were granted this week — including murdering policeman Brian Mitchell — and nine applications were turned down

Five of the eight successful applicants were right-wingers Mitchell, former MP Mr Koos Botha, and three Boerekommando members. The other three were members of an ANC-aligned self-defence unit

Boraine said the amnesty committee's decisions were based on evidence supplied at public hearings or in writing, and were strictly governed by the complex requirements of the Promotion of National Unity Act

These requirements include that the applicant make a full disclosure, that the act for which amnesty is sought was carried out to achieve a political objective, and that the applicant was a member of



**BACKLASH:** Dr Ferdi Hartzenberg claims anti-Afrikaner bias by TRC

a political party or organisation  
Amnesties granted

Roland Roy Petrus, Machabe Petrus Thulo and Paseka Johannes Mpondo, members of an ANC self-defence unit in Kroonstad in 1991/92, who killed three alleged members of the apartheid government-sponsored Three Million Gang. The amnesty committee found that the applicants acted with a political motive, were members of a political party, and that they acted against people they believed to be their political opponents. They were sentenced to lengthy terms of imprisonment

Mr Jakobus Johannes Christoffel Botha's application was for explosions at Hillview School and Cosatu House in Pretoria and at the Verwoerdburg and Krugersdorp post offices in 1991/92. Botha faces criminal and civil proceedings, including charges of terrorism

Mr Gerhard Pieter Daniel Roux, Mr Cornelius Gabriel Volschenk and Mr Rowland Keith Robinson were members of the Boerekommando whose applications were for explosions at Melkriver School in the Nylstroom district and

Perdekop School in the Volksrust district in 1991/92. They, too, face terrorism charges

Amnesties refused

Molefe Joseph Tshukudu, also a member of the Kroonstad self-defence unit imprisoned for murder. The amnesty committee concluded that there was no political objective for his killing of Hendrik Grobbelaar in Maokeng township in 1992

Cornelius Johannes van Wyk and Jean Prieur du Plessis, members of an organisation called the National Socialist Partisans, serving prison sentences for murder and robbery, respectively. The amnesty committee found that their organisation comprised just four people, and was neither a publicly known organisation nor a liberation movement

Kwane Sebe, son of former Ciskei leader Mr Lennox Sebe, was the commander of the Ciskei Police's Elite Unit before being jailed for 21 years for bombing the house of his former second-in-command and a bottle store

The amnesty committee found that the bombings did not have a political objective but that Sebe, especially in the bombing of the bottle store, acted "out of malice, ill will or spite"

Brothers Adriaan, Willem, Gideon and Dawid van Straaten were convicted of the robbery and murder of a heavy-duty truck driver in 1991. The amnesty committee concluded that the brothers' actions were not associated with a political objective, but were purely criminal acts

Police-killer Thamsanqa David Jackson, serving a 12-year prison term for the murder of Oupa Petrus Dithabe in Ventersdorp in 1993, was found by the committee to have acted in self-defence and not with a political objective

# 'Significant' revelations coming

ROGER FRIEDMAN

THE deputy chairperson of the Truth and Reconciliation Commission, Dr Alex Boraine, is "delighted" at the calibre of some of the recently received amnesty applications, saying they will expose "very significant events which could be considered a breakthrough for the commission and the country"

Although he would not divulge names or specific events, Boraine did say the commission was not expecting an application from former state president Mr P W Botha, who was recently named by his former police chief, General Johan van der Merwe, as having given the orders for the bombing

of Khotso House

Boraine said the commission had completed a comprehensive list of questions to put to Botha, which would be sent soon to his retirement home in Wilderness

Although Botha stated at his meeting last month with commission head Archbishop Desmond Tutu that he felt he had nothing he need apologise for, Boraine said he believed Botha owed the country both an apology and an explanation

Boraine warned Botha and other defiant apartheid era officials "If they do not seek amnesty then they leave themselves open to be charged in a court of law, both civilly and criminally. The choice is theirs"



**DELIGHTED:** Dr Alex Boraine, TRC deputy chairperson

## Bombings pardon for Koos Botha

ET 13/12/96  
(252)

ANOTHER chapter closed on the colourful political career of maverick former Conservative Party MP Mr Koos Botha when the Truth and Reconciliation Commission pardoned him yesterday for a series of bombings in the early 1990s

Botha, who, after the bombings, was kicked out of the CP for advocating negotiations, went into a low-cost housing business with Gauteng premier Mr Tokyo

TRUTH &  
RECONCILIATION  
COMMISSION



Sexwale's brother and now runs a secretarial college with mainly black students, said he was "very relieved" at being granted amnesty

He said he would try his best to steer clear of politics in future — "except for issues in my local community like litter on the pavements and so

on" — and called on other right-wingers who had committed political crimes to come clean

"The time has arrived for us to admit the things we have done wrong so that we can move forward," Botha said hours after the announcement that he had received amnesty

Boraine, known as "KleinKoos" in his parliamentary days, was kicked out of the CP in 1992 after clashing with then CP leader Dr Andries Treurnicht over the party's refusal to engage in negotiations.

He was given his nickname to distinguish him from another maverick Conservative, Groot-Koos van der Merwe. Van der Merwe was also kicked out of the CP for his relatively progressive politics and now warms the parliamentary benches for the Inkatha Freedom Party

Soon after being ditched by the CP, Botha was arrested and charged with the bombing of Hillview Primary School in Pretoria, post offices in Verwoerdburg and Krugersdorp; and Cosatu House in Pretoria. No one was injured in the bombings, which were committed in 1990 and 1991, before he had changed his mind about negotiations

At the time, he said, he believed the Afrikaner nation was under siege and Treurnicht's militant statements had driven him to take drastic action

The Hillview School building, which was not in use at the time, was chosen as a target because it had been earmarked as a school for the children of returning ANC exiles

Botha was charged in 1993 with sabotage and terrorism, but never convicted. The case was postponed in the Pretoria Supreme Court pending his amnesty bid

Botha has converted a disused jail in Marabastad, the predominantly black business district of Pretoria, into a secretarial training college mainly for black students

# Three cabinet ministers seek amnesty from TRC

CT 13/12/98

(252)

THREE cabinet ministers are among the people whose amnesty applications will be handed to the Truth and Reconciliation Commission today, hours ahead of the deadline at midnight tomorrow.

It was announced yesterday that Safety and Security Minister Mr Sydney Mufamadi and Posts Minister Mr Jay Naidoo would seek amnesty for the kidnapping of a policeman detailed to spy on Cosatu House in 1990.

Naidoo, who was Cosatu's secretary-general at the time, and Mufamadi, who was his deputy, have appealed against their conviction on the kidnapping charge.

The African National Congress also confirmed that it would hand in amnesty applications by Defence Minister Mr Joe Modise, former commander of the ANC's military wing Umkhonto we Sizwe (MK), and Deputy Defence Minister Mr Ronnie Kasrils.

It was reported earlier that former Law and Order Minister Mr Adriaan Vlok had become the first apartheid-era minister to seek amnesty. He said he did not know of any other National Party politicians who would be applying.

Truth Commission deputy chairman Dr Alex Boraine said it was the commission's policy to release applicants' names only once dates had been set for public hearings, but some of the applications related to very significant events. Boraine and Freedom Front leader Constand Viljoen are to meet President Nelson Mandela at the Union Buildings this morning to discuss proposals for an extension of the amnesty cut-off dates.

The commission, supported by the FF, has asked that the cut-off date for amnesty offences be extended from December 6, 1993, to May 10, 1994, and that the deadline for applications be extended to March 14 next year.

Boraine said he had been in touch with the President's office to suggest that the Pan-Africanist Congress, which also wants an extension, also be invited to the meeting.

Mandela will address a press conference immediately afterwards.

The commission continued to urge the Inkatha Freedom Party to encourage its leaders and members to make use of the commission.

"We will go on doing this as long as we are alive. If the IFP does not make use of that they only have themselves to blame," Boraine said.

The PAC is expected to hand in about 600 applications before tomorrow's deadline, including the entire high command of its military wing, the Azanian People's Liberation Army.

The ANC said yesterday that Truth Commission records showed 300 applications had already been submitted by ANC members around the country.

Of these, 100 had been submitted on behalf of people serving prison sentences.

Party headquarters had received another 60 applications and more were expected. These would also be handed to the commission today.

Applicants included former MK members who were based at home and abroad, MK field and camp commanders, members of the ANC's former security and intelligence department, and ex-prisoners.

● The government has formally agreed to extend the life of the Truth and Reconciliation Commission by

six months to December 15 next year, Dr Alex Boraine said yesterday.

He said the extension had been granted verbally by President Mandela some time ago. A letter confirming this, from Justice Minister Mr Dullah Omar, had arrived this week.

"So we are now definitely kosher," he said — Sapa.

TRUTH & RECONCILIATION COMMISSION



# R1,2bn boost for justice system

(252) ET 13/12/96

## OWN CORRESPONDENT

PRETORIA • Altogether R1,2 billion will be spent to beef up the criminal justice system over the next few years, Safety and Security secretary Mr Azhar Cachalia announced yesterday.

Speaking on behalf of the National Crime Prevention Strategy (NCPS), Cachalia said the money would be used to clear key blockages in departments such as Safety and Security, Justice and Correctional Services

The money for the NCPS programmes will come from RDP funds as well as the budgets of the Ministries of Safety and Security, Justice, Welfare, Defence, Correctional Services and Intelligence

Cachalia listed the achievements of the NCPS as the establishment of a unit to co-ordinate interdepartmental NCPS programmes; each department involved had assigned senior



**BEEF-UP:** Mr Azhar Cachalia

staff members to serve as full-time managers of their NCPS programmes

The NCPS has identified 12 programmes dealing with blockages in the system as priorities. Work has already started; or will start shortly, on the following

- R168,2 million has been allocated for an integrated information management system for the entire criminal justice system, which should improve and

integrate information from the police to the prosecutor to the prisons and social welfare

- R211,5m will be spent on a project to improve police fingerprinting with an automatic fingerprint identification system

- A R20m project for facilities for youth offenders is being led by the Welfare Department.

- Police propose a R5,9-m project to train officers to be more professional at crime scenes

The other priority projects are accelerated internal training for magistrates, state advocates, state prosecutors and interpreters

Money will also go towards improving court management, upgrading the infrastructure of the Department of Justice and a victim support programme

Programmes will also be run on the training and rehabilitation of offenders and training police to handle cases more effectively

# TRC grants 7 amnesties and turns down 9 applications

By ROBERT BRAND

One day after freeing killer policeman Brian Mitchell, the Truth and Reconciliation Commission announced it had granted amnesty to four right-wing bombers and three members of an ANC self-defence unit who had murdered political opponents

The commission denied amnesty to nine people

■ Koos Botha, a former CP MP, received amnesty for the bombing of Hillview School, Pretoria, on July 6 1991, Cosatu House, Pretoria, on December 18 1991, and the Verwoerdburg and Krugersdorp post offices on January 1 1992. He was facing criminal and civil proceedings related to the acts, including a charge of terrorism under the Internal Security Act.

Since the explosions did not kill or injure anyone, a hearing was not required and the application was considered in chambers

■ Gerhard Pieter Daniel Roux, Cornelius Gabriel Volschenk and

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Rowland Keith Robinson, all members of Boerekommando, received amnesty for the bombing of Melkrievier School in the Nylstroom district on January 2 1992 and the bombing of Perdekop School in the Volksrust district on December 22 1991. Their application was also dealt with in chambers

■ Roland Roy Petrus, Machabe Petrus Thulo and Paseka Johannes Mpondo, members of an ANC self-defence unit in Maokeng, Kroonstad, received amnesty for the murder of George Ramasimong and Seabata Ntema in February 1992. They were serving long-term prison sentences

Ramasimong and Ntema were members of the Three Million Gang, which was at war with the ANC in Maokeng, and there was a perception that the police were aiding the gang. The applicants had a political objective because they thought they could bring an end to the violence by killing Ramasimong and Ntema, the com-

mittee found

■ Molefe Tshukudu, a member of an ANC self-defence unit, was denied amnesty for the murder of Hendrik Grobbelaar in Maokeng, Kroonstad, in 1992. Tshukudu is serving a 14-year sentence. The committee rejected Tshukudu's contention that he had killed Grobbelaar, a white man who lived in the township, because he believed he was a policeman who wanted to arrest him

■ Cornelius Johannes van Wyk and Jean Prieur du Plessis, two University of Pretoria students with far right-wing links, were denied amnesty. Van Wyk is serving three life sentences for the murder of a woman and two farmworkers during a botched attempt to steal firearms, while Du Plessis is serving a 12-year sentence for robbery, theft of weapons from the SADF and illegal firearms charges

The committee said the two did not belong to a "publicly known" political organisation as required by the amnesty law and

they could not prove a political motive

■ Kwane Sebe, former commander of the Ciskei police's Elite Unit and son of former Ciskei strongman Lennox Sebe, was refused amnesty for the bombing of his second-in-command's house and a bottle store. The committee rejected Sebe's evidence that the bombings were committed as part of an intelligence operation. Sebe is serving a 21-year prison sentence

■ Four brothers, Adriaan, Willem, Gideon and Dawid van Straaten, who claimed to be AWB supporters, were denied amnesty for murdering two blacks during a robbery in 1989. The committee said the murders were purely criminal acts. They are serving long-term prison sentences

■ Thamsanqa Jackson was denied amnesty for the murder of a policeman, Oupa Dithabe, in 1993. The committee found that Jackson had killed Dithabe after Dithabe had slapped him in the face. Jackson is serving a 12-year sentence

Star 13/12/96

Deadline for applications tomorrow Mandela agrees to TRC mandate being extended by six months to December 1997



Jay Naidoo ... the post and telecommunications minister.



Joe Modise ... defence minister.



Sydney Mufamadi ... security minister.

By ROBERT BRAND

The ANC will present 60 amnesty applications, including those of three Cabinet ministers and a deputy minister, to the Truth and Reconciliation Commission today.

Tomorrow is the deadline for applications.

Among those applying are Defence Minister Joe Modise and his deputy Ronnie Kasrils, Safety and Security Minister Sydney Mufamadi and Post and Telecommunications Minister Jay Naidoo, it was announced yesterday.

Meanwhile, the commission announced that it had granted amnesty to four right-wing bombers and three ANC self-defence unit members who had murdered political opponents.

One of the rightwingers is former Conservative Party MP Koos Botha, who bombed the disused Hillview School in Pretoria after it had been earmarked as a school for the children of returning ANC exiles.

The commission rejected the amnesty applications of nine people, among them Johannes van Wyk and Jean du Plessis, two Pretoria University students who started an ultra-right organisation and were jailed on charges ranging from murder to theft of weapons from military bases.

TRC deputy chairman Dr Alex

Boraine is meeting President Mandela in Pretoria today in a final bid to have the deadline extended by three months. They will also discuss an extension of the cut-off date for acts which qualify for amnesty, currently September 6 1993.

The ANC said the 60 applications to be handed in are from former MK members and members of the organisation's security and intelligence department, including Modise and Kasrils.

The ANC would not disclose the names of other applicants, saying it was the prerogative of the TRC's amnesty committee to release the information.

In a separate statement, lawyers for Naidoo and Mufamadi said they would apply for amnesty for the kidnapping of an alleged police spy in 1990. The man was taken to a basement cell at Cosatu House where he was allegedly assaulted.

Naidoo, Mufamadi and Moses Mayekiso, at the time top Cosatu officials, were convicted of assault and kidnapping.

The assault conviction had been set aside by the Supreme Court, and an appeal on the kidnapping conviction was pending. Mayekiso will also apply for amnesty.

Boraine said yesterday the TRC had drawn up a list of questions for former State President

P W Botha, and would forward it to him at his Wilderness home. He said this step had been agreed at the recent meeting between Botha and the TRC chairman, Desmond Tutu.

Boraine said Botha had made it clear he would not apply for amnesty. "If the cut-off is extended and he changes his mind we would clearly welcome that," he said.

