PUBLIC SECTOR - GOVT. - JUSTICE

1995

MARCH — MAY

Omar looks at new bail legislation

Cape Town — Amendments to legislation governing bail conditions are to be tabled in Parliament soon, Justice Minister Dullah Omar announced yesterday (252)

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

DP Senator James Selfe quoted police statistics which showed that 6 000 accused skipped bail last year. These included 850 people given bail for murder charges and 900 alleged rapists

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

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

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

He would release these details as soon as he had studied the reports — Political Correspondent.

Star 1/3/95

Prisoners, punishment and parole: The push for reform

ARG 1/3/95 (252)

Radical reforms to the parole system were proposed at the Conference on Crime, Security and Human Rights held in Somerset West. Staff Reporter ROGER FRIEDMAN was there.

THE early release of convicted criminals on parole made "a mockery of the entire judicial process", Cape Attorney-General Frank Kahn told delegates to the Conference on Crime, Security and Human Rights organised by the justice ministry

The present legal system seemed pre-occupied with the terests of the offender, he said.

"I would like to see a greater shift of emphasis towards the interests of the victims of crime"

Victims of crime needed to be satisfied on three levels — personal, material and emotional.

On the personal level, the victim should be provided safe and comfortable passage through the courts, thereby avoiding double-trauma syndrome.

On the material level, victims of crime were assisted by means of the payment of compensation, or the freezing of assets of the offender in financial matters.

But on the emotional level, satisfaction was "presently in danger of being seriously undermined by the Department of Correctional Services' policy of [illegible] on parole".

The victim may very well be satisfied that justice has been done in his particular matter, only to subsequently discover that the penal bureaucracy has seen fit to release the offender after a mere fraction of the sentence of imprisonment has been served.

"This situation makes a mockery of the entire judicial process," Mr Kahn said.

"The basic problem with parole is that the discretion as to quantum of punishment shifts from the courts to the prison authorities."

Judges had to consider carefully the nature of the crime, the offender and the interests of society in deciding appropriate sentences.

"Punishment is furthermore regarded as pre-emi[illegible] matter for the discretion of the trial court. The scope for interference with the sentence imposed — on appeal — is very limited.

"It has been said on many occasions that a sentence will only be altered where the discretion has not been judicially or properly exercised," Mr Kahn said.

It was thus "strange" that in terms of the Correctional Services Amendment Act, the Department of Correctional Services could, "by extra-judicial means", order the conditional release of a convicted prisoner after that prisoner had served as little as a third of the custodial sentence imposed by the court.

In terms of the Act, a prisoner could not be considered for placement on parole until he or she had served half his or her term of imprisonment. This date of consideration could, however, be brought forward by the number of credits earned by the prisoner.

Credits might be awarded for good behaviour or for the prisoner's [illegible] in programmes [illegible] at treatment, rehabilitation and training.

This early release system was devised in response to the abolition of the old Correctional Services Act "where, in practice, a reduction of one third of the custodial sentence was automatically granted".

The old Act came in for severe criticism.

But, according to Mr Kahn, "instead of improving the situation, the recent amendments .. exacerbate the problem, since provision is now made for the even earlier, albeit, conditional release of prisoners".

This "problem" was recently highlighted by the release on parole of Sicilian murderer Giuseppe Di Blasi after he served 16 months of a four-year sentence for killing his ex-wife.

Said Mr Kahn: "I have grave difficulty with a convicted murderer being parolled as early as this. Violence against society cannot be tolerated and laws which allow such offenders to be [illegible]turned to the community in these circumstances are simply unacceptable."

In the United States, "to overcome the danger of their sentences being undermined by penal authorities", the judiciary imposed severe sentences in cases where they felt the offender should not qualify for parole. Hence the 200 and 400-year sentences sometimes handed down in that country.

Some American states had even banned parole altogether, using a rigid set of sentencing guidelines instead.

In Germany, a special court — the *Strafvollstreckungskammer* — had the function of determining whether prisoners should be released on parole before completing their sentences.

In France, a judge presided over a commission of punishment which included the head of the prison and the prosecuting attorney Decisions such as parole, reduction of sentences, authorisation for leave under escort and others, must be passed by the judge known as the *juge d' application des paines.*

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

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

"Administrative and other considerations can cloud his judgment.

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

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NP backs May 10 indemnity cut-off

■ BY ESTHER WAUGH
POLITICAL CORRESPONDENT

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

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

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

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

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

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

He added that the NP supported a truth commission "provided it is structured in such a way that it has the potential of in fact promoting national reconciliation and not causing more strife and misunderstanding than it purports to solve"

Star 2/3/95 (252)

Truth commission 'will reject any secret amnesty hearings'

BD 1/3/95

(252)

MARK ASHURST

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

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

Matala told journalists the ANC appeared to have "given in" on its commitment to open amnesty hearings.

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

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

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

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

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

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

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

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

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

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

The Justice Department had provisionally allocated R25m to the commission.

NP backs amnesty call

Political Correspondent (252)

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

It was "reasonable and called for" for the date to be moved from December 5, 1993, to May 10, the NP said ARG 2/3/95

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

NP wants amnesty for the AWB

ADRIAN HADLAND

CAPE TOWN — The NP called on government yesterday to award AWB leaders temporary amnesty for political crimes

NP Justice spokesman Danie Schutte told the National Assembly's justice committee this would enable the AWB's leadership "to consult with a view to a final cessation of hostilities". BD 2/3/95

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

The ANC's leadership received temporary amnesty prior to the World Trade Centre negotiations and this led to a peaceful resolution, he argued The AWB's request "should also be acceded to"

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

MPs agreed , however, that without the presence of the Inkatha Freedom Party's, which walked out of Parliament last week, contentious issues should be dealt with later. (252)

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

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

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

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Extend indemnity cut-off date — NP

THE NP threw its weight yesterday behind right-wing calls to extend the cut-off date for political indemnity by five months to May 10 last year

It said in a submission to Parliament's joint committee on justice the proposed Truth and Reconciliation Commission should be allowed also to consider political crimes committed on the eve of the April election (252)

"We believe an extension of the date is reasonable and called for CT 2/3/95

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

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

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

Law to regulate marches

(252)

CT 2/3/95

Political Staff

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

If the law failed to materialise he would initiate one of his own.

He was reporting back on a suggestion made by Premier Mr Hernus Kriel on Tuesday that there should be a "code of conduct".

Mr McKenzie said his national counterpart, Mr Sydney Mufamadi, told him in August that legislation could come into effect by January 1.

However, Mr Mufamadi had told him this week that the bill would go through Parliament only "in the next few months".

"If they don't put it through, we will," Mr McKenzie said.

Niehaus cautious on prison privatisation

TIM COHEN

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

Niehaus said a comprehensive investigation was needed.

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

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

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

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

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

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

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

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

Niehaus said he had asked President Nelson Mandela to intervene.

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

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

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

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

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

3 000 deaths for truth commission

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

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

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

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

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

The Bill on the commission stipulated it would direct its attention to all incidents between 1960 and December 1993. — Sapa.

B/D 3/2/95

JOHN HLOPHE

Breaking the mould

At only 35, John Hlophe, SA's newest judge, is young enough to be the son of most of his brothers on the Cape Bench But it's not only youth that sets him apart

Hlophe is also the first black to be appointed a judge He is the first judge to be drawn from academia rather than the ranks of senior counsel And he is one of the first new judges to be chosen by the recently established Judicial Services Commission and not by politicians as was the case in the past

John Hlophe

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

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

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

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

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

Those who are serving face the challenge of establishing their independence from politicians

"They have put the new constitution in place," he says "They must now let the judiciary give it life"

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

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

In his leisure time he enjoys gardening and listening to music He likes jazz but also blues

"After all," he chuckles, "blues is forever" (252) FM 3/3/95 ■

Amnesty date won't change, insists Omar

ST 5/3/95

(252)

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

The NP this week joined the AWB and other right-wing groups in a call for the extension of the amnesty cutoff date to May 10 last year

No political crimes committed after December 5 1993 — the date stipulated in the constitution — qualify for indemnity

An extension would allow crimes committed by the right wing on the eve of the elections to qualify for indemnity

Mr Omar said through a spokesman that he had not changed his position on the cutoff date.

However, should the parliamentary justice committee, which is examining the Truth Commission Bill, take decisions which alter the Bill, he would have to take it back to cabinet.

By EDYTH BULBRING
Political Correspondent

The call from the NP follows an appearance before the justice committee last month by AWB leader Eugene Terre Blanche, who offered an olive branch in return for amnesty for rightwingers.

Justice committee chairman Johnny de Lange said this week that an extension to the date should be based on compelling evidence that it would serve the country's interests.

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

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

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

They feel that an extension could cause problems in the future

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

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

The extension of the amnesty date would also be dependent on a clear undertaking by right-wing leaders to promote peaceful ways of achieving their objectives among their followers

Capp submits Phola Park housing plan

ROBYN CHALMERS

THE Co-ordinated Anti-Poverty Programme (Capp) submitted a R129,6m housing scheme for the East Rand's Phola Park to the Gauteng provincial housing board on Friday.

This follows a tussle between a non-profit organisation, the New Housing Company (Newhco), and Capp over which company has the right to provide 4 320 low-cost homes in the squatter camp.