If Botha and many others did not seek amnesty they would expose themselves to possible criminal prosecution and civil claims, Boraine said. Botha has been implicated in the 1988 bombing of Khotso House, the Johannesburg headquarters of the South African Council of Churches.

Boraine said the Government had formally agreed to extend the life of the Truth and Reconciliation Commission by six months to December 15 next year, Sapa reports.

He said the extension had been granted verbally by Mandela some time ago. A letter confirming this, from Justice Minister Dullah Omar, had arrived this week. "So we are now definitely kosher," he said.

The commission would have a further three months from December 15 to write its report.

More reports

# Three in the Cabinet will seek amnesty

Star 13/12/96

(252)



# R1,2-billion to speed up justice

**OWN CORRESPONDENT**

Safety and Security secretary Azhar Cachalia has announced that R1,2-billion would be spent on beefing up the South African criminal justice system over the next few years.

Speaking on behalf of the National Crime Prevention Strategy (NCPS) in Pretoria yesterday, Cachalia said that the money would be used to clear key blockages in affected departments, including those of Safety and Security, Justice and Correctional Services.

The R1,2-billion allocated for the NCPS programmes by the Government will come from RDP funds as well as the budgets of the

ministries of Safety and Security, Justice, Welfare, Defence, Correctional Services and Intelligence.

Cachalia listed the achievements of the NCPS as the establishment of a unit to co-ordinate interdepartmental NCPS programmes.

He said that each department involved has assigned senior staff members to serve as full-time managers of their respective NCPS programmes.

Most of the R1,2-billion will go to projects which will focus on fixing the key blockages in the criminal justice system.

The NCPS has identified 12 programmes dealing with blockages in the system as top priorities.

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Star 13/12/96

# Truth commission pardons CP MP, turns down nine amnesty

Linda Ensor

CAPE TOWN — The truth commission yesterday pardoned Conservative Party MP Koos Botha and six others while refusing the amnesty pleas of nine applicants, including former Ciskei president Lemniox Sebe's son, Kwane, and six right-wingers.

At the same time, Sapa reports that Safety and Security Minister Sydney Mufamadi and Post and Telecommunications Minister Jav Naidoo are to lodge amnesty applications tomorrow

for kidnapping a police spy outside union federation Cosatu's headquarters in Johannesburg in 1990. Their convictions are on appeal.

All the applications disposed of by the amnesty committee yesterday, except Botha's, were from prisoners, and most of those turned down were refused because no political objectives had been established.

Botha's application was dealt with in chambers because it did not concern a gross violation of human rights. It related to explosions in 1991 and 1992 at

Hillview School, Cosatu House in Pretoria and the Verwoerdburg and Krugersdorp post offices.

Boerekommando members Gerhard Roux, Cornelius Volschenk and Rowland Robinson, who faced terrorism charges for detonating explosives at schools in Nylstroom and Volksrust in 1991 and 1992, were granted amnesty in chambers.

The others pardoned were Roland Petrus, Machabe Thulo and Paseka Mpondo, ANC members from Mankeng, Kroonstad, serving long sen-

tences for the murders of three members of the Three Million Gang, which terrorised Maokeng in 1991 and 1992.

The amnesty committee found that the actions of the three were politically motivated and therefore fell within the scope of the act. However, another prisoner from Kroonstad, ANC member Molefe Tshukudu, failed in his amnesty bid, as no political objective could be found for his murder of a Maokeng resident, Hendrik Grobelaar, in October 1992. Tshukudu said he believed Grobelaar to be a policeman.

## Amnesty (252)

Continued from Page 1  
BD 13/12/96

Former Ciskei Police elite unit commander Kwane Sebe, serving a 21-year prison term, failed in his application on the grounds that he had no clear political objective. Sebe had instructed the army to bomb the house of his former second-in-command, Zandisile Nygwanza, and a bottle store belonging to Nygwanza and Fikile Gatyra, the secretary-general of the Ciskei president's office.

The committee found Sebe "was determined to hurt those who did not comply with his wishes" and that he had acted out of malice.

The committee refused amnesty to four AWB-supporting brothers, Adriaan, Willem, Gideon and Dawid van Straaten, serving long jail terms for the murder of two black security guards in Vereeniging in 1989 and robbing a vehicle. They said their aim was to show that blacks could not perform

such work. The committee found that these were criminal acts without a political objective.

Amnesty was withheld from Thamasanga Jackson, a prisoner sentenced for murdering a policeman in Masilo location near Ventersdorp in 1993, as he could not prove a political motive. He claimed to have acted in self-defence after being slapped.

Commission deputy chairman Alex Boraine is to meet President Nelson Mandela in Pretoria today to discuss an extension of the date of the amnesty period from December 1993 to May 14 1994, and of the deadline for applications from December 14 to March.

By late yesterday nearly 4 000 amnesty applications had been received, Boraine said. Political parties had given notice that applications were on the way and other "breakthrough" applications had been received.

Justice Minister Dullah Omar informed the commission this week that its life had been extended to the end of next year, with an additional three months for writing up its report.

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pleas

Amnesty was refused to two imprisoned members of the National Socialist Partisans, Cornelius van Wyk and Jean du Plessis, on the grounds that their organisation, bent on purging SA of "inferior" races, was not a "publicly known political organisation" as required by the act. It had four members, described in newspaper reports as religious fanatics, who killed three people in Louis Trichardt in 1991 while on a mission to steal firearms.

Continued on Page 2

# Plan for R1,2bn upgrading of justice system

Stephen Laufer

BUSINESS plans costing R1,2bn to improve the criminal justice system had been submitted to the state expenditure department by the National Crime Prevention Strategy, co-ordinator Bernard Fanaroff said yesterday

Twenty-two plans had been finalised last month and the relevant ministers and directors-general had approved them last week

The crime prevention strategy co-ordinates efforts of the safety and security, justice, correctional services and welfare departments

More than R300m would be spent on improving and integrating management information systems which

would allow greater co-ordination between the SA Police Service, prosecutors and the correctional services and welfare departments. A basic system would be in place in 18 months

Fanaroff said speedy processing of criminal cases through the system was the most effective deterrent to crime

The system would allow quick access to criminal records and would be linked to an automated fingerprint information system. The process, costing more than R200m, would reduce turn-around time for identifying fingerprints from eight weeks to 48 hours

State expenditure had approved R33m for upgrading secure care facilities for young offenders

Eight other projects were expected

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to get the green light from the state expenditure department within weeks, Fanaroff said. These included measures to improve the infrastructure and management of courts, particularly in former homelands where many were without telephones and other basics, expansion of the witness protection programme, rehabilitation for offenders, 65% of whom were illiterate and likely to return to crime if released without training, and upgrading prison security

Business against Crime had helped departments identify resources and the private sector would assist departments in putting plans into place

BD 13/12/96 Picture: Page 2

# Mandela 'to open amnesty floodgate'

M&G 13-19/12/96 (252)

Applications for amnesty from the the PAC and ANC are pouring in to the truth commission, and with a likely extension of the cut-off date rightwingers will also be able to apply, writes **Eddie Koch**

**P**RESIDENT Nelson Mandela is expected to cap a week of dramatic developments around the truth commission by announcing on Friday that people who took part in election bombings and other acts of violence during the run-up to his 1994 inauguration will now be able to apply for amnesty.

The meeting comes after announcements that former law and order minister Adriaan Vlok has finalised his amnesty application and that guerrillas from the African National Congress and Pan Africanist Congress's military wings are streaming in to ask for amnesty before the deadline on Saturday. It was also the week in which the first security force officer responsible for a serious massacre — Brian Mitchell — received amnesty.

The outcome of the summit at Mandela's office in the Union Buildings — due to be attended by Freedom Front leader Constand Viljoen, truth commission deputy chairman Alex Borane and Justice Minister Dullah Omar — will provide the pivot around which the commission will now begin to take more shape as an active agent for reconciliation.

The truth body, in operation since January, has so far functioned mainly as a forum for victims to express the pain they have suffered as a result of human rights abuse in the apartheid period. The organisation has, until now, had only limited success in terms of its other major function to flush out the truth from perpetrators in exchange for giving them amnesty.

Members of the commission believe they will have time and opportunity to accomplish a more effective mood of reconciliation than the organisation has achieved so far if there is agreement to amend the truth laws so that more rightwingers can apply for amnesty.

Sources inside the commission say the president will probably announce plans at a midday press conference that will enable right-wing terrorists who disrupted the country's first non-racial election with a violent car-bomb campaign to apply for amnesty.

That move — along with the dramatic announcement this week that former minister Adriaan Vlok has applied for amnesty, and the decision this week to grant mass killer Brian

Mitchell amnesty, is bound to bring the right wing more into line with the principles of the country's new Constitution and its stress on the need for national reconciliation.

Vlok was reported to have almost completed his amnesty application while a group of police generals and senior officers under the leadership of former commissioner, General Johan van der Merwe, will submit about 50 applications.

On top of that, the PAC announced this week that the entire high command of its guerrilla wing, the Azanian People's Liberation Army (Apla), would apply for amnesty. An additional 600 applications from rank-and-file Apla cadres will be made before the deadline at midnight on Saturday.

Amendments to the truth laws, especially an extension of the period for which people involved in political violence can qualify for amnesty, will also benefit Apla guerrillas who carried out terror campaigns in the early part of 1994.

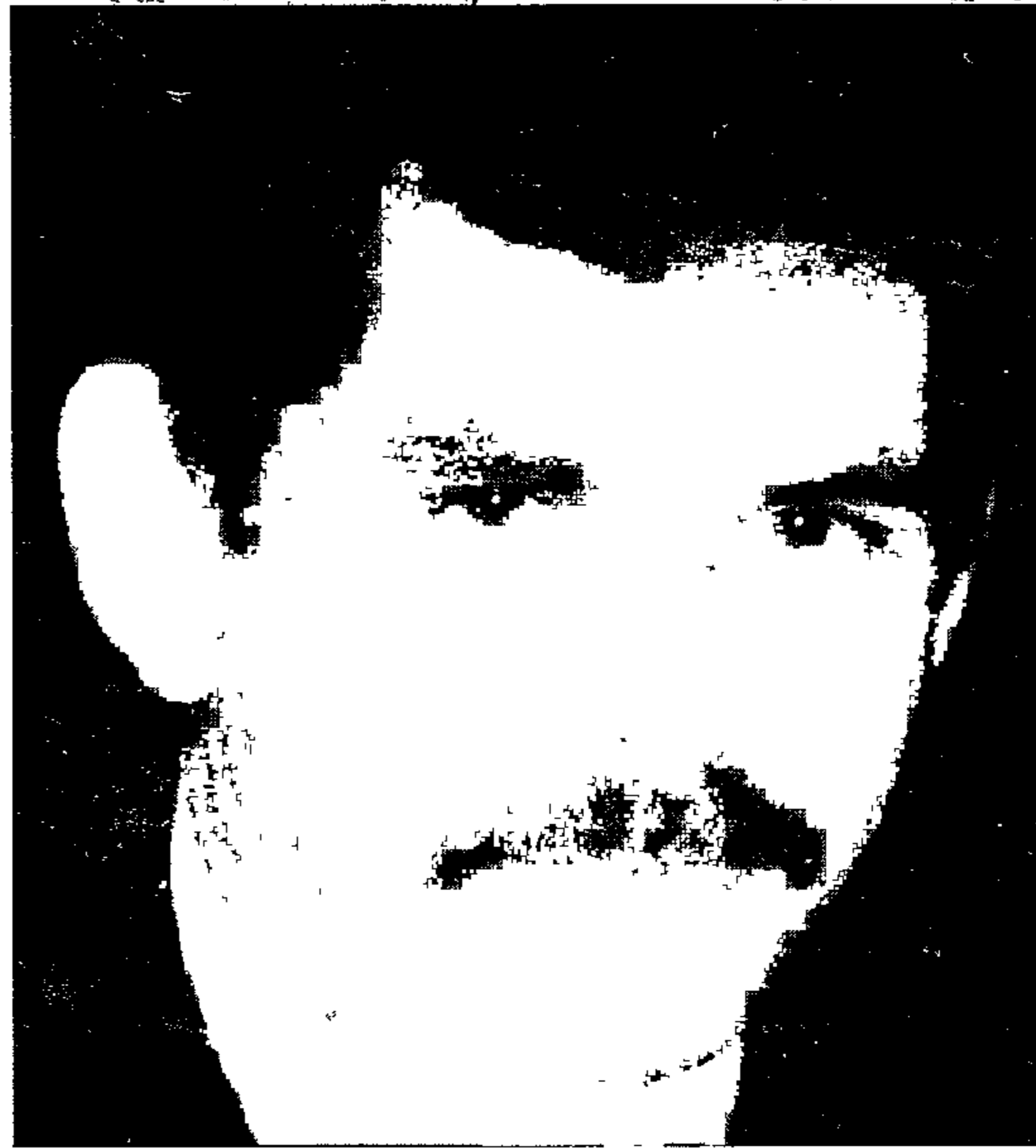
The ANC has also already handed in about 300 applications and is busy processing many more. The organisation has promised to make the names of each applicant public this week, but it is known the list will include Defence Minister Joe Mochise, his deputy Ronnie Kasrils, and Rashid Abu Baker, former commander of the Umkhonto weSizwe's special operations unit, who is now a general in the SANDF.

**T**hese late but dramatic moves will effectively shift the truth body away from being a forum for public venting of anger and grief about past atrocities into becoming a more effective instrument for extracting the truth about these events and then promoting forgiveness on the basis of the disclosures.

Mandela is expected to tell journalists on Friday that his Cabinet will recommend to Parliament early next year that it amend its truth commission legislation in order to change the cut-off date for offences that qualify for amnesty from the end of 1993 to May 10 1994, the date of the presidential inauguration.

The deadline for amnesty applications to be handed in by midnight on Saturday December 14 is also likely to be shifted ahead by a few months to enable those who committed human rights abuse in the early months of 1994 to prepare their submissions.

The M&G has been informed that there is still considerable debate within the ANC about how the president should handle requests from a range of quarters to amend the amnesty rules. But the fact that Viljoen has been asked to attend the Friday summit indicates Mandela is likely to use the



Brian Mitchell: Amnesty decision provides guidelines for other applicants

PHOTOGRAPH COURTESY BEELD

## Pardons: Seven win, six lose

**Eddie Koch and Marion Edmunds**

**T**HE truth commission on Thursday granted amnesty to seven more people, including former Conservative Party MP Koos Botha, who was convicted of bombing a Pretoria school.

The commission rejected applications by Kwane Sebe, son of former Ciskei leader Lennox Sebe, and six rightwingers. Kwane Sebe applied for amnesty for bombing a house and bottle store in the former Ciskei.

Among the six rejected are Afrikaner Weerstandsbeweging supporters Adriaan, Willem, Gideon and Dawid van Straaten, who murdered two black security guards in Vereeniging in 1989.

The other two rightwingers, Jean du Plessis and Cornelius van Wyk, said they belonged to the Nasionale Sosiaistiese Partys (NSP), which had four

occasions to make one of those statesman-like gestures he has mastered.

And the decision to grant amnesty to Mitchell, a police captain sentenced to 30 years in prison for his role in the massacre of 11 people at Trust Feeds in

members. Their application was rejected on the grounds the NSP was not a bona fide political organisation.

The rulings indicate the amnesty committee is placing a strong emphasis on clear-cut political motivation as a criteria for granting amnesty. This is in line with recommendations in the truth commission law that the principle of "proportionality" be considered as a criteria for granting amnesty.

Applications were rejected in cases where personal and criminal motivation appeared to be disguised with political intent. The committee rejected Sebe's claim that his bomb attacks were part of a political plan to destabilise the former Ciskei government.

The committee said it could find no political motive for the killings and theft of a lorry committed by the Van Straaten brothers.

KwaZulu Natal, has already prompted a flood of new applications for amnesty from perpetrators.

Officials in the commission's investigative unit said more than 3 500 applications had been submitted late

this week and the total was expected to reach 4 000 by the Saturday deadline.

By far the biggest proportion of security force applicants were from the police with relatively few coming from the military. However a small group of former Military Intelligence agents were expected to apply and also a large group from 32 Battalion — the mercenary unit that fought in Angola and is reputed to have carried out train violence during the pre-election period.

ANC spokesman Ronnie Mamoepa said staff were preparing to release a list naming all the organisation's members asking for amnesty.

The amnesty committee's decision about Mitchell was the first dealing with a security force officer guilty of a serious offence and, as such, has provided perpetrators and their legal teams with some clear guidelines about what kind of treatment they can expect from the panel of judges on the committee.

**D**uring a conference in Stellenbosch last week on legal aspects of the commission, lawyers acting for former policemen and military officers expressed outrage that the committee had not provided clear guidelines for people who were thinking of applying but were still undecided.

The Mitchell judgment does not refer specifically to the way it interpreted the principal of proportionality — that the crime committed should have been commensurate with the political motives of the perpetrator — but the fact that the police captain was indemnified and set free indicates the committee is willing to take a fairly liberal interpretation of the principle.

The ruling provides other guidelines. It notes Mitchell was under the command of the Joint Management Committee System that co-ordinated the National Party government's counter-offensive against the ANC in the 1980s, he considered it his duty to carry out the strategy; he had no personal motive in planning the massacre, and some of the constables who actually carried out the attack had already received indemnity under earlier legislation.

The NP this week also bolstered amnesty procedures by issuing a statement urging its supporters who have committed crimes and violations of human rights to approach the commission.

The gradual alignment of right-wing parties, including the NP and the Freedom Front, with the objectives of the truth commission is likely to marginalise military figures like former defence minister Magnus Malan who have urged their supporters to risk being prosecuted in court rather than cooperate with the truth body.

# Extension of amnesty date welcomed

## Heidelberg bombing, Shell House now fall within cut-off

(252) ARG 14/12/96

MARCO GRANELL

ARGUS CORRESPONDENT

Pretoria - President Mandela's extension of the amnesty cut-off date from December 6 1993 to the date of his inauguration has been widely welcomed across the political spectrum.

Mr Mandela broke the news at a press conference in Pretoria yesterday after a meeting with Truth and Reconciliation Commission (TRC) deputy chairman Dr Alex Boraine and Freedom Front leader General Constand Viljoen.

Mr Mandela said he would ask Parliament when it reconvened in Cape Town in February to approve an amendment to the Interim Constitution, changing the cut-off date to May 10 1994.

The president also said he would sign a proclamation extending the deadline by which amnesty applications must be handed in to the TRC to May 10 next year.

The deadline is due to expire at midnight tonight.

"This is one of the most difficult decisions I have had to take

"Much pain and suffering has been wrought on families, communities and the nation as a whole by acts of the nature for which amnesty is to be requested and possibly granted," he said.

"If I had to decide the matter myself I would have stuck to my decision and refused any request for an extension either of the cut-off date or the date of making applications.

"But we are dealing with leaders (Archbishop Tutu and General Viljoen) who have played an important, if not crucial, role in bringing about reconciliation and influencing certain elements away from what they were planning.

General Viljoen was pleased that the president had agreed to the extension.

He said he would now apply for amnesty for certain acts before the elections and would also encourage members of the South African Defence Force under his command to join him.

The Conservative Party also welcomed the change in the cut-off date.

It would now include the period during which the election bombings, the Heidelberg Tavern attack and the Shell House

massacre happened.

The Foundation for Equality Before the Law - which was behind the creation of the Committee for Amnesty for Afrikaners - said the extension would lend credibility to the commission and would encourage more people to come forward and seek amnesty.

Azanian People's Liberation Army (Apla) former commander Brigadier Dan Mofokeng was also pleased.

He said it would give Apla members more time to apply for amnesty.

He said many of them were in jail and there had been difficulty in working through the process.

He was unable to estimate how many cadres would be affected by the extension or to say what acts they would seek amnesty for.

Police Commissioner George Fivaz said he had been in favour of such a move all along.

He repeated his call to policemen to make use of the amnesty procedure.

Dr Boraine said the extensions would not require an extension to the commission's life-span.



REUTERS

ear this: President Nelson Mandela is flanked by Constand Viljoen, left, and Alex Boraine in Pretoria



## ◆ Amnesty

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Saying he was delighted with the decision, Viljoen said the move would enable him and some of his followers to apply for amnesty.

"I have to apply and I will apply for amnesty for the acts of resistance which we planned before the 1994 election," he said.

Asked about his activities while heading the SA Defence Force, Viljoen said there was much confusion in this regard. He had so far refused to ask for amnesty for what he called classic military operations.

"I will co-operate with the TRC in order to find answers to the concerns, and to see whether we can add some momentum to this process."

Clarity needed to be attained on activities such as cross-border operations, he said. "We will discuss this and get legal opinion now that we have the time."

TRC deputy chairman Alex Boraine, who attended the meeting with Mandela and Viljoen yesterday morning, said the extension would not lengthen the commission's two-year lifespan.

"The commission is totally opposed to any further extension of its own life," he said. "It believes that it is right to look at the past, but it is not right to dwell on it."

The extensions would, however, increase the body's workload. "We will just have to work longer and harder," Boraine said.

*Star 14/12/96*  
**Not taken lightly**

Mandela said he would sign a proclamation next Friday to put the extended deadline for applications into effect. The new cut-off date - May 10 1997 - will require Parliament's approval.

"I will recommend to Parliament that the necessary amendments should be effected in the new year. I am confident this proposal will receive the co-operation of all the parties in the national legislature," Mandela said.

The ANC said yesterday it believed Mandela's decision had not been taken lightly but had been agreed upon in the best interests of the country and its people.

"In this regard, the ANC gives its support to the decision and calls on all other political parties to do likewise."

The PAC also voiced its support for the extensions. The Democratic Party, however, said the extensions represented a deal between groups of persons represented by DP spokesman Dene Smuts said "It is bad in principle to retrospectively suspend the operation of the rule of law to suit perpetrator parties."

The TRC has so far received about 4 000 amnesty applications, including 300 from the ANC. The latter include applications from three cabinet ministers Jay Naidoo, Joe Modise and Sydney Mufamadi.

# Mandela allows four more months for applications and extends amnesty period

By ADRIAN HADLAND

(252) *Star 14/12/96*  
was December 1993

In what he described as one of his most difficult decisions, President Nelson Mandela finally relented yesterday and agreed to allow another four months for amnesty applications as well as an extension of the amnesty period.

"I have in the past stated that both these dates should not be changed," he said in a statement.

The two extensions will allow potential amnesty applicants an additional four months to apply to the Truth and Reconciliation Commission for a pardon, while the extension of the date will allow all those who committed violent acts in the run-up to the April 1994 election to be eligible for amnesty.

The previous cut-off date, as set in the interim constitution,

Mandela said he had believed the changing of the dates would send the wrong signal to criminals about the Government's preparedness to deal with criminality.

But under pressure from TRC chairman Archbishop Desmond Tutu, Freedom Front leader Constand Viljoen and the Pan Africanist Congress, Mandela announced yesterday he had changed his mind.

Tutu and Viljoen were leaders of integrity who had contributed immensely to the cause of peace and had helped South Africa to avert a civil war, Mandela said.

"I am of the firm view that their request for an extension of both these dates is motivated by the desire for a process of reconciliation that is as inclusive as possible."

Mandela said, however, the decision had not been easy.

"This is one of the most difficult decisions I have had to take. Much pain and suffering have been wrought on families, communities and the nation as a whole, by acts of the nature for which amnesty is to be requested and possibly granted."

He added he had finally been persuaded by the impact of the decision on furthering nation-building and reconciliation.

Sapa reports Mandela said that if the decision had been up to him alone, he would not have agreed to the extensions.

"We have been negotiating since 1990, and people who committed offences after the start of negotiations are to me not at all entitled to consideration," he said.

OPAGE2

# The NP, ANC, TRC and the truth

*Unless parties take responsibility, reconciliation is a mirage*

(252) ARG 16/12/96

HAVE THE TWO MAJOR PARTIES REALLY TOLD THE FULL TRUTH TO THE TRC? DEMOCRATIC PARTY LEADER TONY LEON TAKES A CRITICAL LOOK AT THEIR WORDS – AND DEEDS

The Democratic Party has observed the proceedings of the Truth and Reconciliation Commission with the same reactions as most South Africans

We have felt the ache of sympathy for the victims of a violent struggle for political, social and economic liberation. And we have felt irritation, impatience and dismay with the political parties whose submissions were less than complete and, therefore, less than truthful

Unless the parties take responsibility for the actions of their footsoldiers trained for so long to believe in their aims, the commission's goal of reconciliation will remain merely a mirage

Reading the testimony submitted to the commission by the National Party, especially, raises unanswered questions which far outnumber those addressed and the justification and extenuation in the NP's testimony outweigh remorse and regret

It is understood that the propaganda of the '70s and '80s, which brought us the "total strategy" to combat the "total onslaught", meant euphemism, double-speak, suspicions and even lies. Will it carry on now into the '90s? How can we avoid being "condemned to repeat the past" if we don't comprehend it? Does the NP still expect us to believe that the atrocities committed in the name of its regime were perpetrated by "rogue elements"? Isn't it becoming clear that the most wicked and ruthless rogue elements spawned by the mindset of apartheid were P W Botha and his generals?

Mr Botha and his political colleagues must accept responsibility for the activities of those they supervised. While apartheid certainly was not comparable with the Nazi regime in Germany, certain parallels are relevant. Albert Speer, who was a member of Hitler's cabinet, pleaded with his fellow defendants during the Nuremberg trials to "join (him) in a recognition of a universal law under which they, as part of Hitler's leadership, had to accept responsibility for acts"

Whether they had individually collaborated in the crimes or not, in their capacity as leaders, they had to accept a common culpability just as, had Hitler been victorious, they would have accepted the homage of the people for the common triumph

His comments repudiate Mr De Klerk who continues to maintain that we must blame those "few individuals" who broke the rules. Mr De Klerk has shown an aversion to accountability for years. In 1992, he said "I think in some countries, political accountability is taken too far – in the sense that just because something is wrong in a department, the minister must resign." What if that "something wrong in a department" is a cancer like the organisation, Trewits, which was charged with



COLIN DANIEL

Accuser: DP leader Tony Leon, who questions the sincerity of NP and ANC admissions about the past

systematically identifying people to kill? When will we have a public accounting of its inception, its activities and its ultimate director? Shouldn't that person, if he still holds public office be expected to resign, if not serve a prison sentence? Who ordered the destruction of documentation at police stations around the country this year? How many of the generals and their political masters knew about Trewits and Vlakplaas and knew what the word, "elimination" signified?

Instead of focusing exclusively on what we don't know, we must examine what we do know. We know that the NP government established, during the early 1970s, a parallel system of governing, in which coercion was a major feature. The civil service carried on as before while a second hierarchy of state security officials developed under the auspices of the National Security Management System. The structure was headed by the State Security Council, which reported directly to the state president

The NP government kept a constant stream of information flowing in from all sections of society through JMCs. These reports landed at one time on Mr P W Botha's desk and then when Mr de Klerk

assumed the reins, on his. It was through the structure he ultimately controlled that the security forces became, as Brigadier Jack Cronje said, the NP's "armed wing"

As our country began to feel the effects of international sanctions and acts of terrorism and sabotage in the name of the struggle (and of the state), the day-to-day management of South Africa fell more and more under the direction of the generals. This was justified in the mind of General Magnus Malan as everything from education to government finance to defence

became issues of "national security". The State Security Council came to dominate Cabinet

Dangers inherently present in this second hierarchy – besides creating a de facto para-military governing body – were many. The system allowed and ultimately

encouraged a "need not to know" so that it could promulgate its immoral laws and their devious enforcement. The judge sentencing Eugene de Kock, said a "rotten system" allowed De Kock to commit his crimes implicating the NP as well as Prime Evil. "The system," he said, "helped him hide his crimes and continue with them"

In 1987 Mr de Klerk said, "We abhor terrorism. We abhor execution without trial

by necklace." He went on to say, "If we want to deal with terrorism and other dastardly acts, we need special powers. We can't fight that type of onslaught with legal niceties." The system created and accommodated those "special powers". Mr De Klerk said his government would not make excuses for acting strongly and effectively against those bent on revolution, destabilisation and terror. And yet that is all we have heard in his party's testimony to the TRC: excuses

Many people have tried to affix blame to the NP's Teflon. In 1992, Mr Jan van Eck was thrown out of Parliament for alleging that Mr P W Botha's regime sanctioned assassination. It was Adrian Vlok who introduced the motion calling for his expulsion. The same Adrian Vlok, with the ironic portfolio of Law and Order, who allegedly ordered that a bomb be placed in Khotso House, injuring 23 people (to whom he expressed his condolences), the same Adrian Vlok who pinned the medal honouring Eugene de Kock's activities to his heartless chest

We have seen other comments by Mr De Klerk proved false. In 1992, he said that he was "not aware of one named person in the service of the state who had committed any act in respect of which indemnity might be sought"

He said this at the time Dirk Coetzee was begging the world to believe that he was a state-sponsored assassin and the authorities were trying equally hard to persuade the public he was lying. He said this while his government was piloting a bill for indemnity through Parliament and he maintained this as Adriaan Vlok and 3 500 police officers applied for that indemnity just before the 1994 elections

The ANC Government has also fed excuses to the TRC and the South African public. Violations of human rights, even for a "just cause", cannot be excused. If the ANC insists, as Matthews Phosa did recently that Magoo's Bar was a "legitimate military target" then they are giving the NP the right to claim that Khotso House was, too

What caused M K troops to mutiny in 1984? Did the ANC leaders enrich themselves, as many soldiers have claimed, with overseas money destined for the "struggle"? Where are the soldiers who made up the group known as "mbokodo", or "grinding stone"? Is it true that one Gabriel Mthunzi Mthembu, known as "the butcher of Quatro" is now the general manager of security at NIA? And what of other Cabinet ministers fingered by the various commissions looking into human rights violations at the ANC camps?

In 1994, Mr Mandela said any Cabinet minister serving under him should be suspended from the Cabinet and their cases referred to the courts if they could be shown to have violated human rights. And yet, the ANC has hopped around in so many directions regarding their culpability it remains to be seen whether any of their commanders and politicians and soldiers will be applying for amnesty by the December 14 deadline

***'If the ANC say Magoo's Bar was a legitimate target, they give the NP the right to say Khotso House was, too'***

# Rude shock waiting for liars

(252) Rowen 17/12/96

TRC has begun to find out who was killed and who ordered the deaths

By Claire Keeton  
Feature Writer

**S**ECURITY POLICEMEN are no longer protected from probing questions about past abuses by their rank or superiors, and secret state files are no longer hidden in locked steel vaults. The Truth and Reconciliation Commission (TRC) has changed all that.

Now both retired and serving policemen, from sergeants to generals, have had to answer to TRC investigators at in-camera inquiries, while State Security Council (SSC) files are open on the desks of commission researchers.

Across the country TRC investigators and researchers have uncovered new information on how the state and liberation movements systematically perpetrated human rights abuses between 1960 and 1993.