Capp, which is believed to have links with Deputy Arts, Culture, Science and Technology Minister Winnie Mandela, wrote to the Gauteng Housing Board earlier this year asking if it could become the official developer of the housing scheme. BD 6/3/95

The board responded by setting Friday as the final deadline for the proposed scheme to be submitted.

Architect Peter Malefane, who is advising Capp on the project, said he personally delivered the proposal to the housing board, and was hoping for a speedy response.

"We are planning to provide more than 4 000 houses at a cost of R30 000 a unit and are ready to begin construction as soon as the scheme is approved by the housing board," he said.

Significant infrastructural work in the area has already been undertaken by Newhco, which has indicated it is unwilling to hand over the project.

It was approved as developer of the scheme last year, and has completed servicing on more than 200 stands.

Flat rates in Tembisa to stay for now

BD 6/3/95

WILSON ZWANE

THE North East Rand Transitional Metropolitan Council will not immediately abolish the R30 flat rate Tembisa residents are paying for services, saying to do so would have a negative effect on efforts to restore the culture of payment in the township

Council executive committee chairman Greg Malebo said at the weekend the issue of a services tariff was a thorny one and needed to be handled with circumspection and in consultation with all role players

He said the metropolitan council had agreed to allow the flat rate payments by Tembisa residents until "visible" improvement in the delivery of services took place.

It is understood, however, the council has estimated that a viable monthly tariff for services in Tembisa is R150.

Constitutional Development Minister Roelf Meyer said central government was not prescribing to local authorities how they should encourage people living in their areas to pay for services.

Operation Masakhane, launched by President Nelson Mandela last week, was a national initiative aimed, among other things, at ending rent, service and bond boycotts, he said.

But the ANC has said the flat rate system should be done away with as it favours the rich.

Malebo said as part of the council's plans to improve services in the township, "Operation Clean-up Campaign" would start today R1,4m would be pumped into the campaign.

Jail for non-payment challenged in court

BD 6/3/95 SUSAN RUSSELL (252)

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

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

Sections 65a-m allow a debtor to be jailed for contempt of court if he or she does not comply with a judgment for payment granted against them.

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

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

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

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

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

Coetzee and Matiso's lawyers also contend that civil imprisonment "is a medieval concept out of line with our constitution, which enshrines freedom and equality"

Included in the written submissions already before the court are statistics obtained by the SA Law Commission in 1986 for its report on committals for debt

From Page 1

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Protection for witnesses okayed

(252) Star 6/3/95

■ BY JO-ANNE COLLINGE

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

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

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

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

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

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

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

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

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

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

IFP rejects 'witch-hunt'

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

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

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

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

Earlier IFP leader Chief Mangosuthu Buthelezi compared the Truth Commission to the McCarthy Commission conducted in the United States in the 1950s. CT 6/2/95

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

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

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

"I have never in my entire life ordered the killing or murder of a single person," he said.

Parties differ over emergency powers

CT 7/3/95

(252)

SHARP differences of opinion emerged in the Constitutional Committee yesterday over whether provinces should have the right to declare states of emergency

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

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

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

Prison for debt under spotlight

SUSAN RUSSELL (252)

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

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

But he also argued that there would be "chaos" if the Constitutional Court stopped civil imprisonment before Parliament amended section 65 appropriately. BD 7/3/95

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

The 11-member court sat yesterday to consider applications Farida Coetzee and N Matiso and others, attacking the constitutional validity of section 65.

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

M Navsa SC, acting for Coetzee and Matiso, said statistics showed thousands of people were imprisoned for debt every year. More than 85% were for debts of less than R500.

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

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

Indemnities slammed

(252)

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

He told a meeting at the University of Stellenbosch that the indemnities were granted on November 3 and 30, adding that some of those indemnified were guilty of three murders.

"Why is indemnity granted to these people and not the 3 500 policemen?" he asked.

Accusing the ANC of double standards, Schutte said it was unfair to expect the ANC's opponents to testify before the truth commission while its supporters were granted indemnity confidentially — Political Correspondent.

Star 8/9/95

Inkatha MPs to help set up truth commission

(252)

BD 8/3/95

ADRIAN HADLAND

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

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

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

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

However, Inkatha MPs, with representatives from the other parties, continued yesterday to work on ironing out technical details of the Promotion of National Unity and Reconciliation Bill.

Cassim said five critical areas within the Bill would receive special Inkatha attention.

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

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

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

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

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

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

NEWS

Web of Constitutional Court rules

(252) STAR 8/3/95

Legal minds baffled

BY HELEN GRANGE

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

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

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

Changes

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

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

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

system • Mufamadi challenged over grievances

State should rule on payment - ANC

(252) Sowetan 8/3/95

■ **TIME FACTORS** Amnesty cut-off dates are being debated:

PARLIAMENT, NOT THE Truth Commission, should decide on appropriate reparation to victims of gross human rights violations, the African National Congress has recommended

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

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

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

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

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

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

More historic

She said the scope of the commission's work was too wide, unworkable and "hopelessly over-ambitious"

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

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

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

The DP's proposal would also exclude offences which were not part of a systematic pattern of abuse. — *Sapa*

Payment to human rights victims debated

(252) Star 8/3/95

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

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

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

Extradition agreements imminent

TYRONE SEALE
Political Staff

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

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

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

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

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

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

The commission's report would not be available before November. ARG 9/3/95

The earliest opportunity for parliament to consider legislation flowing from the report would be during next year's session. (252)

Mandela authorised 100 indemnities of ANC supporters says NP's Schutte

Nats cry foul on amnesties

Sowetan 9/3/95

By Ismail Lagardien
Political Correspondent

(252)

ONE HUNDRED new indemnities authorised by President Nelson Mandela and Justice Minister Dullah Omar in November last year have left the National Party angry and unamused

According to Government Gazette numbers 16 072 of November 3 1994 and 16 150 of November 30 at least 100 people were indemnified

Among them was Mr Hein Grosskopf, an Afrikaner who is regarded by many black people in South Africa as a hero in the struggle against apartheid

Grosskopf was granted "unconditional" indemnity and his crime is listed as "causing an explosion in Quarts Street (sic), Johannesburg, on 30 July 1987 which resulted in damage to 58 buildings, 33 motor vehicles and the injury of 29 persons"

Other actions for which people were indemnified are, among others, the murders of Hoyd Thabelala on May 24 1986, Jacob Mkumbi on June 17 1986, Enos Ramalala on August 24 1987 and K Goodman on July 2 1990

Among them were also people who refused to do military service in the former South African Defence force

The NP's spokesman on justice Mr Danie Schutte said yesterday there was little doubt that the people indemnified by Mandela and Omar were "ANC supporters" and that double standards were being applied with regard to releases

"I don't think that there can be any doubt about their affiliation that they're ANC supporters," Schutte said

"We regard this in a very serious light because it is clear that this is a serious breach of the letter and spirit of the constitution

"The constitution clearly provides that amnesty shall be granted in terms of an Act to be passed after the election That was the agreement," Schutte said

And since the agreement had not been adhered to "there was no need for a Truth and Reconciliation Commission, to deal with amnesty"

He said the indemnities now cast a shadow over the refusal of the applications for indemnity by 3 500 police officers and former state officials

Schutte said it was now evident that the envisaged Truth and Reconciliation Commission would be a "witch-hunt" and an "inquisition"

Marchers meet head-on

CT 9/3/95 (252)

BY EUNICE RIDER
STAFF REPORTER

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

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

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

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

The pro-hangings protesters ignored the opposing groups.

HANG CRIMINALS: Justice Minister Mr Dullah Omar (right) accepts a memorandum on the death penalty from Mr Mohamed Khatlieb *Picture: ANNE LAING*

"The situation in the streets — with criminals running rampant — does not afford us the luxury of abandoning the ultimate penalty yet", said march co-ordinator Mr Sulaiman Samaai of Bo-Kaap

ANC motion encourages kangaroo courts — Sanco

BD 9/3/95 WILSON ZWANE (252)

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

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

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

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

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

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

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

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

MPs propose group amnesty applications

ADRIAN HADLAND

CAPE TOWN — Parliamentarians moved yesterday to provide for a collective application to the proposed truth commission for amnesty.

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

BD 9/3/95

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

Yesterday the National Assembly's justice committee requested legal advisers to draft a clause in the Bill allowing small groups of people to sign common statements.

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

The clause, which has yet to be approved by the full justice committee, would prevent the amnesty committee of the truth commission from being "swamped" by applications which ostensibly concerned the same event.

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

He had received dozens of applications for amnesty — including one arguing a bank robbery had been committed in the name of the struggle — which were patently "not political crimes"

NP slams indemnity for alleged ANC supporters

(252)

■ BY ESTHER WAUGH
POLITICAL CORRESPONDENT

Cape Town — The simmering indemnity row has taken a new twist with the National Party accusing the ANC of double standards by indemnifying 100 "ANC sympathisers" and releasing 146 prisoners since last year's election.

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

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

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

Schutte said the ANC had slammed the indemnity, days before the April election, of the 3 500 policemen on the grounds that the former government could not indemnify "its own people". He questioned why the ANC could indemnify its "supporters".

Asked what evidence he had that those indemnified were ANC supporters, Schutte said: "The NP did not throw bombs and did not murder people". He added that "on the balance of probability" they were ANC supporters.