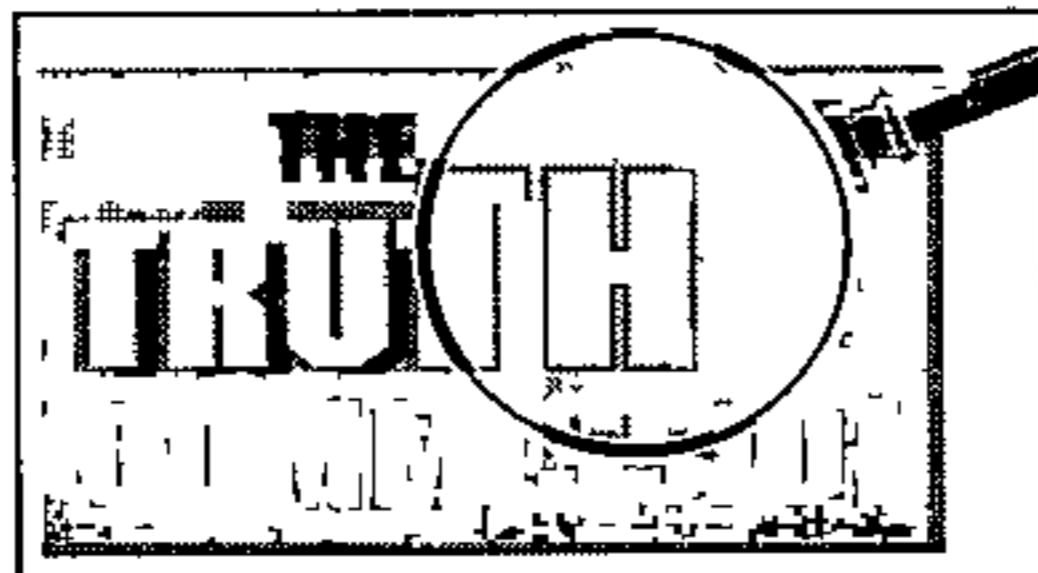
The head of investigations, Commissioner Dumisa Ntsebeza, said his unit had the capacity to discover the whole truth. "Amnesty applicants should not tailor evidence to suit their own ends. They may be rudely shocked by how they fail," he warned.

The unit has begun to find out not only who was killed in political violence but who ordered their deaths, how they died and for what reasons.

Investigations director Glen Goosen said the unit was compiling this information to gain a "clearer insight" into the context of the human rights violations.

The unit – with less than 60 policemen, lawyers, violence monitors, foreign and other experts – has prioritised several areas during its first year. Apart from its own investigations, it has done the ground work with the research unit for many human rights, amnesty and event public hearings.

The corroboration of testimony for the public hearings has taken much of the investigators' time. "The bulk of our work this year has been case-dri-



ven," Goosen said. TRC executive secretary Paul van Zyl said the corroborative work was critical to making accurate and defensible findings. "Our credibility stands and falls on whether we have a thorough methodology and standards for making findings."

Another important area has been the Section 29 in-camera inquiries with subpoenaed individuals, many from the security forces. "We have identified people allegedly involved in violations and issued a large number of notices in terms of Section 29 (of the Promotion of Truth and Reconciliation Act)," said Goosen.

"We have made significant progress and had major breakthroughs in a number of instances. We have gathered quite a lot of information not previously known or available."

The national office has done inquiries with senior policemen like General Krappies Engelbrecht and each regional office has conducted inquiries related to its own investigations.

Van Zyl said "The Section 29 inquiries have been astonishingly successful. Although some people have clammed up, others have walked in saying they were entirely innocent and left saying they would submit amnesty applications in the next few days."

But the TRC has struggled to win the cooperation of members of the military. "Their obvious reluctance to cooperate is a problem and we will concentrate a lot of energy on this next year," said Goosen.

He said there were a "few notable exceptions" who have assisted with



Alex Boraine ... political parties must help to expose the real powers responsible for human rights violations.

investigations, some of them would apply for amnesty.

The TRC is hoping that members of notorious military units like 32 Battalion will approach them with inside information on violence like the 1990s train massacres.

In addition the investigations unit will be directly affected by the recent flood of amnesty applications. "The huge volumes of applications (now close to 4 000) will be a substantial portion of our work next year," Goosen said.

Meanwhile the research unit, headed by Professor Charles Villa-Vicencio, is also working hard to document human rights violations and the context which gave rise to them. He said the unit has made "significant progress" this year, with 12 national themes to guide their research.

Van Zyl said the themes helped to provide an analytical framework against which to interpret primary information and to see how representa-



Commissioner Dumisa Ntsebeza ... the investigations unit has the capacity to discover the whole truth.

tive the data is. The TRC already has about four times more information than the Chile Truth Commission.

Villa-Vicencio said one of their priorities, on top of servicing public hearings, has been accessing primary documentation. Key documents such as SSC and Cabinet minutes have been released by major institutions like the State Archives, National Intelligence Agency, and the former South African Defence Force and South African Police.

"We have begun to work our way through a number of very sensitive, important documents, which have established a clearer picture in our own minds of the activities of the old South African regime than we had at the beginning of the year," he said.

The unit does not make findings, but next year it will be under severe pressure to start defining the main lines and conclusions of the final report.

The research unit, like investigations and the committees, has been

frustrated that the TRC's data base has taken a long time to become operational. "We have had a limited ability to cross-check and analyse primary data," Villa-Vicencio said.

But the database will be operating at full speed by the beginning of next year and assist the TRC's units in identifying trends and perpetrators.

For example, it would be significant if a general was named in 50 cases in the Eastern Cape during a period when he was commanding officer and there were many disappearances.

TRC researcher Janet Cherry said the unit has seen patterns emerge such as torture on both sides of the struggle and vigilante involvement in human rights abuse.

Although crucial evidence has shown security force complicity in so-called "black-on-black" violence, Cherry said "We need someone in a senior position to say how they strategised and how they implemented their plans."



# TRC: Parallels with Holocaust

CT 18/12/96

(252)

**THE** proceedings of the Truth and Reconciliation Commission carry a special poignancy for Jewish South Africans, writes **BRIAN JOSSELOWITZ.**

**T**HE forbidding and bleak landscape of Auschwitz-Birkenau brought to mind pictures of a grey, sprawling and smog-covered Soweto and Alexandra.

These vivid pictures, thousands of kilometres from home, linked a South African to the shame and horror of apartheid and the work of the Truth and Reconciliation Commission.

The South African connection was underscored at a recent workshop in Johannesburg which examined the TRC from the Jewish perspective (the workshop was organised by Geshet, the Jewish movement for social action) and by a visit to one of the sites of the Holocaust by Suzanne Belling, the South African editor of the SA Jewish Times.

Belling, with 30 people from around the world, visited Auschwitz-Birkenau, the infamous German death camp in Poland.

The group also visited Krakow and the Jewish Ghetto in Warsaw where in the 1940s the Jews were separated by a wall from the rest of society.

"It was hard to imagine what our fellow Jews had endured behind the wall," Belling

said "As a South African, having lived as a privileged white citizen, the shame I felt during our apartheid era resurfaced. Although apartheid and the Holocaust could never be analogous, any Jew who cannot come to terms with the new SA, and there are some, should visit Poland and realise where racism, if unchecked, can lead."

When Jews watched the working of the TRC on television and heard and saw the agony of the witnesses, there were parallels with the Holocaust and Nuremberg.

**"Any Jew who cannot come to terms with the new South Africa, and there are some, should visit Poland and realise where racism, if unchecked, can lead."**

Chairman of Geshet Geoff Sifin said "While no simple comparisons can be made between the Holocaust and apartheid, either in nature or scale, there are certain similarities in the events, the roles of the perpetrators, victims and bystanders, and in the attempts to deal with the aftermath."

He said that for the past 50 years, Jews, Germans and others had been battling with three questions about what happened during the Holocaust:

- Was justice done by putting the Nazi leaders on trial?
- Was the truth of what happened firmly established in peoples' minds?
- And was peace or reconciliation achieved?

Educationalist Dr Franz Auerbach said SA had a TRC because South African society wanted to know what happened to human beings, not just to "them", during the

apartheid years and how and why it happened. The TRC was an instrument to make that happen.

"I cannot be indifferent to those who suffered during the apartheid years. We are South African and Jewish and we have some awareness of our own history. We know that the past leaves wounds and memories, collectively and personally, and we expect, even demand, that people listen to what we have to say about the Holocaust."

He said if Jews turned their backs because they did not suffer, then Jews acted like the Holocaust bystanders who also said they did not do anything terrible, so why should they care what happened to the other people who were "different" from them.

By experience, Jewish people could also show that they had suffered human rights violations. They knew the pain of not knowing what had happened to their loved ones, when they had died and by whose hand, or even where they were buried.

"One can only begin to walk the road to reconciliation when people are shown clearly what the wrongs were that they committed and when they show genuine repentance."

"South Africans, particularly Jewish South Africans, whose past echoes the pain and suffering revealed at the TRC hearing, have a moral duty to support the commission."

However, Steven Friedman, journalist, commentator and director of the Centre for Policy Studies told the workshop that he did not agree that the Truth Commission process was a modern vindication of the Jewish concept of *teshuvah*, which meant reper-

tance but, more specifically, atonement. He said that the TRC would reflect the views of Christianity, but it would not reflect Judaism's view.

"According to the Talmud (laws) nobody can right a wrong for you. The only one that can right a wrong is you and there are only two ways to do that. In the first you must seek forgiveness from whom ever you have wronged and the second is you must change your behaviour."

"Repentance requires a change of behaviour as well as making reparation to the person whom you have wronged."

And that was the problem with the Truth Commission from a Jewish perspective "Jewish tradition does not allow repentance or forgiveness to be made through an intermediary," Friedman noted.

Capetonian Xavier Platka, honorary secretary of the Jewish Holocaust Association in the Cape, believes the TRC will have a beneficial effect.

"For a Jewish Holocaust survivor who, after the horrors of World War II, found refuge in SA in the early 1950s the proceedings of the TRC, which unveils the inhumanity of man to man, strikes a very familiar chord."

"For some right-wing racists, even the irrational motivation to deny that the Holocaust took place, is accepted in good faith by

**"According to the Talmud, nobody can right a wrong for you. The only one who can ... is you ... You must seek forgiveness from whom ever you have wronged ..."**

After he qualified as a doctor he joined Namda (the National Medical and Dental Association) formed by doctors, after the death of Steve Biko in detention, to take a stand against apartheid.

"The Torah has a lot to say about politics and religion. There is clearly a repeated emphasis on justice and equality and the need to care for your fellow man and, in particular, those who are underprivileged and disadvantaged in some way."

□ Brian Josselowitz is the Assistant Editor at Cape Community Newspapers.

# Ex-servicemen 'left out in cold over amnesty'

(252) Star 18/12/96

Members of former government and  
defence force accused of indifference  
and failing to provide clarity on issue

By **NORMAN CHANDLER**  
Defence Correspondent

**M**ilitary veterans have launched a blistering attack on the former government and on the former South African Defence Force, accusing them of letting ex-servicemen fend for themselves in regard to amnesty and possible criminal charges arising from their military service.

Lieutenant-General Raymond Holtzhausen, chairman of the Council of Military Veterans' Organisations, an umbrella group representing various organisations, said "the cessation of hostilities in South Africa" had meant that members of the SADF had been "left out in the cold".

He said this was in marked contrast to the attitude taken by the ANC and Pan Africanist Congress regarding amnesty applications being made by members of their armed wings, Umkhonto weSizwe (MK) and the Azanian People's Liberation Army.

The SADF, MK, Apla and the homeland armies of the former Venda, Bophuthatswana, Transkei and Ciskei amalgamated in April 1994 to form the South African National Defence Force.

"The attitude of the former government and the former leadership of the SADF seems to be one of letting everyone fend for himself and may the devil have the last sucker for breakfast.

"This attitude reflects a lack of proper concern for those former SADF members who rendered exemplary service to the state," Holtzhausen said.

"The advice that the former

chief of the SADF and minister of defence (General Magnus Malan) is implying, that all ex-servicemen should take their chances in a law court, discounts a very elementary question: Who will be footing the legal costs involved?

"Surely, the current department head (Joe Modise), who is himself applying for amnesty, will not approve the payment of such legal costs from the state's coffers. This part of the deal was never cut at Kempton Park."

Ex-servicemen were concerned that the former leadership had not clarified the amnesty issue in regard to full-time or part-time soldiers "whose sense of

**'Who will  
be footing  
the legal  
costs?'**

duty gave the government of the day the necessary time to resolve the political issues, which was commonly put forward as a goal for the military."

Malan said last week that soldiers who served under him while he was chief of the SADF should rather take their chances in court in regard to amnesty or possible criminal charges, as he regarded as legitimate all military acts authorised by him during the so-called "bush war" years, when South African soldiers fought in Angola and Namibia, and in the era of the former government's total onslaught policy.

# Bringing a divided nation together

Truth and Reconciliation Commission ends its first exhausting nine months and has another year to complete its difficult task



By ROBERT BRAND

It would be premature to claim that South Africa's reconciliation process started on a hot April afternoon in a packed Assemblies of God church hall in Mdantsane, the sprawling township outside East London.

But that church service, led by Archbishop Desmond Tutu on the day before the Truth and Reconciliation Commission started its first public hearing, set in motion a unique experiment at bringing a divided nation closer together through trying to unearth the truth about a turbulent past.

The Promotion of National Unity and Reconciliation Act was one of the most hotly-debated pieces of legislation yet to be passed by South Africa's fledgling democracy.

It attempted to find a solution to a problem facing many emergent democracies on the one hand, victims who want justice, on the other, the departing rulers, who want amnesty for themselves, and in between, the new government, which owes allegiance to the victims but is forced by the realities of politics to pay a toll to its former enemies. Many similar attempts at reconciliation have failed, mostly because, from the point of view of victims and their relatives, the truth is seldom an adequate substitute for justice. But South Africa had a few things in its favour, which made its Truth Commission unique.

The commission was a product of a Parliamentary process rather than an imposition by a victorious new order, like the Nuremberg trials or the Chilean commission. All sides in the

apartheid conflict had a role in its conception. It avoids the problems of a general amnesty by setting objective criteria to judge whether a political offence should be pardoned. Also, its hearings would be in public, giving ordinary people a rare insight into the process of recording human rights violations and granting amnesty to the offenders.

Lastly, the commission made it clear from the start that it intended focusing on victims. Rather than turning itself into a quasi-judicial process hunting criminals, its priority would be to give victims and survivors the chance to re-establish their dignity by telling their stories in public.

The first of those "victim hearings", at the East London City Hall, was an emotional event.

Amid bomb scares and threats of legal action against the commission, Noble Mkhapi became the first person to testify before the commission. She told the story of her husband, Mapelela Mkhapi, a black consciousness activist and contemporary of Steve Biko who died in detention at the Kei Road police station in 1976. Police said he had hanged himself, a refrain which would become familiar as the commission heard stories from victims in the next nine months.

The bomb scares proved groundless, the legal threats not. With the first public hearing still in progress, families of murdered anti-apartheid activists including Steve Biko launched an action in the Constitutional Court against the legality of the commission's amnesty procedures, and said they would attempt to obtain an interdict to stop the commission's operations pending the Constitutional Court's ruling.

Of more immediate concern was an urgent application launched in the Cape Town Supreme Court by two retired policemen, Brigadier Jan du Preez and Major-General Nic van Rens-



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ANDREAS VLACHAKIS

**Pity our children ... at a TRC hearing in Soweto, writer and community leader Ellen Khuzwayo talks about the brutalisation of a generation of young people.**

burg, attempting to prevent the commission from hearing evidence in public about their alleged involvement in the death of Eastern Cape activist Siphwe Mthunhulu. The commission undertook not to allow testimony from Mthunhulu's mother until the court had ruled.

With the legal threats still hanging over it, the commission moved to Cape Town and then to Johannesburg and Durban for week-long hearings in each centre. After this first round, the human rights violations committee split up into panels to hold

hearings in towns and cities in all nine provinces.

With this process in full swing, the commission won the Constitutional Court case, the judges ruling that amnesty was required under the interim constitution and that the reparations to victims in terms of the Truth Commission legislation were a legitimate substitute for the civil damages to which some of them might be entitled.

The two retired policemen first won their case in the Cape Town Supreme Court, then lost it on appeal to a full bench of the same

court. They have appealed to the Appellate Division, and the outcome is still pending.

The emotion of the victim hearings, together with the victims' modest demands for reparations - tombstones, burials, re-burials - argued well for the TRC's mission of reconciliation in the spirit of ubuntu.

But demands mounted for perpetrators to be called to account. The amnesty committee, headed by Mr Justice Hassen Mail, only started its operations

late in May, and the case they chose as their test case concerned a little-known inter-tribal dispute in what used to be Bophuthatswana. The two applicants, Boy Diale and Christopher Makgale, who were serving long-term sentences for the murder of an unpopular tribal councillor, later became the first people to be given amnesty by the TRC.

In August, it was the turn of political parties to make oral submissions to the TRC in Cape Town. The ANC submitted a detailed report, documenting the organisation's policy on armed actions and

listing some incidents in which ANC members were involved. It implied, however, that the organisation viewed such deeds as "acts of war" for which its members need not apply for amnesty.

The ANC also provided new details, including a list of victims, of abuses in its camps in Zambia, Angola and Tanzania during the 1980s, and apologised to the relatives of those who had died as a result of abuses.

NP leader F W de Klerk also apologised to the victims of apartheid, but stopped short of accepting responsibility for

human rights violations committed by agents of his government. The party-political submissions fuelled demands that the commission should get tough with perpetrators, and raised concerns that the commission might fail in its task of unearthing new details of human rights violations and those responsible for them.

The breakthrough came in June, when a group of 22 serving and retired policemen, with the backing of seven former generals, approached the commission with a view to applying for amnesty.

With Transvaal attorney-general Jan D'Olivera hot on their heels, five from this group broke ranks and handed in amnesty applications for at least 40 murders. The applications were heard in October, and for the first time South Africa heard first-hand accounts of the depravity of some of the actions carried out to defend apartheid.

The five, including former Vlakplaas commander Brigadier Jack Cronje, implicated other policemen in serious crimes, as did Eugene de Kock, who was sentenced to more than 200 years' jail while the amnesty hearing was in progress. This opened the flood gates, and dozens of other policemen, opting to be safe rather than sorry, have started testing the amnesty waters.

The commission realised early that the allotted 18 months would not be enough to fulfil its mandate. It asked for, and got, a six months extension.

It has also asked for an extension to the amnesty cut-off date, currently set at December 6, 1993, and for the December 14 deadline to apply for amnesty to be moved to March 14 next year.

An exhausting nine months behind them, the members of the Truth Commission now have another 12 months left to accomplish their task of establishing "as complete a picture as possible of the nature, causes and extent of human rights violations" during the apartheid conflict.

truth and reconciliation commission  
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 REVIEWS

# Jailbirds lead rush for amnesty

(252) M+G 20-23/12/96

While a detailed breakdown of amnesty requests is not yet available, it seems the majority have come from those already behind bars, reports **Eddie Koch**

**A**LTHOUGH hundreds of guerrillas policemen and some government ministers have made a late rush to the Truth and Reconciliation Commission, the great majority of requests for amnesty for human rights abuse have come from perpetrators who are already behind bars

With boxes of amnesty applications still streaming into the commission's headquarters in Cape Town — including a new one from Transport Minister Mac Maharaj — officials say they are not yet able to provide a detailed breakdown of the types of people who applied for amnesty this year

But initial indications are that up to 4 000 people who think they committed human rights offences during the apartheid era have asked for indemnity from prosecution in return for confessing details of their actions

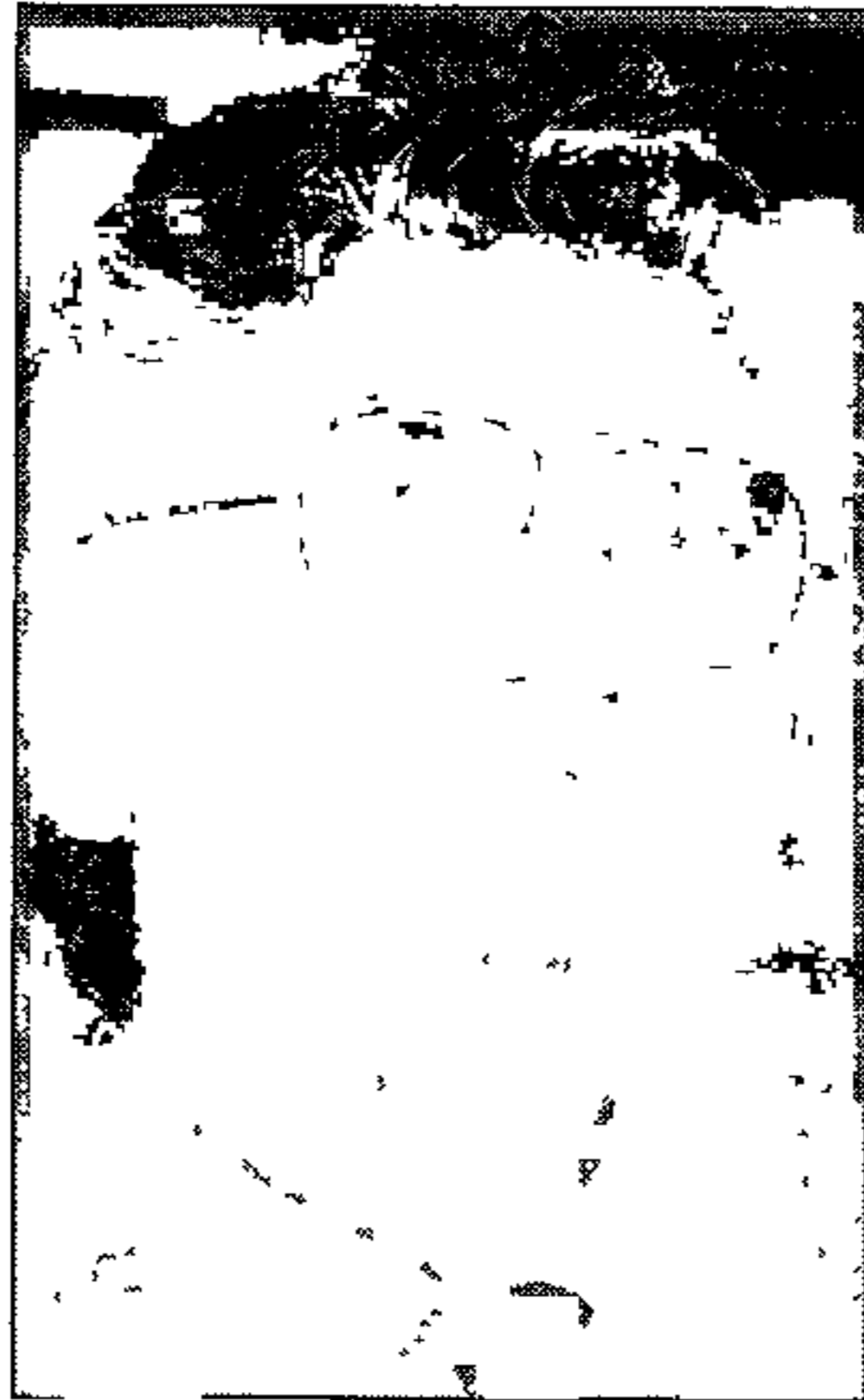
By far the biggest number of these applications, possibly as many as 3 000, have come from convicts whose only way out of jail is to tell all.

"The trickle of applications from former security force members turned into a flood last week but appears to be slowing down since the deadline was extended," said one official

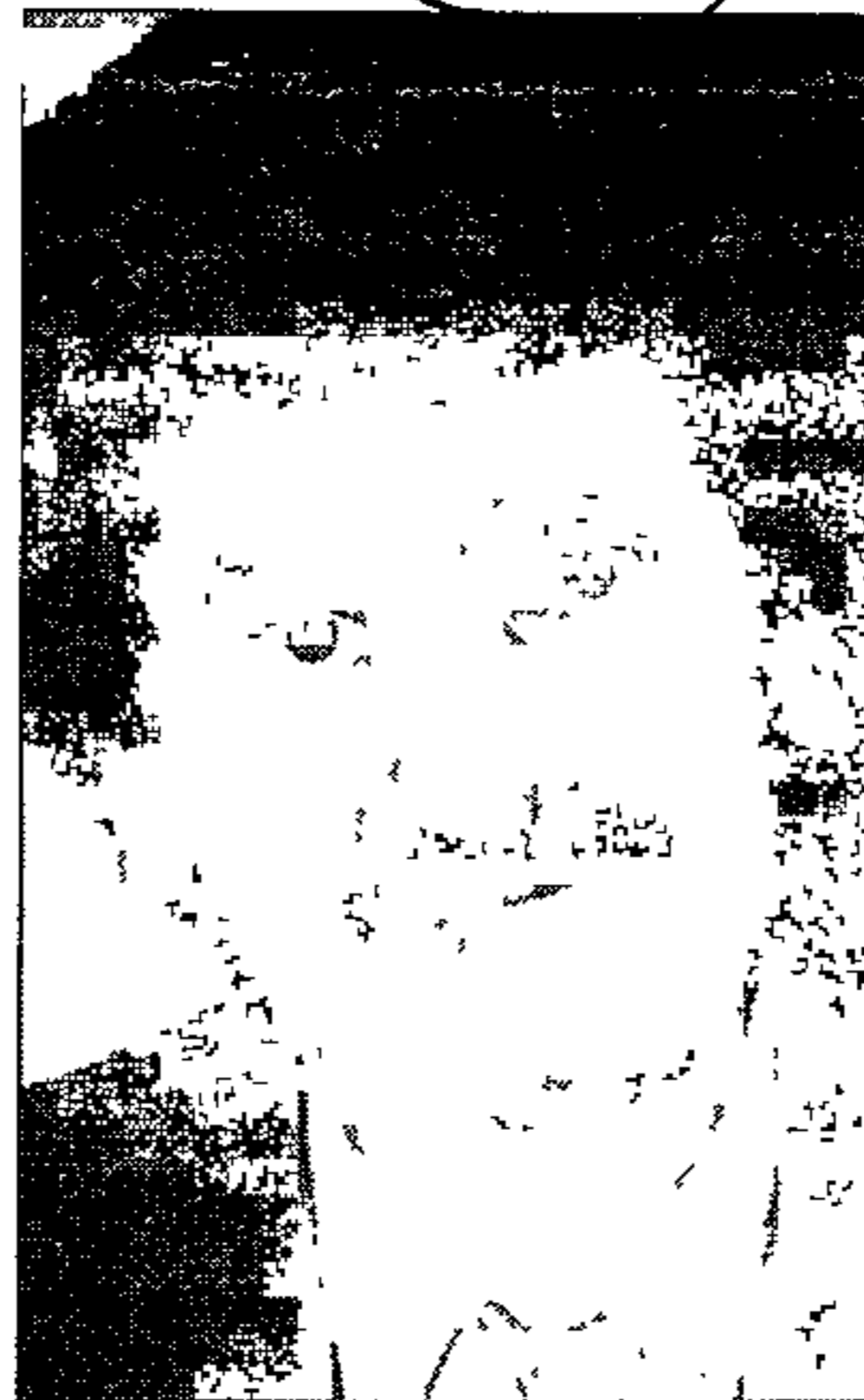
No exact figures were available for the number of security force applications although by far the largest number came from members of the security police and also various murder and robbery squads of the South African Police

Only a handful of applications had been received from military men — even though many of the police applicants have said their abuses included joint operations with the special forces of defence force

It appears the small South African Defence Force (SADF) group that is co-operating with the commission



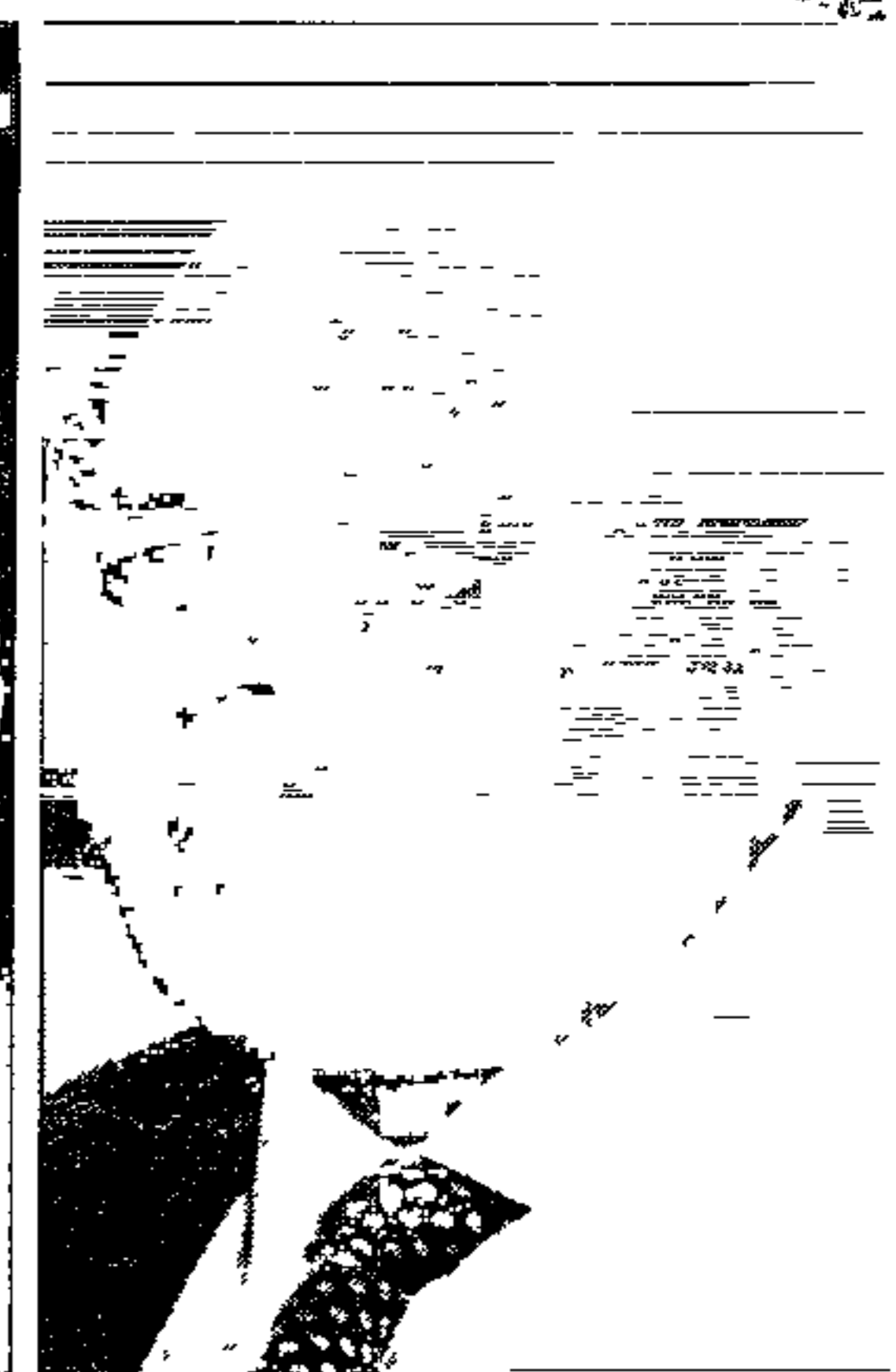
Transport minister: **Mac Maharaj**  
PHOTO ELMOND JIYANE



Telecom minister: **Jay Naidoo**  
PHOTO HENNER FRANKENFELD



Defence deputy: **Ronnie Kasrils**  
PHOTO RODGER BOSCH



Defence minister: **Joe Modise**  
PHOTO MIKE HUTCHINGS

comes mainly from within military intelligence. There are no indications that anyone from the Civilian Co-operation Bureau, the main special forces unit of the SADF responsible for dirty tricks, has yet applied

Commission officials were not able to give a breakdown of the security force officials applications by rank and are not allowed by law to make the names of applicants public. "It seems there is a mix of ranks with lower officers applying for individual deeds while more senior officers are applying for actions that involved implementing state policy," said one official

The absence of military co-operation with the truth process stems primarily from the fact that the prosecution failed to prove that General Magnus Malan and his co-accused were responsible for the Kwa-Makutha massacre in KwaZulu-Natal. There have also been no other criminal cases involving military personnel to prod these people into seeking amnesty

This could change early next year when the families of people who were murdered lodge civil proceedings against the Malan group for damages they suffered

The onus of proof in civil cases will not be as stringent and the families will be able to choose lawyers willing to mount a more combative case against the military men. This could force some of the accused to seek amnesty as this will indemnify them from liability for such claims — and any admissions they make will have a domino effect into the military's ranks

The *Mail & Guardian* is also aware that scores of soldiers from 32 Battalion — the "mercenary" unit of the SADF — are talking to the truth commission about indemnity in return for details about train attacks and other civilian terror campaigns they are reported to have committed in the early '90s

No formal amnesty applications for this group have yet been registered, but these are likely in the new year and will inevitably implicate senior military officers

The African National Congress has so far submitted 150 applications, mainly from members of its guerrilla wing, and has indicated it will be processing less than another

100 forms early in the new year

In a public sign of commitment to the truth process, at least five ANC ministers have applied for amnesty. These are Defence Minister Joe Modise, Deputy Defence Minister Ronnie Kasrils, Safety and Security Minister Sydney Mufamadi, Telecommunications Minister Jay Naidoo and Transport Minister Mac Maharaj.