Star 9/3/95

AWB bomb builder 'a third force' agent'

BD 9/3/95

DEBORAH FINE

FORMER Ystergaarde lieutenant Jacob Koekemoer, who turned state witness against 26 alleged AWB bombers, was accused yesterday of being a "third force" agent after he told the Rand Supreme Court he had been a police spy

Defence counsel Louisa van der Walt accused him of being an operative who was ordered to disrupt last year's elections and smear the AWB's name. She made the accusation after Koekemoer, who earlier admitted to building the six bombs which killed 20 people and wounded 46 others in Gauteng last year, made a surprise announcement during cross-examination that he was a police informer.

Koekemoer told the court he had been an informer for the Criminal Intelligence Service (CIS) for two years before he had volunteered to infiltrate the Ystergaarde, the AWB's elite guard, in December 1993.

He maintained he had joined up with a special AWB task force shortly before the elections simply to gather information, but had been forced to build bombs for the 26 accused because he feared they would suspect he was an informer and kill him. A qualified mine blaster, Koekemoer admitted the accused could not have built the bombs without his help.

He was asked by Van der Walt why he had not contacted his CIS "handler" after the first bomb exploded in Bree Street, Johannesburg, on April 24, but had continued to build more bombs until April 27. Koekemoer replied there had not been "a safe opportunity" for him to do so and he had been given strict orders not to endanger his life

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

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

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

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

"But the CIS would have arrived within minutes with helicopters and automatic weapons to rescue you and stop the bombs if you had phoned. You were left completely alone part of the time, you could have phoned or even tried to run away," Van der Walt submitted.

"What if I had run onto an AWB farm? What if one of their patrols had found me. It was a 'my life or yours' situation. I did not plant the bombs, I only built them," he replied.

"It was not one life. It was 20, 40 or 100 lives," presiding Judge HCJ Flemming said.

'Lack of clarity' in Bill of Rights

MARK ASHURST

252

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

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

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

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

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

BD 9/3/95

He predicted chapter 3 would become contentious as courts came under pressure from claimants seeking protection in disputes related to discrimination and affirmative action.

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

The entire Bill was "up for grabs" pending review of the interim constitution by the Constitutional Assembly.

Minister dismisses NP's 'wild' indemnity claims

(252) Star 10/3/95

BY ESTHER WAUGH
POLITICAL CORRESPONDENT

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

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

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

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

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

The committee had also urged the release of 86 people in terms of the Further Indemnity Act and indemnification of 106 under the Indemnity Act of 1990 and the Further Indemnity Act of 1992

Corporal punishment to go

☐ 'It's unconstitutional': Kahn to abandon court fight

ROGER FRIEDMAN
Staff Reporter

CORPORAL punishment seems destined for the legislative scrap-heap with the announcement that Cape Attorney-General Frank Kahn does not plan to argue for its retention at the Constitutional Court later this month

And if South Africa follows the Namibian model, caning at government schools will be outlawed too

Mr Kahn told Constitutional Court president Arthur Chaskalson yesterday that in his opinion corporal punishment was unconstitutional

To pursue the argument for its retention would be a "waste of time and money".

To reach a decision as to whether beating is constitutional or not, the Constitutional Court is to make arrangements for the appointment of a lawyer to present argument for its retention

But it appears the die is already cast

Not only has Justice Minister Dullah Omar announced imminent legislation scrapping corporal punishment, but a full bench of the Namibian Supreme Court found it to be unconstitutional in 1991

And not only are the relevant sections of the Namibian and South African constitutions virtually identical, but one of the Namibian judges who determined the punishment's unconstitutionality — Ismael Mohammed — now sits on the South African Constitutional Court bench

The Namibian Court found "The imposition of any sentence by any judicial or quasi-judicial authority, or directing any corporal punishment upon any person, is unlawful and in conflict with Article Eight of the Namibian Constitution

"The infliction of corporal punishment in government schools is likewise unlawful and unconstitutional"

The registrar of the constitutional court, Martie Nienaber, said yesterday "A notice was received this morning from the Attorney-General of the Cape informing the president of the court he takes the view that corporal punishment is unconstitutional and that he does not plan to argue to the contrary

ARG 10/3/95

"In the circumstances, the president of the court will make arrangements for an amicus curiae (friendly lawyer) to be appointed to present the contrary argument to the court."

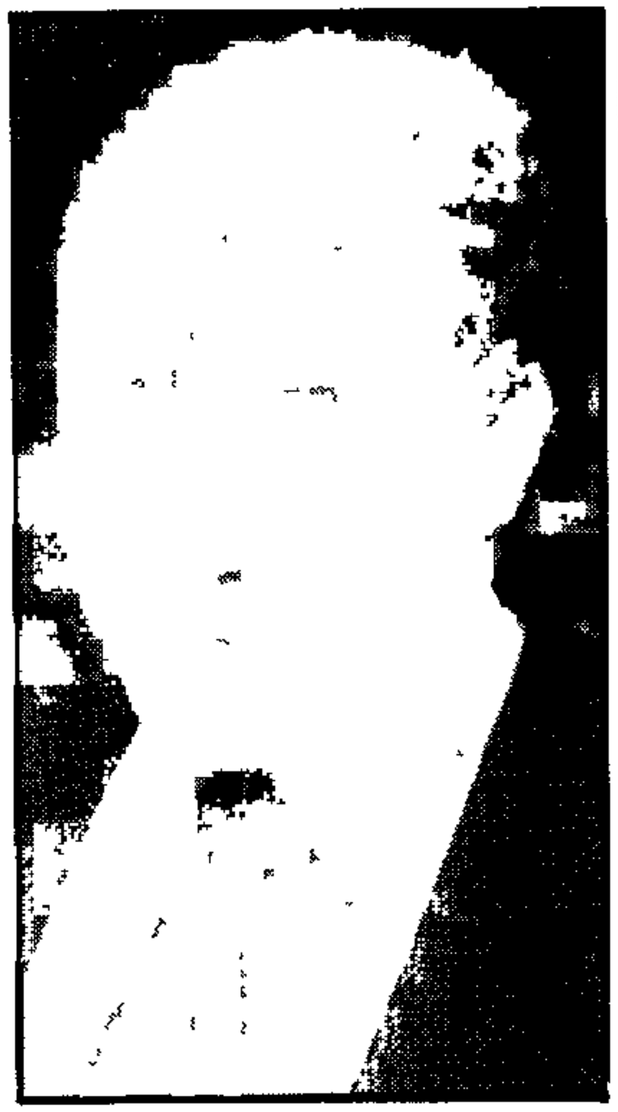
Mr Kahn had already submitted heads of argument, arguing the contrary view, to the constitutional court

Questioned on his change of mind, Mr Kahn said he initially filed his argument to help the court make an informed decision

"I am now persuaded that corporal punishment is unconstitutional in law — to pursue the argument would be a waste of time and money"

Steve Kahanowitz of the Legal Resources Centre in Cape Town is to argue for the unconstitutionality of the punishment The case is on the roll for March 24

● President Mandela announced in his opening speech to parliament three weeks ago that South Africa would ratify the United Nations Convention on the Rights of the Child, and the International Covenant on Civil and Political Rights — both of which bar judicial and institutional corporal punishment. (252)



FRANK KHAN

(252) ARG 10/3/95

Indemnity claims 'wild statements'

CLIVE SAWYER
Political Correspondent

JUSTICE Minister Dullah Omar says National Party claims that 100 African National Congress members were given post-election indemnities are "rather wild statements".

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

The ANC said all the indemnities complied with legal requirements.

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

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

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

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

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

This committee had dealt with about 1 200 applications

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

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

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

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

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

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

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

(252) ARG 10/3/95

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NP turns tables over amnesties

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ARG 11/3/95

CLIVE SAWYER
Political Correspondent

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

Claiming that the 100 were ANC supporters, the NP this week used the indemnities to turn the tables on the ANC, which gained huge political capital from earlier disclosures about amnesty applications before the election by 3 500 security force members.

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

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

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

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

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

"It is not disputed that the Currin Committee was appointed

"The fact is that no committee, cabinet or president can overrule the constitution"

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

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

Mr Schutte asked why the constitution had not been obeyed

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

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

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

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

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

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

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

Indemnity

which made it surprising that the NP was kicking up a fuss about them.

The row coincided with the final stages of debate about legislation on a truth and reconciliation commission, to go before Parliament next month.

Yesterday Schutte said Omar's statement left questions unanswered.

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

Star 11/3/95

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

(252)

ST 12/3/95

Moves to free jailed debtors

(252)

By CARMEL RICKARD

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

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

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

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

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

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

Prisons officials said this week that the number of "judgment debtors",or people jailed for civil debt, had dramatically declined over the last few years

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

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

The decline also follows a series of court challenges brought by the Legal Resources Centre in Cape Town

Department of Correctional Services official Lieutenant Rudi Potgieter said judgment debtors were held in jails around the country, except the maximum security prisons

They had awaiting-trial status and, as far as possible, did not come into contact with other categories of prisoners

According to the South African Law Commission, a judgment debtor spent an average of nine days in prison At R45 a day, this means the taxpayer spends, on average, over R400 for each person jailed for debt.

Lieutenant Potgieter said this week, that, because large numbers were not involved, all judgment debtors could be released the same day if authorisation was received, "even if it means that personnel have to work after hours to complete the task"

Law bodies hammered at court

By CARMEL RICKARD

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

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

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

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

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

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

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

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

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

In his replying remarks, advocate Mahomed Navsa SC for the Legal Resources Centre, asked why the association didn't "apply blow torches to the feet of debtors to get them to comply?"