Modise and Kasrils will be dealing with actions they participated in as senior officers in the command structure of Umkhonto weSizwe — and will probably include orders given to attack civilian targets during the

struggle against apartheid. The application from Maharaj will probably detail aspects of Operation Vula, including efforts to smuggle weapons into the country during the early 1990s

Mufamadi and Naidoo have applied for a relatively minor incident relating to the abduction of a suspected police spy at the Congress of South African Trade Unions offices

The only Cabinet minister from the old National Party government who has said in public that he will apply is former police minister Adrian Vlok.

Although the Pan Africanist Congress indicated it would submit applications from the entire high command of its guerrilla wing, it handed in about 300 applications on Saturday and many of these will have to be reprocessed as they were not filled in correctly

**T**he Inkatha Freedom Party has not applied as a group although a handful of individuals have applied in their individual capacities. Moves are also afoot to provide amnesty for warlords who participated in the KwaZulu-Natal civil war in the 1980s and early 1990s

An official says there have been "quite a lot" of applications from the ANC's self-defence units. It is expected there will be a major increase in applications from this quarter since the period in terms of which people can qualify for amnesty has been expanded to 10 May 1994

Most self-defence unit members were involved in battles with Inkatha during the early part of 1994 before the April elections



Former foes, now allies . TRC chairman Archbishop Desmond Tutu and a policeman during the September hearing into the 1992 Bisho massacre  
PIC CLAIRE KEETON

# No easy road to reconciliation

(252)

same Jan 19/12/96

By Claire Keeton  
Feature Writer

**R**ECONCILIATION does not take second place to truth in South Africa's unique Truth and Reconciliation Commission – and reconciliation is as difficult to achieve as discovering the truth

The commission's commitment to building unity in communities divided by apartheid violence is no less important to it than understanding the forces behind that conflict

"The very act of people coming before the TRC, both the victims and those seeking amnesty, has within it the seeds of reconciliation," says TRC deputy chairman Dr Alex Boraine "The telling of the truth holds the potential for reconciliation, however painful to both sides"

Reconciliation is inevitably a painful process since it means reconciling two opposing parties, and the process of telling the truth while striving for reconciliation is emotional, even for the commissioners

"All the Africans on the commission find the suffering, arising from assassinations and disappearances, so close to our hearts it is wrenching We walk away and say 'There, but for the grace of God, go I,'" says commissioner Dr Mapule Ramashala

Her colleague the Reverend Bongani Finca says reconciliation "is not claimed, it is earned", and he has learnt to acknowledge all victims, from every side of the political struggle

Finca says the Bisho massacre public hearing in September highlighted a "moment of genuine reconciliation" when one army colonel responsible for ordering the fatal shootings honestly pleaded for forgiveness for himself and his soldiers

"The victims began to cry because they embraced what he was saying, not because they were angry," he said

Massive public participation has been an outstanding feature of the TRC's Eastern Cape hearings, with thousands turning up in East London, Port Elizabeth, Umtata and Bisho

A public amnesty hearing in Phokeng also demonstrated the power of reconciliation, when both the perpetrators and the victim's family asked for forgiveness and wanted the community to be reunited

"That hearing was the best of all,"

This is the sixth part in our series on the Truth and Reconciliation Commission. Today we look at how it is trying to foster reconciliation

says amnesty committee member Judge Andrew Wilson

Amnesty applicants are not required to say they are sorry in their testimony, though many, including freed former security policeman Brian Mitchell, have done so

"The majority of perpetrators are in fact sorry for the past and have a new vision," amnesty committee member Advocate Chris de Jager says

But many white South Africans, who allowed systematic human rights violations either directly or indirectly by their ignorance or lack of opposition, are unwilling to accept the litany of abuse exposed by the TRC

They have gone into denial, claiming that Mitchell and other killer policemen were simply "bandits" operating without authorisation, despite convincing evidence to the contrary

## State repression

Moreover, the symbol of state repression in the 1980s, former president PW Botha, has told the TRC he has nothing for which to apologise

The TRC has treated him with kid gloves despite his intransigence in the hope that he will reveal inside information

They have also taken a diplomatic approach with uncooperative parties such as the Inkatha Freedom Party but this has yet to make a significant difference

"The IFP is resolutely set against the commission, although we have gone down on our knees in meetings with IFP leader Mangosuthu Buthelezi," says commissioner Mr Richard Lyster, based in Durban

Another KwaZulu-Natal commissioner, Dr Khozo Mgoja, says it is a problem that no more than 10 percent of the victims in their region are IFP members

He says they have progressed in bringing rival organisations, "which would never sit under the same roof", together at TRC hearings

Lyster says many people are afraid of coming to the commission as it is "like a

death warrant" in particular areas of KwaZulu-Natal

Despite this the TRC has gone to areas all over the region to inform them about its work

It is clear that all regions have communities torn apart by so-called black-on-black violence, and often the vigilante forces involved have not been dismantled and are tied to criminal activity

"In every town we go to, the question of vigilante and orchestrated black-on-black violence arises, whether it is the Three Million Gang in Kroonstad, the Toasters in Tembisa or the Mbokodo in Moutse (where 160 people died in the 1980s)," said commissioner Yasmin Sooka.

She has been shocked at the intensity of conflicts in the former Transvaal and neighbouring homelands, the largest TRC region falling under the Johannesburg office "No rural or urban area was immune and people lived in terror"

Sooka says the TRC is working towards accountability in communities Members of the Toasters, for example, have applied for amnesty following public hearings Ramashala says such accountability should be prioritised for the safety of witnesses

The Western Cape office has succeeded in doing follow-up work in communities after hearings in order to foster reconciliation

Commissioner Glenda Wildschut says in Upington the TRC has brought together a former policeman and a family whose child he had shot and they had a united community service after the meeting

But inconsolable loss may make reconciliation a distant hope as with the mothers of seven Guguletu boys shot by police, even given the remarkable generosity of spirit among victims

Boraine says it would be wrong to demand that those who been hurt must forgive, as it "would add another burden to their suffering"

He says "Reconciliation is not a cheap, sentimental love song It's tough to say 'I'm sorry' or 'I forgive'"

# ANC debates special amnesty

M+G 20-23/12/96 (252)

**Ann Eveleth**

**T**HE special amnesty mooted for KwaZulu-Natal may help African National Congress chairman Jacob Zuma's bid for the party's deputy presidency, but the idea is still highly controversial within ANC ranks.

ANC leaders say details of the proposal to grant a special amnesty to KwaZulu-Natal's warlords has not been discussed by either the party's national executive committee or its provincial structures.

Presidential spokesman Parks Mankahlana said the idea had not yet been discussed with President Nelson Mandela, but added: "Zuma understands KwaZulu-Natal's problems better than anybody in the ANC, so I'm sure the president

would listen to his proposal".

Other ANC leaders said a successful peace effort in KwaZulu-Natal would be the feather in Zuma's political cap and would bolster his chances of securing the ANC deputy presidency.

They said a proposal also on the table to split the party's deputy presidency from the national deputy presidency — both of which are currently held by Thabo Mbeki — would pave the way for Zuma to take the party's second post, but leave room for him to continue leading the province if Inkatha Freedom Party leader Mangosuthu Buthelezi decided to return after the demise of the government of national unity.

KwaZulu-Natal ANC deputy chairman S'bu Ndebele said the amnesty proposal formed part of a "peace

package" which the party's provincial conference earlier this month had resolved to offer the IFP.

He said the plan would still have to be negotiated with the IFP. The proposal under consideration would see the "disclosure" function of the truth commission revised in the case of KwaZulu-Natal — and probably the Gauteng townships affected by violence between the two parties — to mean "disclosure and dismantling of paramilitary structures and weapons", rather than disclosure of past crimes.

The IFP was this week non-committal on whether it would accept such a deal as bilateral talks between the two parties still had to take place. Party secretary general Ziba Jiyane said: "Any serious peace proposal must be supported."

AMNESTY (252)

### HANI'S KILLERS IN SPOTLIGHT

FM 20/12/1996

Rightwing radicals are poised to emerge as the main beneficiaries of the Truth & Reconciliation Commission amnesty hearings, judging from the decision to free mass murderer Brian Mitchell

As a human rights lawyer put it, the release of Mitchell — who was originally sentenced to death 11 times for his role in the Trust Feed massacre of December 1988 — "opens the door quite wide"

Wide enough for the assassins of former SA Communist Party secretary-general Chris Hani — Clive Derby-Lewis and Janus Walusz — to walk through to freedom, he reckons, after pondering the text of the Truth Commission's statement on Mitchell's successful amnesty application

Judging from the statement, Mitchell is a free man today for two primary reasons his "full disclosure" of the events

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surrounding the massacre (in which an Inkatha household was mistakenly targeted), and his political objective, which was to counter the ANC's advance through its front organisation, the United Democratic Front

There is no prima facie reason Derby-Lewis, a former Conservative Party member of the old President's Council, and Walusz, a Polish immigrant with a morbid fear of communism, cannot fulfil those requirements



Chris Hani

Lawyers acting for the two men, Harry Prinsloo and Louisa van der Walt, are upbeat about their clients' chances of being granted amnesty If they are, there will be anger in ANC ranks, since several ANC leaders, including President Nelson

Mandela, earlier expressed strong opposition to clemency for Hani's killers

It is likely to match the dismay which greeted the release in 1992 of Barend "Wit Wolf" Strydom, who went on a shooting spree against black civilians in Pretoria in November 1988, and Robert McBride, the ANC man who detonated a car bomb which killed white civilians in Magoo's Bar in Durban in mid-1986

The chances of rightwingers benefiting from the amnesty process have been further increased by Mandela's decision to extend the deadline for amnesty applications and the cut-off date beyond which amnesty will not be considered for politically motivated offences The deadline has been extended from December 14 1996 to May 10 1997 and the cut-off date from December 6 1993 to May 10 1994 — Mandela's inauguration as President

The main beneficiaries of Mandela's decision — which he described as one of the toughest that he has had to make — will be members of the neo-fascist Afrikaner Weerstandsbeweging who were jailed for their role in the bombing spree which killed 20 people on the eve of the April 1994 election

They can now apply for amnesty

So, too, however, can two members of the PAC's underground army, Apla, who were imprisoned for the attack on the Heidelberg Tavern in Cape Town on December 31 1993 ■

FINANCIAL MAIL · DECEMBER 20 · 1996

# ANC debates special amnesty

MAG 20-23/12/96 (252)

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# Three security police apply for amnesty

(052) M+G 20-23/12/96

Ann Eveleth

**T**HREE former KwaZulu-Natal security policemen have applied to the Truth and Reconciliation Commission (TRC) for amnesty, the commission's chief investigator said this week.

TRC investigator Satchie Govender confirmed reports that former Durban security policemen Colonel Andy Taylor and Captain Tjaart Fourie — now with the TRC's Witness Protection Unit — and Pietermaritzburg policeman Captain Jerry Brooks, have applied for amnesty. Govender would not comment on the content of the applications.

Taylor's application is believed to be the first by a senior police officer from the province and follows his court appearance earlier this year on charges related to the 1981 assassination of Durban human rights lawyer Griffiths Mxenge. Tay-

lor was also subpoenaed to appear before the TRC following human rights hearings surrounding the 1978 assassination of University of Natal academic Rick Turner.

Taylor's attorney Christo Nel said Taylor's application did not relate to either of these incidents. "He denied involvement in either of them and did not even know Turner," said Nel.

He said Taylor's application covered involvement in "six or seven" other incidents including the death of askari [an insurgent-turned-collaborator] Neville "Goodwill" Sikakhane and the "assault during interrogation" of other people including African National Congress MP and senior South African Communist Party member Raymond Suttner.

Nel said Taylor had applied for amnesty in respect of "a couple of incidents on which the TRC supplied information that he didn't even remember as they date back to 1974".

One incident included in his application involved the "recruitment, or what you might call abduction, of a person from Swaziland who was to become an askari," said Nel.

**F**ormer Pietermaritzburg security policeman Brooks — now a member of the South African Police Service Crime Intelligence Service (CIS) — had also applied for amnesty in connection with this incident, said Nel who is also representing him.

Govender confirmed that TRC Witness Protection Unit member Captain Tjaart Fourie had applied for amnesty. The unit's KwaZulu-Natal head Chris McAddam, however, denied that Fourie had resigned from the unit to make his application in the wake of Taylor's application.

McAddam said he could not comment on whether Fourie had applied for amnesty, but said: "He is still a member of the unit."

# Jailbirds lead rush for amnesty

MTG 20-23/12/96

(252)

While a detailed breakdown of amnesty requests is not yet available, it seems the majority have come from those already behind bars, reports **Eddie Koch**

**A**LTHOUGH hundreds of guerrillas, policemen and some government ministers have made a late rush to the Truth and Reconciliation Commission, the great majority of requests for amnesty for human rights abuse have come from perpetrators who are already behind bars.

With boxes of amnesty applications still streaming into the commission's headquarters in Cape Town — including a new one from Transport Minister Mac Maharaj — officials say they are not yet able to provide a detailed breakdown of the types of people who applied for amnesty this year.

But initial indications are that up to 4 000 people who think they committed human rights offences during the apartheid era have asked for indemnity from prosecution in return for confessing details of their actions.

By far the biggest number of these applications, possibly as many as 3 000, have come from convicts whose only way out of jail is to tell all.

"The trickle of applications from former security force members turned into a flood last week but appears to be slowing down since the deadline was extended," said one official.

No exact figures were available for the number of security force applications although by far the largest number came from members of the security police and also various murder and robbery squads of the South African Police.

Only a handful of applications had been received from military men — even though many of the police applicants have said their abuses included joint operations with the special forces of defence force.

It appears the small South African Defence Force (SADF) group that is co-operating with the commission



Transport minister: Mac Maharaj  
PHOTO: ELMOND JYANE



Telecom minister: Jay Naidoo  
PHOTO: HENNER FRANKENFELD



Defence deputy: Ronnie Kasrils  
PHOTO: RODGER BOSCH



Defence minister: Joe Modise  
PHOTO: MIKE HUTCHINGS

comes mainly from within military intelligence. There are no indications that anyone from the Civilian Cooperation Bureau, the main special forces unit of the SADF responsible for dirty tricks, has yet applied.

Commission officials were not able to give a breakdown of the security force officials applications by rank and are not allowed by law to make the names of applicants public. "It seems there is a mix of ranks with lower officers applying for individual deeds while more senior officers are applying for actions that involved implementing state policy," said one official.

The absence of military co-operation with the truth process stems primarily from the fact that the prosecution failed to prove that General Magnus Malan and his co-accused were responsible for the Kwa-Makutha massacre in KwaZulu-Natal. There have also been no other criminal cases involving military personnel to prod these people into seeking amnesty.

This could change early next year when the families of people who were murdered lodge civil proceedings against the Malan group for damages they suffered.

The onus of proof in civil cases will not be as stringent and the families will be able to choose lawyers willing to mount a more combative case against the military men. This could force some of the accused to seek amnesty as this will indemnify them from liability for such claims — and any admission they make will have a domino effect into the military's ranks.

The *Mail & Guardian* is also aware that scores of soldiers from 32 Battalion — the "mercenary" unit of the SADF — are talking to the truth commission about indemnity in return for details about train attacks and other civilian terror campaigns they are reported to have committed in the early 90s.

No formal amnesty applications for this year have yet been registered, but these are likely in the new year and will inevitably implicate senior military officers.

The African National Congress has so far submitted 150 applications, mainly from members of its guerrilla wing, and has indicated it will be processing less than another

100 forms early in the new year.

In a public sign of commitment to the truth process, at least five ANC ministers have applied for amnesty. These are Defence Minister Joe Modise, Deputy Defence Minister Ronnie Kasrils, Safety and Security Minister Sydney Mufamadi, Telecom and Transport Minister Jay Naidoo and Transport Minister, Mac Maharaj.

Modise and Kasrils will be dealing with actions they participated in as senior officers in the command structure of Umkhonto weSizwe — and will probably include orders given to attack civilian targets during the struggle against apartheid. The application from Maharaj will probably detail aspects of Operation Vula, including efforts to smuggle weapons into the country during the early 1990s.

Mufamadi and Naidoo have applied for a relatively minor incident relating to the abduction of a suspected police spy at the Congress of South African Trade Unions offices.

The only Cabinet minister from the old National Party government who has said in public that he will apply is former police minister Adrian Vlok.

Although the Pan Africanist Congress indicated it would submit applications from the entire high command of its guerrilla wing, it handed in about 300 applications on Saturday and many of these will have to be reprocessed as they were not filed in correctly.

The Inkatha Freedom Party has not applied as a group although a handful of individuals have applied in their individual capacities. Moves are also afoot to provide amnesty for warlords who participated in the KwaZulu-Natal civil war in the 1980s and early 1990s.

An official says there have been "quite a lot" of applications from the ANC's self-defence units. It is expected there will be a major increase in applications from this quarter since the period in terms of which people can qualify for amnesty has been expanded to 10 May 1994.

Most self-defence unit members were involved in battles with Inkatha during the early part of 1994 before the April elections.

who has been reporting on it for months. That job takes an awful toll

# the truth

(252) MTG 24/12 - 9/1/97

there He wants me to stay with you I have watched him die I must be there when you die She is now a teenager and has twice tried to commit suicide

And it wipes us out Like a fire Or a flood Tears are not what we call it Water covers the cheeks and we cannot type Or think

And this was how we often ended up at the daily press conference — bewildered and close to tears at the feet of Archbishop Tutu By the end of the four weeks it was no longer press conferences — he comforted us. He caressed us with pieces of hope and humanity We asked fewer and fewer critical questions Perplexed, we listened to the sharp haughty questions posed by foreign journalists — those who jetted into the country, attended one day's hearing and thereafter confronted the commission with its lack of procedures and objectivity

"His body was totally burnt I held him Who did this to you?" I cannot tell, he says maudibly I hold him even his face was burnt except the nose He opened and closed his mouth opened and closed like a bird Then his eyes changed their colour

I walked into my home one evening My family was excitedly watching cricket They seemed a happy close-knit group I stood in the dark kitchen for a long, long time Everything had become unconnected and unfamiliar I realised I didn't know where the light switch was

I can talk about nothing else Yet I don't talk about it at all

Some journalists ask to be elsewhere deployed Others start to focus on the perpetrators Some storm out enraged at parties, or see their friends fleeing from them Some drink deep gulps of neat brandy, others calm themselves with neatly rolled *dagga-zolletjes* After four months most of those who travel frequently become ill — lungs and airways The chairperson has bronchitis, the deputy chairperson pneumonia It's the planes, someone says, they are germ incubators No, it's the constant adapting to different climates and altitudes. We are becoming a family. I board a tiny propellered plane and sit next to the translator In the back sits the Arch with his Anglican bodyguard. While we ascend shakily, I see how Tutu bows his head and prays and I just know, somehow, we're going to be fine

Until the day in Queenstown It is bitterly cold Coated, scarved, duveted we listen to one neck-

**Week after week, from one faceless building to the other, the arteries of our past bleed their own peculiar rhythm, tone and image. One cannot get rid of it. Ever**

lace experience after the other — grim stones, unrelentless faces in a monotonous rhythm A man testifies about a bomb explosion in his restaurant. "The reason," he says, "why only one person died that day is because of the top quality of tables that the Spurs has" And I start to laugh "My friend came to me and said 'Lucas I wanted to come to you' but I couldn't find my legs, I say in my head, and collapse with laughter A local journalist puts some tea in front of me and asks with a weak voice "Have you been covering the commission for long?"

I took two weeks leave The man sits alone He is wearing a cheap jacket In a formal old-fashioned Afrikaans he says he cannot tell the story of how an African National Congress bomb wiped out his family and friends

"I can deal with it only in the form of questions Do you know, you the truth commissioners, how a temperature feels of between six and eight thousand degrees? Do you know how it feels to experience a blow so intense that it forces the fillings from one's teeth? Do you know how it feels to look for survivors and only find dead and maimed? Do you know how it feels to look for your three-year-old child and never, Mr Chairman, never to find him again and to keep wondering for

the rest of your life where he was?"

The Van Eck and De Neyssen families went for a holiday on a game farm near Messina on the northern South African border Late afternoon the two families drove with the bakke to look for game The right back wheel — the specific spot where the three-year-old Van Eck boy was sitting, struck a land mine

"We were immediately in flames When I came to myself I saw my baby boy of 18 months was still alive he was lying quite still, but looking at me Mr De Neyssen was lying on the steering wheel his hair in flames, blood spouting from his forehead"

After Van Eck pulled them all through the window, he went to look for survivors

"Right behind the vehicle I found my wife and Martie de Neyssen Both severely maimed and killed outright I searched further I came upon small Kobus de Neyssen who had some life in him I went back to his father and said 'The child is still alive, but severely maimed and burnt' His father asked there on the scene to let his child go which was what happened Then I noticed Mr de Neyssen's little daughter Lizelda walking towards us out of the veld She had a cut across her face and she limped Then I searched further for my son of three years, but I could not find him until today I could not find him I and my son buried our two family members and the next day our two friends Since then it has been down the hill for me all the way I sat for days

I simply sat I lost my business I am reduced to a poor white"

The small side hall accommodates the electronic media The translation is channelled to our tape recorders We see Van Eck on the monitor I write the news copy I decide on a soundbite I dictate the hard copy over the phone I read 'to never comma mister chairman comma never to see "a catch in my voice My throat throbs heavily My breast silts up, speechless

I give the phone to a colleague and flee blindly among the cables and electronic equipment out on to the steep overlooking Nelspruit. I gasp for breath Like two underwater swimmers, my eyes burst out to the horizons the mountains lit in a blushing light blue hedge of peace I am drowning My eyes claw at the trees, the kloofs see, smell a landscape of paradise and a language from paradise *mispel, maroela, tarentaal* I whisper The air as drowsy with jasmine and *kanferfoelie* I sit down on the steps and everything tears out of me Flesh and blood can in the end only endure so much Every week we are

stretched thinner and thinner over different pitches of grief how many people can one see crying, how much torn-loose sorrow can one accommodate and how does one get rid of the specific intonation of the words? It stays and stays

I wake up in unfamiliar beds with blood on my frayed lips and the soundbites screaming in my ears

I am called "They say the story is really powerful can we possibly send another soundbite? Shall we send the one about the teeth fillings or the one about the daughter coming towards them?" I wipe my face "Send the one about where he was just sitting and remember to add that the newspapers of that day said that pieces of his son's hair and eyes were found in a tree near the bakke."

My hair is falling out. My teeth are falling out I have rashes After the amnesty deadline I enter my house like a stranger And barren.

I sit around for days Staring My youngest walks into a room and flinches "Sorry, I'm not used to your being home"

No poetry should come forth from this May my hand fall off if I write this So I sit around Naturally and unnaturally without words If I write this, I exploit and betray If I don't, I die. Suddenly my overweight grandmother's motto comes to mind when in despair, bake a cake To bake a cake is a restorative process

I snip into a bowl glacéed pineapple, watermelon, ginger, green figs, dates and walnuts Big red and green cherries, currents, sultanas I let it stand in a cool dark cupboard — a bowl full of glistening colourful jewels soaking in brandy I relish the velvet of 12 eggs, butter and sugar I bake a fruit cake and eat small fragrant slices in the blinding blue Cape summer heat.

And I think up delicious lines of Lies and Revenge

APPLICANT

'I am not made to report on the Truth and Reconciliation Commission,' writes **Antjie Krog**;

# Overwhelming trauma of

**T**HE word *truth* makes me uncomfortable

As recently as last week I had to do several retakes of a voice report for radio, because — after nine months of reporting — the word *truth* still trips the tongue

"Your voice tightens up approaching the word *truth*," the technical assistant said irritably "Repeat it 20 times so that you can become familiar with it *Truth is mos jou job!*"

I hesitate at the word I am not used to using the word Even when I type it, it ends up as either "turth" or "trth" I have never bedded that word in a poem

I prefer the word *lie* The moment the lie raises its head, I smell blood Because it is there where the truth is closest

The word *reconciliation*, on the

other hand, is my daily bread

Compromise, accommodate, provide, make space for Understand Tolerate Empathise Endure without it, no relationship, no work, no progress is possible Yes Piece by piece we die into reconciliation

However — neither truth nor reconciliation is part of my graphute when sitting in front of a blank page, rubber close at hand Everything else fades away It becomes so quiet. Something opens and something falls into this quiet space A tone, an image, a line And the oxygen of the first line mobilises completely I become myself Truth and reconciliation do not enter my anarchy It chokes on betrayal and rage It falls off my refusal to be moral I write the broken line For some brief moments of loose-limbed happiness everything I am, every shivering, otherwise useless, vulnerable fibre and hypersensitive sense come together A

**I can talk about nothing else. Yet I don't talk about it at all**

heightened phase of clarity and the glow stays

Somewhat breathless I know for this I am made

I am not made to report on the Truth and Reconciliation Commission When told to head the five-person radio team covering the truth commission, I inexplicably began to cry on the plane back from Johannesburg Someone tripped over my bag in the passage Mumbling excuses, fumbling with tissues, I looked up into the face of

Dirk Coetzee There was no escape After three days a nervous breakdown was diagnosed and within two weeks the first human rights violation hearings began in East London The months that have passed proved my premonition right — reporting on the truth commission has indeed left most of us physically exhausted and mentally frayed

Because of language

Week after week, from one faceless building to the other, from one dusty godforsaken town to the other, the arteries of our past bleed their own peculiar rhythm, tone and image One cannot get rid of it Ever

It was crucial for me to have the voices of the victims on the news bulletin To have the sound of ordinary people dominate the news No South African should escape the process

"I was making tea in the police station I heard a noise. I looked up

There he fell Someone fell from the upper floor past the window I ran down It was my child my grandchild, but I raised him"

We pick out the soundbite By removing some of the pauses, we edit it into a 20-second soundbite for radio news — 200 news bulletins, 11 languages We feed it to Johannesburg

We switch on a small transistor The news is read and the voice of an ordinary cleaning woman is the headline We lift our fists triumphantly We've done it!

We sleep between one and two hours per night We live on chocolate and chips After having stopped for five years, I began to smoke again

In the second week of hearings, I do a question and answer with an actuality programme I stammer I freeze I am without language I put the receiver down, and think resign Now You are clearly incompetent The next morning the truth commission sends one of its own councillors to address the journalists "You will experience the same symptoms as the victims You will find yourself powerless — without help, without words"

I am shocked to be a textbook case within a mere 10 days

"Exercise regularly Take photographs of loved ones with you to come home to in the hotels Take your favourite music with And talk to one another he one another's therapy"

We develop techniques to lessen the impact We no longer go into the halls where the hearings take place, because of the accumulated grief We watch on provided monitors The moment someone starts crying, we start writing/scribbling/doodling

The one hotel room drifts into the other The one breakfast buffet provides the same as the other The one sorrow-filled room flows into the other The one rental car smells like the other but the language, the detail, the individual tone it stays

"I heard shots I ran slipped and fell I crawled out at the front door On the steps my son sat with his father's face in his hands He was covered in blood He cried over and over Daddy talk to me Today he is 11 years old I am still woken at night by his cries When I reach his bedside, he cries 'Wipe the blood wipe the blood from my father's face'"

The story of the century, they say. With heroes and villains, well known and unknown, characters, the powerful and the powerless, the literate and illiterate Hung with laptops, tape recorders, bags, notebooks and reels, we limp into hotel foyers long after midnight We hear over radios

"That morning I did something I have never done before My husband was still at his desk busy with the accounts of our business I went up to him and stood behind his chair I put my hands under his arms and tickled him he looked surprised and unexpectedly happy 'And now?' he asked 'I am going to make tea,' I said

"While I poured water on the teabags, I heard this devastating noise Six men stormed into our study and blew his head off My five-year-old daughter was present That Christmas I found a letter on his desk. 'Dear Father Christmas, please bring me a soft teddybear with friendly eyes My daddy is dead If he was here I would not have bothered you' I put her in a hostel The morning we drove there we had a flat tyre 'You see,' she said, 'Daddy does not want me to go

## Commission's 'remarkable' job

**Eddie Koch**

**T**HE Truth and Reconciliation Commission (TRC) went into its Christmas recess after a one-year performance that was "quite remarkable compared to other truth-seeking processes around the world", says an international expert.

Priscilla Hayner, an international researcher writing a book on truth commissions in various parts of the world, says it is premature to say South Africa's TRC has so far failed to lure significant sections of apartheid's security forces into its ambit.

"The process going on in South Africa is quite remarkable, as compared to other truth-seeking processes, and has already gone much further in some important ways. That perpetrators are speaking out at all, and letting out some remarkable new layers to the truth of the past, is quite astonishing compared with elsewhere," Hayner told the *Mail & Guardian* this week

"In Chile, Argentina, El Salvador, Haiti and other places, truth commissions received virtually no cooperation at all from the armed forces, except for a few private, confidential conversations with individuals (usually retired officers) who were willing to come clean.

"In Chile and El Salvador, for example, the military still flatly deny their role in past abuses, or the extent of the abuses described by truth commissions that operated in those countries. After viewing these examples, the process taking place in South Africa is quite remarkable"

Hayner was responding to reports that the TRC, with one year of its lifespan left, had so far been dominated by public hearings for victims of South Africa's past and that, so far, relatively few security force operatives had come forward to confess their role and apply for amnesty.

TRC statistics show the organisation held 47 human rights violations hearings countrywide during 1996. Five hearings dealt with major events such as the Bisho Massacre or the Seven-Day War in Pietermaritzburg while the others were designed for residents of the region to tell of their experiences.

There were, by contrast, only 10



Waiting for an answer: Relatives of Ahmed Timol, one of the earliest people to die in detention, at the truth commission

PHOTOGRAPH RUTH MOTAU

amnesty hearings and a number of these related to relatively obscure events. In addition, some 4 000 individual amnesty applications were received by the end of the year and the great majority of these were from convicted prisoners who have nothing to lose by talking about what they did.