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Law society restructured

DEBORAH FINE

THE Law Society of the Transvaal has been restructured to accomodate the division of the old Transvaal Province into four new provinces.

In terms of the new constitution, which came into force on April 27 last year, the Transvaal Law Society only exercises jurisdiction over attorneys practising in areas which formed part of the Transvaal province on April 26 1994.

This means the society now only has jurisdiction over attorneys practising in the provinces of Gauteng, Eastern Transvaal and Northern Transvaal.

Attorneys practising in Northwest remain under the jurisdiction of other law societies while Bophuthatswana attorneys continue to fall under the jurisdiction of the Bophuthatswana Law Society despite the fact that they now practise in Northwest.

Following failed attempts to repeal the Bophuthatswana Attorneys Act and other legislation to establish the jurisdiction of the Transvaal society over attorneys practising in all four Transvaal provinces, the Society has introduced four "circle" committees for the four new provinces.

The society will continue to exist as the umbrella body of these committees.

RDP can be world model — Mandela

ERICA JANKOWITZ

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

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

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

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

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

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

Mandela said the SA delegation was "elated by these discussions".

"We were given the assurance from the summit we will receive any assistance the north can provide in ensuring the successful implementation of the RDP."

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

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

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

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

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

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

● See Page 8

SABC must have new name — union

MARK ASHURST

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

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

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

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

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

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

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

Provincial boards would be expensive and — contrary to their objective — risked being influenced by regional politics, he said.

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

Sources at the SABC strategic planning unit said the group had made "radical progress", although disclosing the substance of discussions at this stage could jeopardise an agreement.

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

In particular the SABC, which last week began a programme of outside broadcasts from the provinces, including inserts in weekday magazine programmes, would not set up separate bureaus in the regions

The task group was exploring ways of channelling the resources of TBVC broadcasters into indigenous language radio services, which could be decentralised and moved away from Johannesburg, they said.

Law body still 'male, pale'

(252) Star 14/3/95

■ BY BRENDAN TEMPLETON

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

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

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

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

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

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

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

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

VETAN Wednesday March 15 1995

ngs today

Sowetan 15/3/95

Unofficial indemnity bids out

(252)

OF the 14 002 people who have applied for indemnity since September 1990, no person was granted indemnity on application for offences not officially stated in the application for indemnity, according to the Indemnity, Immunity and Release Office

This assurance was given in a document, containing the latest indemnity statistics before the House Select Justice Committee yesterday

207 turned down

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

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

Secrecy clause dropped from draft truth commission legislation

(252) BD 15/3/95

ADRIAN HADLAND

CAPE TOWN — The controversial "secrecy clause" has been dropped from draft truth commission legislation

The clause, which raised a storm of criticism from human rights and legal groups, stated all applications for amnesty by the perpetrators of human rights abuses would be held behind closed doors

It was included in draft legislation by the Cabinet after a multiparty agreement. In the second draft of the Promotion of National Unity and Reconciliation Bill, which was discussed by the National Assembly's portfolio committee on justice yesterday, the clause had been excised.

ANC MP Willie Hofmeyr said while the committee had not yet agreed on the change, it was a reflection of the "immense public pressure".

NP justice spokesman Danie Schutte said the Bill was still in its draft stage. "We are fairly staunch at this stage that the question of process and the qualifications for amnesty are exactly the same after the election as they were before."

According to a new clause, truth commissioners will have limited discretion to decide whether hearings are held in camera. The decision will be based on whether the evidence is contrary to the interests of state security, good order, the administration of justice or the person testifying. If the commission has reason to believe there is a likelihood the person giving evidence "may suffer harm as a result of his or her testimony", the evidence may be heard behind closed doors However, victims will be allowed to attend.

Committee chairman Johnny de Lange said the aim was to submit the Bill to Parliament, following Cabinet approval, by the first week of April

Hofmeyr said that if all went well, the truth commission would be running by July and would be expected to complete its work by the end of next year.

In another development yesterday, the Indemnity, Immunity and Release Office said at least 14 000 people had applied for indemnity from prosecution The latest indemnity statistics were put before the House select justice committee

Sapa reports the office said nobody had been granted indemnity for offences not specified in their applications

Excluding applications for release from jail, the office had received 14 002 indemnity applications since September 1990.

Former president FW de Klerk and President Nelson Mandela had turned down 207 applications A further 3 481, mostly by security force members and former Cabinet Ministers, had been "completed in such a way that . indemnity was not acquired" Most of the indemnities — about 4 709 — were granted to people who had received illegal military training or had left the country illegally

EAST RAND Black lawyers challenge Constitutional Court decision on legal aid

(252) Sowetan 15/3/95

Attorneys' issue denied hearing

By Russel Molefe

■ **COURT LAWYERS** E Rand

Legal Aid Board accused of racism

EAST RAND attorneys are angered by the refusal of the Constitutional Court to hear an application challenging the Legal Aid Board's practice of imposing attorneys on people awaiting trial

The application, lodged by Mr Ephraim Mathonsi last month on the advice of the Attorneys Forum on the East Rand, was refused a hearing by Constitutional Court judge Mr Justice Madala

In his notice of motion, Mathonsi asked the court to declare that he was entitled to the legal representative of his choice as opposed to the practice of the LAB, which chooses attorneys for people awaiting trial Mathonsi also applied for the matter to be treated as urgent The LAB helps people who cannot afford to pay legal fees by themselves It has been accused of racism when allocating clients to attorneys This has angered black attorneys on the East Rand who complained that they were overlooked in favour of white attorneys.

The president of the Constitutional Court designated Madala to handle the application by Mathonsi He ruled that the matter could not be heard by the Constitutional Court, as Mathonsi had not exhausted all avenues in the search for a solution

But the attorneys hit back and argued that their client's application could not be decided upon by a "single judge in his chambers because the court, consisting of 11 judges, should decide on that aspect "There are no other avenues that our client can exhaust before he approaches the Constitutional Court," the attorneys said They appealed to the judge president to attend to the matter and advise Mathonsi on the alternative cause of action he could follow

The attorneys last month also invaded the offices of the LAB in Pretoria demanding an end to its practice of allocating attorneys to clients

14 000 have applied for indemnity, committee told

(252)

TYRONE SEALE
Political Staff

SINCE the inception of the indemnity process, 14 002 applications for indemnity have been submitted to the Office for Indemnity, Immunity and Release

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

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

According to the report

- The Indemnity Office processed 4 709 applications resulting from illegal military training,
- The office processed 5 302 applications which resulted in indemnity for people who had illegally left the country This number included 1 862 people who had also acquired indemnity for military training in contravention of the law,
- 1 016 applications involved offences listed in the April 1991 terms of indemnity and resulted in indemnity for specific offences,
- 207 applications were refused,
- 327 applications were granted on an individual basis,
- 219 applications are to be processed by the proposed Truth and Reconciliation Commission,
- 650 of the applications related to offences committed after October 1990
- 3 481 applications were completed in such a way that, in the view of the Indemnity Office, indemnity was not required ARG 16/3/95

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

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

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

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

"Indemnity applications which could not be brought within the frameworks of these Acts of Parliament could not benefit, either under the previous government or the present government"

Legal aid more than doubled

(252)

CT 16/3/95

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

HUMAN Rights

Facing the human rights reality

(252) Sowetan 20/3/95

■ COMMITMENT Thirty human rights treaties to be considered:

By Dr Sandy Shaw

TOMORROW SOUTH AFRICA celebrates its first Human Rights Day In doing so the country has come a long way from that fateful day in 1948 when South Africa was one of six countries which did not support a United Nations resolution introducing the Universal Declaration of Human Rights

The declaration, passed largely as a result of the Nazi atrocities during the World War 2, signalled a shift from human rights as a purely domestic concern of states, to being an integral part of international relations

And so, during the next four decades, South Africa excluded itself from the benefits on participation in international and regional human rights structures and from human rights norms which have been systematically codified since then

Tremendous backlog

We now sit with a tremendous backlog in terms of normalising our status in the international human rights system The international human rights dimension constitutes an important aspect of the

There are some 30 international human rights treaties to which South Africa should now consider a legal commitment Such a commitment would send out strong signals to the world that South Africa takes human rights seriously

Because of the reporting obligations contained in these treaties, it would put the government of the day under the scrutiny of neutral UN experts, thus enhancing our hard-won democracy

It would enable our citizens with allegations of human rights abuses in South Africa to submit these to the UN, a more participatory civil society, thus promoting transparency

It is rightly contended that one of our greatest challenges is to create a human rights culture in South Africa While tolerance may often be in short supply, we have in fact inherited a valuable legacy from the international campaign against apartheid

This campaign became closely linked with the promotion of human rights and served as a precursor to the human rights guarantees in the Interim Constitution

One of the line-function responsibilities of the Foreign Affairs Department is to manage South Africa's foreign interests in respect of human rights The

Sharpeville March 21 1960 ... bodies strewn in the streets after the shooting of pass protesters.

Economic and Social Council and intends offering its candidature for the UN Commission on Human Rights in Geneva These are the two primary UN human rights organs

Parallel with this involvement abroad will be the signing and ratification or accession to international and regional human rights instruments The Department has identified ten such treaties to

Right of the Child,

- International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
- International Covenant on Economic, Social and Cultural Rights,
- International Convention on Civil and Political Rights,
- International Convention on the Elimination of all form of Racial Dis-

we wish to exert on our region and on our continent"

Of the seven UN so-called basic human rights treaties and protocols, three will then remain for South Africa to consider These include the Optional and Second Optional protocol to the international Covenant on Civil and Political Rights

ate a human rights culture in South Africa

When the Government of National Unity took office last year it found itself legally committed to a mere five international human rights treaties — three Slavery Conventions ratified in 1927, a Traffic in Persons and Prostitution Convention ratified in 1951 and Marriage Convention acceded to in 1993

section and is establishing an expertise on the human rights system to address the task of coordinating South Africa's expanding international involvement

Visits to South Africa by international human rights experts are encouraged Outside offers of training and advisory services are being channelled to state departments South Africa was recently elected a member of the UN

see to become a party during 1995

These are

- International Convention on the Elimination of All Forms of Discrimination Against Women;
- International Convention on the Political Rights of Women,
- International Convention on the Nationality of Married Women,
- International Convention on the

criminal on;

- International Convention on of the Civil Aspects of International Child Abduction,
- African Charter on Human and Peoples' Rights

South Africa's commitment to these ten treaties will, as Minister Alfred Nzo put in Cape Town on February, "be our way of saying what kind of nation we seek to be And what kind of influence

claim to be victims of human rights violations, to submit complaints to the Human Rights Committee in Geneva The second outlaws the death penalty The third basic instrument is the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families

● Dr Shaw belongs to the human rights directorate in the Department of Foreign Affairs, Pretoria.

Lagging behind in human rights

By Kim L Robinson

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If the Government of National Unity is to fulfil the requirements of the Constitution and build a non-racist as well as non-sexist democracy based on human rights, it must eliminate all vestiges of legally sanctioned and mandated gender inequality Accordingly, Parliament should repeal section 11(3) (b)

Parliament should also amend the Age of Majority Act to state that all persons throughout the Republic of South Africa who attain the age of twenty-one years, irrespective of marital status and whether subject to customary law, are adults Further, Parliament should implement programmes to counter the negative effects of section 11(3) (b) and educate women on their rights

The preamble to the Constitution states

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

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

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

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

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

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

NEWS FEATURE *Research exposes tradition's danger*

Sexual custom imperils women

By Laurence Zavriew,
Editor of World AIDS magazine

■ HIV RISK *Practice has serious implications in Aids transmission:*

Sowetan 20/3/95

LONDON — Women sometimes approach stallholders in Harare's main market with the words *ndiri kutsvaga sauti* (I am looking for salt) What they are usually looking for are herbs and powders to dry, warm and tighten their vaginas when they have sex

To achieve "dry sex", they ingest herbal porridges and teas or insert powders, herbs, cloth, aluminium hydroxide, Dettol in water, rock salt or stones

Increasingly, researchers are raising the issue of the role of dry sex in the spread of HIV

Extent unknown

The extent to which dry sex is practised beyond Zimbabwe, Zambia and Zaire is unknown, but the use of vaginal tightening or drying methods has been reported in Malawi, Cameroon, Ghana, Kenya, Saudi Arabia, Indonesia, Costa Rica and the Dominican Republic.

"Whenever I've discussed dry sex with people, it's been recognised and acknowledged," says Dr Marian Pitts of the University of Staffordshire, who has researched the practice in women reported pain due to the increased friction during intercourse

"In traditional African society," explains Dr Henriette Meilo Ngoko, a Cameroonian dermatologist and specialist in sexually transmitted diseases (STDs), "women do not have sex for pleasure A woman has to satisfy her husband in bed and at the table"

Dry sex also exists in Cameroon, she says "Traditionally, women insert rock salt in their vaginas, which withdraws the moisture, but can also lead to haemorrhages "

Dry sex can have serious implications in the context of AIDS For a start, condoms are not designed for dry sex — they are much more likely to tear and break if the friction is excessive

"Condoms need some form of lubrication. Certainly the use of any spermicide is not indicated with this practice," says Dr Pitts

She mentions that in informal conversations with family planning personnel before she had even heard of the practice of dry sex, she was told "No, we can't use spermicide, it's not [illegible] "

serted, can cause tears, lesions and sores

"I think that almost by definition dry sex has to increase risk," says Marian Pitts, who has seen the study's results

But even though dry sex is likely to increase the risk of contracting HIV during intercourse with an infected partner, none of the women approached by researchers were aware of the potential danger

In Zambia, the local branch of the Society for Women and AIDS in Africa (SWAAZ) has been networking with *banachimbusas* — traditional sex and marriage educators who offer advice to young women at puberty or before marriage, including advice on dry sex

Traditional educator

"Dry sex is something we *banachimbusas* have to take up," says Mrs Sekanyika, a traditional educator with SWAAZ

"We understand now that dry sex, and the methods used for it, could be [illegible] "

film reviews

Thabiso Leshoai

Serial Mom not really amusing

[illegible] one denies it. Life's little frustrations [illegible] get so overwhelming that at times one [illegible] is to murdering the supermarket [illegible] simply because she didn't smile and [illegible] "Good morning, Sir" when handing [illegible] your change.

But does that mean we deserve a film [illegible] *Serial Mom?*

Serial Mom purports to be a satiri[illegible] look at how seemingly normal people can [illegible] the most hideous things. How the nice [illegible] next door can keep corpses under the [illegible] floorboards.

Not funny

[illegible] idea of satire must have have escaped [illegible] the window when the name Kathleen Turner was mentioned She's an actress who wouldn't be funny if she slipped on a banana peel.

Turner plays a suburban housewife whose calm exterior hides murderous impulses. When her neighbour beats her to a parking spot at the local shopping mall, she mounts a campaign of telephone terrorism against her.

When the school headmaster criticises her son, she runs him down with her car. When her son's pornography obsessed friend won't put on his seat belt, she [illegible] petrol and set [illegible] alight

[illegible] supposed [illegible] unfunny jokes [illegible] wooden Holl[illegible]

[illegible] the film's director, John [illegible] was considered a kind of [illegible] — his films su[illegible] through the grease and fat [illegible] and perversity. As the king of [illegible] jokes, his films featured [illegible] dressed as women doing all sorts of unmentionable things.

The result is the films would only be shown to homosexual men in midnight cinemas and Waters was a cult hero. Now, however, America is more tolerant of offensive films and Waters is not that provocative anymore.

So why doesn't he become more outrageous if he is such a crusader?

That's because the hypocrite would rather get a big Hollywood paycheck with an obnoxious, stupid film in which Katheleen Turner bludgeons a pensioner to death with a leg of lamb.

How long are we going to have to put up with this?

"I would estimate that among rural women in Zimbabwe it's probably the norm after two children, among urban women less so, but still probably the majority after a few children

Some women quoted in a Zairean study indicated that they preferred dry sex to "wet sex", with comments such as "I feel pleasure when he suffers a little, and he too feels pleasure when it's difficult to enter"

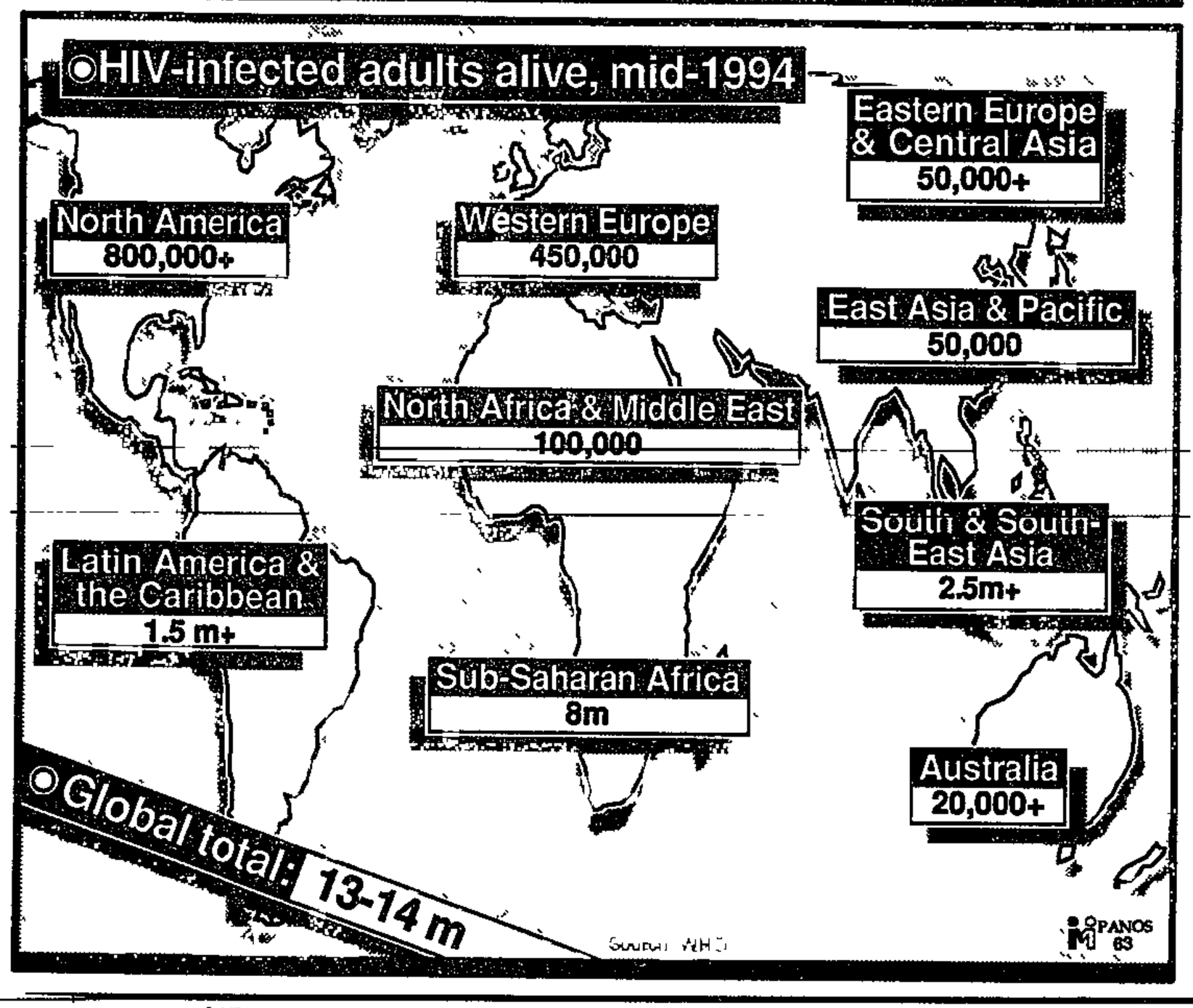
But many of these women essentially practise dry sex for their partner's sexual gratification Several [illegible] says, "is that wet-sex is unacceptable."