There were five public events where political parties made their submissions and one for the South African Defence Force to describe the role it played in the apartheid era. With the partial exception of the African National Congress report, each of these accounts failed to make any significant revelations about why the 1970s and 1980s were the most brutal period of this country's turbulent history.

Hayner says the TRC's greatest strength to date has been its ability to organise, and keep a record of, numerous human rights violations in hearings even in remote parts of the country. Significant details about official involvement in these violations have emerged

She points out the South African truth commission stands out because

it has been extremely "process conscious". "They seem to appreciate the TRC is not just an exercise aimed at product but, just as important, will make its impact through process... the involvement and interest and understanding from the public. On this score, the TRC is far ahead of most other truth commissions, which have focussed their energies on a final report to be read and discussed after the fact."

**B**ut the TRC has played another vital role. It has shaped the way this country's people can describe their past and, in so doing, offers them the prospect of a better future. "My sense is that the overwhelming quantity of stories and testimony has changed the dynamics of 'the past' in South Africa that is, there are few today who would argue that abuses didn't take place on a grand scale," says Hayner

"It was interesting to ask people during my visit there whether they were learning anything new from the TRC hearings or whether they already knew what was coming out. The most interesting responses were

from those who clearly used to support apartheid (although they wouldn't admit to it directly), and would say they knew 'nothing' about all this — but they did not deny that everything coming out in the hearings was the truth.

"Without a truth commission, where would the conversation stand on this question? I would assume there would still be massive denial by many, many different versions of the truth, and a strong desire by some to 'lighten' the historical account of 'errors made'. That is no longer possible"

And, because denial has been made impossible, a repeat of the past is made less likely. Which is good enough reason to say that Bishop Desmond Tutu, his deputy, Alec Boraine, and the men and women who run the TRC deserve their Christmas break

● Priscilla Hayner is currently in Brazil conducting research for her book. She has written numerous reports for human rights organisations comparing the role and performance of truth commissions in more than 10 countries.

# New legislation aims to stamp out racism

Derogatory words and deeds to be outlawed formally, along with torture and military-style training (252)

By **NORMAN CHANDLER**  
Pretoria Bureau

Racial discrimination is to be formally outlawed next year, along with torture as well as military-style training by organisations other than those sanctioned by Government

The Department of Justice says it will be proposing to Parliament, when the next session opens in February, the adoption of the Convention on the Elimination of All Forms of Racial Discrimination Bill, along with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Bill

This will constitute the first formal legislation in South African history aimed at demeaning behaviour against a person of another race group. While details of the proposed two bills have not been released, it is expected that the usage of derogatory words and deeds against people of any race will no longer be tolerated in law

Parliament will also be asked to pass as a matter of urgency the Judicial Matters Amendment Bill which will prohibit military-style training. The bill also includes provisions for an increase in the penal jurisdiction rights of lower courts, such as magistrates' and regional courts

Previously, right-wing organisations like the Afrikaner Weerstandsbeweging (AWB) and political parties such as the Inkatha Freedom Party have been able to hold military-style training camps at which their members were given instruction in weaponry and military discipline. Evidence of the existence of the camps has been disclosed during recent court trials involving right-wingers and former policemen

such as Eugene de Kock, who was convicted recently on six charges of murder carried out while he was commander of the police's Vlakplaas counter-insurgency unit

The department has prioritised eight pieces of legislation for the 1997 parliamentary session

First is the Magistrates' Courts Amendment Bill which deals with committal to prison in respect of debt and a new, simplified debt recovery procedure

Reference to the death penalty

“  
**Change will  
make justice  
system more  
accessible to  
the people**  
”

will be expunged from South Africa's legal system when the Criminal Law Amendment Bill becomes law, while the department will also be seeking the outlawing of corporal punishment in terms of the Abolition of Corporal Punishment Bill

So-called "black divorce courts" are to disappear with the Divorce Courts Amendment Bill, while fathers of children born out of wedlock or through extra-marital liaisons will have their rights of access and of adoption enshrined in the proposed Powers of Natural Fathers of Extra-marital Children Bill

Also proposed, but not given a priority rating, is the Establishment of Family Courts Bill which will provide for the establishment

Star 24/12/96  
of these courts specifically for the adjudication of divorce actions

Court prosecutors are to come under the control of a Directorate of Public Prosecutors in terms of the National Prosecuting Authority Bill, while witnesses in sensitive court cases will be given formal protection in terms of the Witness Protection Programme Bill which also provides for the establishment of an Office for Witness Protection

The protection scheme has been operating for some time but this will be the first move made towards formally legalising the process

The department says it is also seeking the finalisation of 17 other proposed laws

The payment of a non-taxable allowance to Constitutional Court judges and of an allowance to sitting Supreme Court judges who also act for the Constitutional Court forms the basis of the proposed Judges' Remuneration and Conditions of Employment Amendment Bill

It also covers increased benefits for judges who have served 20 years and the payment of a gratuity to the surviving spouse of a Constitutional Court judge

Victims of crime will be able to obtain compensation for their losses in terms of a proposed Prevention of Crime Fund Bill, which Government announced earlier in the year would be investigated, while money-launderers are to be punished severely in terms of proposed legislation known as Money Laundering Project 104

According to the department, the promulgation of new legislation "will bring our statutory law into line with the demands of an ever-changing society and will provide a more accessible justice system"

## Viljoen makes 'final' appeal for new amnesty cutoff date

(252) *Nov 29/11/90*

By **MONDLI MAKHANYA**  
Political Reporter

Freedom Front leader Constand Viljoen made a "final" appeal to President Mandela yesterday to extend the amnesty cutoff date and warned that failure to do this would result in "serious ramifications" for the reconciliation process.

The call comes just two weeks before the deadline for the submission of amnesty applications for deeds committed before December 6 1993. Despite numerous appeals by the Freedom Front and other parties for the date to be shifted to coincide with the May 10 1994 presidential inauguration, Mandela has remained adamantly opposed.

Viljoen said in Pretoria that if the cutoff date were extended, he and many other "ethnic Afrikaners" would seek amnesty for deeds committed in the runup to the 1994 general election. He said they would reveal details of pre-election mobilisation by right-wing Afrikaners who wanted to seize a part of the country by force and turn it into an Afrikaner homeland.

"If the president sees his way open to reconsider the cutoff date, I will, before December 14 1996, submit my application on behalf of

myself and my followers to the Truth Commission.

"In conjunction with the commission I will then as leader act in a way that would ensure that amnesty will be available for Afrikaners who may still be liable for prosecution or may have already been prosecuted and may therefore in terms of the provisions for amnesty have their sentences reviewed," said Viljoen.

He said Afrikaners were disadvantaged by the present amnesty provisions as they excluded the period when the planned pre-election uprising was supposed to take place. He said that if any more young Afrikaners continued to be charged and jailed, there would be "serious alienation of the Afrikaner community".

"It will certainly affect the willingness of the Afrikaner people to stay in this country and it will influence the idea of self-determination. So far we have not emphasised the idea of secession. If it becomes necessary we will have to go for secession," said Viljoen.

"I am not holding a pistol to their head. I have been committed in my own way to finding a solution to the country's problems and that is what I am still trying to do," he said.

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# TRC set sights on military intelligence

(252)

Star 30/11/96

By ADRIAN HADLAND

The Truth and Reconciliation Commission announced a new breakthrough yesterday in its bid to unravel the truth about apartheid atrocities, confirming that several military intelligence (MI) members had approached it to discuss amnesty.

At least two MI operatives who have contacted the commission are believed to have been involved in Trewits, a secret state body which drew up priority lists of activists to be assassinated in the late 1980s and early 1990s. The existence of Trewits was disclosed in October in evidence given to the commission by five former members of the Northern Transvaal security branch.

Commission deputy chairman Alex Boraine said the two MI operatives, who had been in touch with the commission for some weeks, had been debriefed by investigators this week. "We can't compel them to apply (for amnesty) but they did want our advice," Boraine said.

The commission's investigation unit has been desperate to uncover information on the activities of military intelligence, believing the secret unit was a key player in planning a wide range of abuses.

Earlier this year the unit obtained warrants to search two Western Cape military bases, hoping to find documents outlining the scope of MI activities in the 1980s and early 1990s.

Boraine said several MI operatives had inquired about the amnesty process and offered the commission information.

"It is a very small beginning

but we are hoping that it will be the same as with the police, and that the trickle will turn into a flood," Boraine said, referring to the number of security branch members who testified in Johannesburg in October.

"We need information from every source to reach the truth."

Meanwhile, commission chief Desmond Tutu said a joint meeting of all political leaders would be called soon by President Nelson Mandela to encourage members of all parties to apply for amnesty before the deadline expired on December 14.

Tutu has asked Mandela to allow him to address the Cabinet on the need to extend the date in the interests of national reconciliation, and there is a possibility that the deadline could be moved to May 10.

Tutu issued a plea to Inkatha Freedom Party leader Mangosuthu Buthelezi to encourage his members to approach the commission.

"For goodness' sake, for the sake of your people, for the sake of the country, please expedite the amnesty and human rights violations process," he said.

Tutu said the commission would be taking on extra staff and had enlisted the help of non-governmental organisations and churches to process amnesty applications.

"The amnesty committee is overwhelmed with applications and its staff are unable to cope," he said.

Documents produced at a press conference yesterday indicated that about 3 500 amnesty applications had been received.

Many more were expected as the cut-off date approached.

"We need to point out to those considering whether they need to apply for amnesty that they need to recognise that if they do not, and they are named in our final report, there is nothing to stop attorneys-general from initiating prosecutions," he said.

CAREL LESSING reports that the Transvaal attorney-general's office is waiting for detectives to be assigned to investigate a growing number of dockets relating to politically motivated crimes committed by ANC officials and others during the apartheid era.

Deputy Attorney-General Paul Fick said yesterday an additional 18 dockets had been received, taking to 33 the number being assessed.

For the attorney-general to proceed, police officers needed to be appointed to investigate each allegation.

It is believed that further dockets concerning anti-apartheid activists could be referred to the attorney-general's office. No dockets have been referred to police yet.

National police commissioner George Fivaz had indicated that investigating officers might be appointed soon, Fick said.

Fivaz's spokesman, Director Joseph Ngobeni, said the assignment of detectives to the cases was being considered. It would take another six to 10 weeks to finalise whether detectives would be appointed.

Fick declined to name ANC officials implicated in the dockets. However, he did say that all the allegations which had been

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Fick said he had assessed 15 dockets, including one relating to the 1983 Church Street, Pretoria, bombing

"If it is decided that enough evidence exists to prosecute, all names will be made known," he said "We hope there will be more clarity about this early next year"

The transfer of the dockets to Attorney-General Jan D'Oliveira earlier this month followed a request from his office for outstanding dockets on politically motivated apartheid-era crimes

The request was made because D'Oliveira felt a perception existed that there was an irregular approach in investigating political crimes



# Reflections on the TRC's first year

UMLA GOBODO-MADIKIZELA

Reflections on the work of the Truth and Reconciliation Commission at the end of its first historic year.

The Truth and Reconciliation Commission (TRC) has been in session for nine months and, given the recent celebration of the Day of Reconciliation, it is a good time to review goals, performance, and public reactions.

Within the framework of the truth commission public hearings, survivors and families of victims of past atrocities reclaimed their stories from apartheid politicians, and from those who killed in the name of the struggle.

It broke the silence for each witness who took the stand. It was a remarkable historical event that reminded us of the trauma of this country. It was history unveiled, a chance to throw the abyss that separated South African society from death squads and the apartheid era.

Why is it necessary to lift this veil? Why not simply erase the page and start all over again? The TRC is enjoined by the Promotion of National Unity and Reconciliation Act to ensure the restoration of dignity to people who have suffered pain and loss through atrocities of the past. In addition, it is also inherited the role of promoting reconciliation.

The TRC has heard painful individual stories. At this level, the commission has succeeded as an opportunity for families of victims and survivors to turn years of silence into a visible expression.

In some notable cases, the commission effectively discharged its important task of investigating the torture and death of many people, and this at least gave individuals and families the consolation of knowing what happened to their loved ones.

Because of this investigative process, it is no longer possible to uphold the black-on-black violence thesis as a conclusive analysis of what happened in black townships.

The commission has been vociferously attacked from a variety of quarters — ranging from those who criticise the TRC for being a "Kleenex commission" or a witch-hunt, to those who feel disillusioned by a process that promises amnesty to perpetrators of atrocities.

These attacks are at once partially true and patently unfair. Some people do not understand how history can be told in such an emotionally-charged context. Our history is a traumatic one, and requires that we engage not only our intellect, but our empathy as well.

The revelations by those who participated in torture and killing are a challenge to the notions of justice and reconciliation. The TRC starts with the assumption that the truth will heal and rebuild a shattered past. In most cases, people want those responsible punished. This is true for day-to-day

crimes, the judicial process becomes a crucial part of making peace with oneself. However, this country achieved a powerful consensus which was not only responsible for an election that included all South Africans, but also one that created the TRC.

Amnesty was never meant to diminish the trauma that families and individuals had to go through. Some witnesses have expressed a preference for truth, rather than a need for the punishment of perpetrators.

The TRC hopes that one of the lessons to be learnt from these confessions is the importance of individual choice. Conscience should be elevated above the service of the state, or other institutions of power. This is why I cringe when political parties discourage free speech, and instead push a "party line". I believe this is another form of oppression.

*Conscience should be elevated above the service of the state, or other institutions of power. This is why I cringe when political parties discourage free speech and push a party line.. This is another form of oppression.*

clean break with the past". The significance of the notion of "breaking with the past" has been variously interpreted in the public arena. Some equate it with "forgive and forget". In other words, simply turning the page, wiping everything from memory, and moving on.

The danger with this concept of reconciliation is that it trivialises the process of forgiveness, and reduces pain into something that can be easily chucked away, in exchange for joyful unity with the one who caused the pain.

But forgiveness is a journey and a challenge. Acknowledging and accepting a plea for forgiveness is a first step, and one that requires hard work from both parties. Assuming that it is anything more profound than a first step would be unrealistic, and tantamount to false reconciliation.

The TRC can and already has made a modest contribution towards reconciliation. But one of the challenges facing the commission, and organs of civil society, is how some things have remained the same.

For example, perceptions about the work of the commission have sometimes been expressed in terms of race, and sometimes in terms of political "sides". Secondly, there is the assumption that apartheid atrocities do not deserve the same protection that acts of resistance against apartheid are entitled to.

In the former case, the work of the commission is seen as a "black thing" and simply a ploy to "get back" at whites.

While the question of symmetry is an important and challenging one, both perspectives are flawed at two levels. First, they lose sight of the fact that the process is concerned with families of victims and survivors of gross violations of human rights.

Also, they ignore the fact that the commission offers an opportunity to redress the trauma and dehumanisation of people, and to open the way for reconciliation.

The intrusion of race in any public debate in our society is probably something we shall

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have to face, particularly when the debate is on reconciliation. We need to address what it is that maintains racial attitudes.

One of the issues we have to face is the fact that there are still great barriers in our society — physical barriers that separate black residential areas from white, and other attitudinal barriers.

Even as we pride ourselves in being a rainbow nation, beneath the surface lurk racist sentiments against those who were historically oppressed, poor and powerless, and who continue to suffer the consequences of that history.

The commission should not be seen as a panacea to fix all that is not well in South Africa. Some of the problems are beyond the scope or capacity of the TRC. They are social problems that must be addressed at all levels, from churches and schools, to government and the military.

Most importantly, one can neither legislate nor proclaim reconciliation from above. This is a long process that can be addressed best through interpersonal contacts that ultimately are the best way to break down stereotypes and antagonism.

The issue of reconciliation should at least be addressed in every home and every boardroom and hall of power. There may be different ways of achieving reconciliation, and none can guarantee a flawless process.

Any contribution made by the TRC will certainly not be perfect, but will be an important component in the complex process of reconciliation.

Umla Gobodo-Madikizela is a member of the Human Rights Violation Committee of the TRC.