Many agents used for dry sex may irritate the vagina and cause damage to the fragile mucous of the vaginal wall — the body's first line of defence against infection by HIV or other STDs

Increased friction alone carries the risk of genital ulcerations, in both partners, and broken skin facilitates transmission of the virus But the Zairean study also showed that some of the herbs used, as well as the abrasive powders or stones that are in- [illegible] But w[illegible] detrimental to women's health and well-being, it is widely supported within the countries where it occurs by women and men alike The threat of HIV alone is unlikely to make people abandon practices followed for generations "Everything is centred on the pleasure of the man," says a Zimbabwean woman

"So if these substances are harmful or even if discomfort is caused, it doesn't matter to the woman She's doing what she thinks he wants This is how we have been conditioned "

Portrait of an epidemic



'Necklace them in public' call

(252)

Star 20/3/95

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

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

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

Gauteng MEC for education Mary Metcalfe, the only minister to attend, apologised for the absence of Gauteng MEC for safety and security Jessie Duarte. — Sapa.

Angry East Rand residents demand death penalty back

ARG 20/3/95 (252)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"We cannot allow criminals to stop us from building a new South Africa They bring in guns, drugs and go on a wanton crime spree to instil fear in the community. — Sapa

Celebrate human rights

WE MUST build a culture of human rights that will become part of the way we all think, act and interact.

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

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

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

Concept

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

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

Celebration and remembrance . . . Minister of Justice Dullah Omar.

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

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

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

Equality

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

"Can we build such a culture in a country that will, for many years struggle to equalise access to schools and a decent standard of living? And can we build such a culture in a society that is still sharply divided between those who have and those who are deprived of even the most basic needs for survival?

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

Adequate

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

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

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

Caring

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

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

Star 21/3/94

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Zikhali	Nke	ANC	Charges of murder in case B251/90 in the Durban Supreme Court	10238/91	949	06/11/91
Zitha	Petros Mandla	ANC	(1) Roof met verswarende omstandighede, (2) moord, en (3) poging tot moord, Germiston	5711/91	890	16/10/91
Zulu	Nkosi Giphihle	ANC	Aanklagte van moord in die Durban en Kus Plaaslike Afdeling van die Hooggeregshof van Suid-Afrika	1473/91	921	30/10/91
Zulu	Bongani Patrick	ANC	Charge of assault with intent to do grievous bodily harm, in case number 41/1165/914 in a Court of the Natal Regional Division, held at Durban	2686/91	720	21/08/91
Zuma	Philo	ANC	Aanklagte van moord in die landdroshof te New Hanover in die saaknommer 1208/90	4386/91	918 643	30/10/91 31/07/91
Zuma	Edward Fanazile	ANC	Charge of murder in case number R421/90 in the Umlazi Court	5936/91	139	17/01/92
Zuma	Mveli Walter		Aanklagte van moord in die landdroshof te New Hanover in saaknommer 1208/90	4388/91	918 643	30/10/91 31/07/91

Corporal punishment: investigation into constitutionality (252)

62 Adv D P A SCHUTTE asked the Minister of Justice. Hansard 22/3/95

Whether, with reference to his reply to Question No 9 on 14 September 1994, his Department has completed its investigation into the constitutionality of the sections of the Criminal Procedure Act, 1977 (Act No 51 of 1977), providing for corporal punishment, if not, why not, if so, what were the findings?

N110E

The MINISTER OF JUSTICE

As I mentioned in my reply to Question No 9 of 14 September 1994 a strong possibility exists that the Constitutional Court may find the imposition of whipping as a sentencing option unconstitutional I have consequently directed my Department to investigate the whole issue regarding whipping as a sentencing option As part of this pro-active action a Bill, which purports to abolish all provisions in our statutory law, in terms of which corporal punishment may be imposed, has been prepared The Department has already submitted this Bill to me and in due course I intend publishing it in the Gazette for general information and comment

It is recognised that clear alternative sentencing options, which are effective, should be in place and available if corporal punishment is declared unconstitutional or is abolished This is one aspect of sentencing in general, which the SA Law Commission was asked to investigate As soon as the Law Commission's recommendations are available, they will be published and given further consideration

Criminal cases disposed of in supreme courts/magistrates' courts

77 Mr J W MAREE asked the Minister of Justice

(a) How many criminal cases were disposed of in (i) supreme courts and (ii) magistrates' courts in the Republic during the latest specified period of 12 months for which information is available, (b) what were the average costs related to the legal proceedings of such concluded criminal cases in each case and (c) how many staff members were needed to dispose of these criminal cases in each case?

N127E

The MINISTER OF JUSTICE

(a) (i) 1 481

(ii) 690 444

(b) and (c) In view of the fact that all court personnel are not exclusively utilised for the disposal of criminal cases it is unfortunately not possible to furnish the required information

(3) This question cannot be answered now because it will depend on the outcome of negotiations.

Mrs G N M PANDOR: Madam Speaker, arising from the hon the Deputy Minister's reply, I should like to pose the following supplementary question We have, in some ways, had a situation similar to this one with regard to the taxation of married women I wonder whether there has been any consideration of the fact that this situation is really unconstitutional Has this been addressed by the Ministry?

Secondly, I do not believe that there was a response to the last part of the question pertaining to the date after which the situation has changed Could the hon the Deputy Minister please provide us with a response?

The DEPUTY MINISTER OF JUSTICE: Madam Speaker, I regret that I am not able to respond to that question as it was not included in the reply I was furnished with. I cannot give the information regarding that date, but I undertake to take it further with the Department and I hope to be answering that question later

I would just like to say that as far as the whole issue of the constitutional provision on the matter of gender is concerned, certainly it is a very strong force in influencing all the actions being taken within the Ministry, and also in respect of this particular matter We are therefore very sensitive to that aspect, as, I am sure, are the Finance Ministry, and they have so indicated

For written reply:

Applications for indemnity: approved/rejected

36 Mr A J LEON asked the Minister of Justice:

(1) How many persons had applied for indemnity in terms of the Indemnity Act, 1990 (Act No 35 of 1990), as at the latest specified date for which information is available;

(2) whether the indemnity applications of any of these persons were not approved, if so, (a) in respect of whom, (b) why were such applications not approved and (c) when were (i) such applications received and (ii) decisions taken on such applications, in each case;

(3) whether each such person was informed that his or her application had been (a) approved or (b) denied; if not, why not; if so, how;

(4) whether he will make a statement on the matter?

N56E

The MINISTER OF JUSTICE.

(1) According to the records of the Indemnity Office, 13 981 applications for indemnity were received from the beginning of the process up to and including 24 February 1995 in terms of the Indemnity Act, 1990 (Act No 35 of 1990)

This figure includes the approximately 3 500 policemen who sought to secure indemnity in terms of the categories created in the *Government Gazette* dated 24 April 1991. It should be noted, however, that the figure of 13 981 does not include any applications for release from prison

(2) (a) (i) A total of 207 individual applications for indemnity (that is not category-based) were refused A list containing details of the said 207 applications is attached hereto.

In addition, 645 applications relating to offences committed after the cut-off date (12 00 on 8 October 1990) were not formally refused, but they could not be processed and considered due to the fact that the Indemnity Act, 1990 and Further Indemnity Act, 1992, did not make provision for offences committed after the cut-off date of 8 October 1990. Such applications may be renewed once the cut-off date is extended

(ii) With regard to this question, it should firstly be explained that in terms of section 2(1) of the Indemnity Act, 1990, unconditional indemnity was granted to—

(a) persons who left the Republic unlawfully (Government Notice No 3013 dated 18 December 1990),

(b) persons who underwent military training with the object of overthrowing the apartheid government (Government Notice No 501 dated 6 March 1991), and

(c) persons who committed any of the acts mentioned, such as
* convening a prohibited gathering;
* holding a prohibited gathering,
* arson or public violence or malicious damage to property;
* intimidation;
* high treason, terrorism or sabotage (where no serious injury was inflicted),
* attempted murder (where no serious injury was inflicted),
* possession of arms, ammunition and explosives under certain circumstances, or
* trespassing

No specific provision was made for the granting or refusal of indemnity in respect of any application designed to ensure the acquisition of indemnity in respect of any of the aforesaid categories. Indemnity is acquired on receipt of application, provided that the application complies with the requirements published when the category was created

Of the 13 981 applications, more than 11 500 were for indemnity in terms of categories

The names of persons who in the opinion of the Indemnity Office had complied with the requirements of the category, were published in the *Government Gazette* Every single name in respect of the following categories was so published

Category created on 18/12/90	illegally leaving the country	5 302
Category created on 6/3/91	illegally receiving military training	4 709
Category created on 24/4/91	various offences but excluding offences that resulted in death or serious injury	1 016
TOTAL		11 027

In some instances an individual applied for indemnity for offences in terms of more than one category. This therefore means that the total number of persons who applied to take advantage of the category-based indemnities was less than the number of indemnities

According to the Indemnity Office also, none of the approximately 3 500 policemen who sought to secure indemnity in terms of the 24 April 1991 categories, acquired indemnity because details of the act or acts in respect of which indemnity was sought to be acquired, were not specified It follows therefore that none of their names was published in the *Government Gazette* either.

(2) (b) In respect of individual applications for indemnity which were not category-based, according to the Indemnity Office, they were tested against guidelines which were published by the previous government in *Government Gazette* of 7 November 1990 The then State President gave no reasons for refusing to grant indemnity

(2) (c) (i) and (ii) Applications for indemnity in terms of the Indemnity Act, 1990, were received as from September 1990 The Indemnity Office is still receiving applications Unfortunately the information regarding refused applications is not readily available and cannot be furnished at this stage

(3) (a) and (b) According to the Indemnity Office, the result of an application for indemnity was in all cases communicated to the applicant or his or her legal adviser Where indemnity was granted to an applicant, details thereof were published in the *Government Gazette*

(4) A statement is not necessary

Applications refused (Indemnity)

Surname	*Christian Names*	*Party*	*Offences*	*File Number*	*SP Min*	*Date SP Min*
Aau	Makone Solomon	ANC	Die gebeure wat op 18 June 1990 te Heilbron plaasgevind het en waarop die aanklag van diefstal in saaknommer SH76/90 in die Streekhof te Heilbron gebaseer is	2909/91	136	17/01/91
Abrahams	Rushdien	NONE	Murder, attempted murder, armed robbery, illegal possession of firearms and ammunition in case number SS296/86 in the Cape of Good Hope Provincial Division of the Supreme Court of South Africa	14/94	210	29/09/94
Adams	Johnny	ANC	Resisting arrest Contravening section 57(1) of Act 51 of 1977	2820/91	Currin Com	
Berling	Mark Anthony	ANC	(1) Een aanklag van openbare geweld, alt twee aanklagte van aanranding met die opset om ernstig te beseer (2) Een aanklag van opsetlike saakbeskadiging (3) Drie aanklagte van aanranding op 'n polisiebeampte, alt verhindering van 'n polisiebeampte in die uitvoering van sy pligte, in die Streekhof te Vredenburg in saaknommer SH193/91	226/92	594	29/09/92
Bester	John	ANC	Aanklag van bedrog in die landdroshof te Wynberg, in saaknommer F1012/93	3267/91	Currin Com	
Bhengu	Phumlani	ANC	Aanklagte van moord in die landdroshof te New Hanover in saaknommer 1208/90	4390/91	918 643	30/10/91 31/07/91

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Bhengu	Joseph Mdumiseni	NUMSA	Die aanklagte van moord, poging tot moord, brandstigting, die onwettige besit van wapens in oortreding van artikel 2 van die Wet op Wapens en Ammunisie, 1969 (Wet No 75 van 1969)	5506/91	490	12/06/91
Blaauw	Lionel	ANC	(1) Een aanklag van openbare geweld, alt twee aanklagte van aanranding met die opset om ernstig te beseer (2) Een aanklag van opsetlike saakbeskadiging (3) Drie aanklagte van aanranding op 'n polisiebeampte, alt verhindering van 'n polisiebeampte in die uitvoering van sy pligte, in die Streekhof te Vredenburg in saaknommer SH193/91	227/92	594	24/09/92
Blaauw	Sonja	NONE	(1) Een aanklag van openbare geweld, alt twee aanklagte van aanranding met die opset om ernstig te beseer (2) Een aanklag van opsetlike saakbeskadiging (3) Drie aanklagte van aanranding op 'n polisiebeampte, alt verhindering van 'n polisiebeampte in die uitvoering van sy pligte, in die Streekhof te Vredenburg in saaknommer SH193/91	225/92	594	24/09/92
Blaauw	Arnold	ANC	(1) Een aanklag van openbare geweld, alt twee aanklagte van aanranding met die opset om ernstig te beseer (2) Een aanklag van opsetlike saakbeskadiging			

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
			(3) Drie aanklagte van aanranding op 'n polisiebeampte, alt verhindering van 'n polisiebeampte in die uitvoering van sy pligte, in die Streekhof te Vredenburg in saaknommer SH193/91	224/92	594	24/09/92
Burwana	Siyabuela Justice	ANC	Vyf aanklagte van moord en twee aanklagte van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	4863/91	989	27/11/91
Calitz	Dirk Daniel Johannes	SAP	Aanklag van aanranding met die opset om ernstig te beseer, alternatiewelik die nalatige hantering van 'n vuurwapen in stryd met die bepaling van artikel 39(1) van die Wet op Wapens en Ammunisie, 1969 (Wet No 75 van 1969), in die Streekhof te Worcester	12135/91	473	10/09/93
Cele	Sibusiso Sigora	ANC	Charges of murder (×6) in case number B251/90 in the Durban Supreme Court	10234/91	949	06/11/91
Chiloane	Alfred Leckios	ANC	Culpable homicide in Lydenburg Regional Court	12159/91	Currin Com	
De Kock	Daniel Jacobus	NONE	Aanklagte van aanranding in landdroshof te Klerksdorp in saaknommer B669/91	12144/91	297	25/05/92
Dlamini	Thulani Professor	MAWU	Culpable homicide, attempted murder (×3) in the Regional Court at Germiston in case number 368/90	9849/91	711	15/08/91
Dowries	Christopher Louis	ANC	(1) Een aanklag van openbare geweld, alt twee aanklagte van aanranding met die opset om ernstig te beseer (2) Een aanklag van opsetlike saakbeskadiging			

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
			(3) Drie aanklagte van aanranding op 'n polisiebeampte, alt verhindering van 'n polisiebeampte in die uitvoering van sy pligte, in die Streekhof te Vredenburg in saaknommer SH193/91	222/92	594	24/09/92
Du Plessis	Jean Prieur	NSP	Aanklagte van (1) motorc[illegible]tal, (2) huisbraak met die opset om te steel en diefstal (×2), (3) roof met verswarende omstandighede, (4) onwettige besit van wapens en ammunisie, (5) onwettige besit van ontplofbare stowwe, (6) onwettige besit van traanrook, in saaknommer 14/3893/926 in die Streekhof te Pretoria	337/92	9	24/01/93
Dywili	Mthethe	ANC	Vyf aanklagte van moord en twee aanklagte van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	4868/91	533	19/06/91
Fubu	Fuyisile Simon	ANC	Charged with (1) public violence, alt malicious damage to property, (2) theft, (3) rape, in the Regional Court at Welkom in case number B152/90	11385/91	298	25/05/92
Gani NEXT PROCESS	Abolool Sattar	ANC	Bribery attempted murder, escape from custody Pietermaritzburg	356/92	Currin Com	

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Geyer	Hermanus Christoffel	SAP	The events which took place on 6 October 1990 and upon which the charges of assault and crimen injuria in the Regional Court at Barkly East are founded	12143/91	169	17/01/92
Gumede	Khulo	ANC UDF	Aanklagte in saaknommer H284/90 en saaknommer H285/90 in die landdroshof te Camperdown	4373/91	891	16/10/91
Gumede	Sinqobile	ANC	Charge of murder (×6) in case number B251/90 in the Durban Supreme Court	10236/91	949	06/11/91
Gumede	Ben Mandla	ANC	Aanklagte van moord in die landdroshof te New Hanover in saak nommer 1208/90	4390/91	918 643	30/10/91 31/07/91
Gumede	Richard Simajet	ANC	Charge of murder (×6) in case number B251/90 in the Durban Supreme Court	10240/91	949	06/11/91
Gwala	Mcatshangelwa	ANC UDF	Aanklagte in saaknommer H284/90 en saaknommer H285/90 in die landdroshof te Camperdown	4375/91	891	16/10/91
Gwala	Skhosiphi Se	ANC	Aanklagte van moord en aanranding met die opset om ernstig te beseer in saaknommer 1491/90 in die landdroshof te New Hanover	4199/91	154	17/01/92
Hayward	Colin Joel	NONE	The events which took place on 6 October 1990 and upon which the charges of assault and crimen injuria in the Regional Court at Barkly East are founded	12140/91	886	16/10/91
Hayward	Colin Joel	SAP	Charge of assault with the intent to do grievous bodily harm in the Regional Court at Barkly East	12140/91	886	16/10/91

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Heyl	Allan George	SAHRO	(1) Robbery (×8) (2) Forgery (3) Attempted murder (4) Car theft (×6) (5) Firearms offences (×16) (6) Escape from custody	261/92	Currin Com	
Hlobo	Thami Bethuel	ANC	Gebeure op 29 September 1990 te Odendaalsrus plaasgevind het waartydens vier persone gedood en die motorvoertuig waarin hulle gereis het aan die brand gesteek is	6592/91	125	17/01/92
Hlongwane	Tshepo Emmanuel	ANC	Aanklagte van die onwettige besit van 'n vuurwapen en ammunisie in saaknommer 43/16771/90 in die Streekhof te Protea	3666/91	164	17/01/92
Hote	Wandile Neville	XCSAS	Aanklagte van moord in die Suidoos-Kaapse Plaaslike Afdeling van die Hooggeregshof van Suid-Afrika	4359/91	645	31/07/91
Jacquesson	Joseph Alphonse	ANC	Fraud	466/93	Currin Com	
Kabini	Samuel Mkhuzelwa	ANC	Die gebeure wat op 7 Augustus 1990 plaasgevind het en waarop die aanklag van moord in saaknommer 64/91 in die landdroshof te Moutse gebaseer is	10817/91	129	17/01/92
Kgoronyane	Koos	ANC	Aanklag van poging tot roof in die Streekhof te Vryburg in saaknommer 4/90	10319/91	923	30/10/91
Khanyile	Eric Siyabonga	ANC	Aanklagte van moord en roof met verswarende omstandighede in saaknommer G896/90 in die landdroshof te Pietermaritzburg	4410/91	163	17/01/92

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Kenisa	Sithembiso	ANC	Charged with (1) murder, (2) assault with intent to commit grievous bodily harm, in case number A494/90 in the Regional Court at Pietermaritzburg	4411/91	149	17/01/92
Khomo	Boba	ANC UDF	Aanklagte in saaknommer H284/90 en saaknommer H285/90 in die landdroshof te Camperdown	4379/91	891	16/10/91
Khumalo	Bongani Sipho	ANC	Aanklagte van moord, ontvoering en aanranding met die opset om ernstig te beseer in saaknommer G994/89 in die landdroshof te Pietermaritzburg	4400/91	618	24/07/91
Khwela	Mbukeni Aka Gkahuz	ANC UDF	Aanklagte in saaknommer H284/90 en saaknommer H285/90 in die landdroshof te Camperdown	4374/91	891	16/10/91
Kobue	Nicholas Oupa	ANC	Charges of robbery, malicious damage to property, arson and public violence	1133/91	526	26/06/91
Kobue	Lucas Rabatana	ANC	Charges of robbery, malicious damage to property, arson and public violence	668/91	526	26/06/91
Kotsi	Aubrey	COSAS	Charge of assault with intent to do grievous bodily harm in case number 64/90, in a Court of the Orange Free State Regional Division, held at Frankfort	678/91	445	07/06/91
Kutumela	Samuel Senamela	NONE	Aanklagte van aanranding in die landdroshof te Klerksdorp in saaknommer B669/91	12148/91	297	25/05/92
Kwela	Kwenzakwabo	UDF ANC	Aanklagte in saaknommer H284/90 en saaknommer H285/90 in die landdroshof te Camperdown	4373/91	891	16/10/91

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Kweyana	Vusumuzi Dean Stanley	ANC	Charged with armed robbery in Pretoria Magistrate's Court	241/92	Currin Com	
Lekaota	Tebello Godfrey	ANC	Aanklagte van moord in saaknommer 1176/90 in die Streekhof te Bloemfontein	2911/91	750	29/08/91
Lekholo	Mohlopheni Andries	ANC	Charged with (1) public violence, alt malicious damage to property, (2) theft, (3) rape, in the Regional Court at Welkom in case number B152/90	11382/91	298	25/05/92
Leotlela	Aaron	ANC	(1) Public violence, (2) assaulting a police officer, (3) robbery	13526/91	Currin Com	
Lesia	Patrick	ANC	Charges of (1) robbery and (2) unlawful possession of a firearm and ammunition in case number 4/91 in the Regional Court at Wepener	11794/91	867	02/10/91
Lesia	Frans	ANC	Charges of (1) robbery and (2) unlawful possession of a firearm and ammunition in case number 4/91 in the Regional Court at Wepener	11541/91	867	02/10/91
Lesole	Collen	ANC	Vyf aanklagte van moord en twee aanklagte van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	4862	989	27/11/91
Ludick	Michael Gerhardus	ANC	Fraud, theft, forgery	8886/91	Currin Com	
Lunake	John	ANC	Vyf aanklagte van moord en twee aanklagte van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	7603/91	989	27/11/91

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Luthuli	Ronnie Bhekokwakhe	ANC	Charges of murder (×6) in case B251/90 in the Durban Supreme Court	10233/91	949	06/11/91
Luthuli	Michael Ndondeni	ANC	Charge for murder (×6) in case B251/90 in the Durban Supreme Court	10249/91	949	06/11/91
Mabusana	Mpho Samuel	ANC	Die gebeure op 18 Junie 1990 te Heilbron waarop die aanklag van diefstal in saaknommer SH76/90 in die Streekhof te Heilbron gebaseer is	2908/91	136	17/01/92
Macinga	Philani Phineas	ANC	Aanklagte van moord, ontvoering en aanranding met die opset om ernstig te beseer in saaknommer G994/89 in die landdroshof te Pietermaritzburg	4403/91	618	24/07/91
Madlala	Buyani Jamaica Jeremiah	ANC	Charges of robbery and attempted escape from prison in case number RC881/90 in a Court of the Natal Regional Division, held in Pietermaritzburg	68/90	447	07/06/91
Maeneche	Tshokolo William	UDF	Aanklagte van poging tot moord en verkragting in saaknommer RCK93/90 in 'n hof van die Noord-Kaapse Streekafdeling te Kimberley	1618/91	550	08/07/91
Magubane	Innos Sibusiso	ANC	Aanklagte van moord en roof met verswarende omstandighede in saaknommer G896/90 in die landdroshof te Pietermaritzburg	4408/91	163	17/01/92
Magwaza	Jabulani Jerome	ANC	Aanklagte van moord in die landdroshof te Umlazi	5935/91	139	17/01/92
Mahlangu	Simon	ANC	Aanklagte van roof in die Streekhof te Ermelo in saaknommer 246/90 en saaknommer 248/90	12034/91	593	24/09/92

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Mahlangu	Aaron John	ANC	Die gebeure wat op 7 Augustus 1990 plaasgevind het en waarop die aanklag van moord in saaknommer 64/91 in die landdroshof te Moutse gebaseer is	10816/91	129	17/01/92
Mahlelehlele	Gideon	ANC	Charged with (1) public violence, alt malicious damage to property, (2) theft, (3) rape, in the Regional Court at Welkom in case number B152/90.	11379/91	298	25/05/92
Mahlokomane	Dumisani Remington	ANC	Aanklagte van moord, die onwettige besit van 'n vuurwapen en ammunisie, huisbraak met die opset om te roof en poging tot roof in die Hooggeregshof, Johannesburg	8317/91	674	07/08/91
Makata	Stephan Mkone	ANC	Charged with murder in case number 1176/90 in the Supreme Court, Bloemfontein	2915/91	750	29/08/91
Makhathe	Victor Koteng	ANC	Charged with murder in case number 1176/90 in the Supreme Court, Bloemfontein	2913/91	750	29/08/91
Makhubu	Phillip Dumisane	ANC	Aanklagte van roof in die Streekhof te Ermelo in saaknommer 246/90 en saaknommer 248/90	12036/91	593	24/09/92
Makubalo	Lindile Lindsay	ANC	Charged with murder in case number 1176/90 in the Supreme Court, Bloemfontein	2917/91	750	29/08/91
Malaba	Jacob Mhlaba	ANC	Charged with murder in case number 1176/90 in the Supreme Court, Bloemfontein	2910/91	750	29/08/91
Mancha	Dennis	ANC	Vyf aanklagte van moord en twee aanklagte van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	7604/91	989	27/11/91

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Mankwa	Patrick	ANC	Charged with (1) arson, (2) culpable homicide, (3) attempted murder (×2) in the Regional Court "b", Wynberg case number SH/B301/90	7598/91		
Mano	Tsietsi John	NONE	Aanklagte van aanranding in die landdroshof te Klerksdorp in saaknommer B669/91	12146/91	297	25/05/92
Manona	Dennis	COSATU	Charges of murder and attempted murder in case number SH/B301/90 in a Court of the Cape of Good Hope Regional Division, held at Wynberg	4864/91	533	19/06/91
Manona	Patrick	COSATU	Charges of murder and attempted murder in case number SH/B301/90 in a Court of the Cape of Good Hope Regional Division, held at Wynberg	4865/91	533	19/06/91
Manuel	Munelwa	ANC	Charged with (1) public violence, alt malicious damage to property, (2) theft, (3) rape, in the Regional Court at Welkom in case number B152/90	11381/91	298	25/05/92
Mapelo	Matladi Maria	ANC	Aanklagte van moord in saaknommer B2007/90 in die landdroshof te Oberholzer	470/91	552	08/07/91
Marnoch	Craig Iain	SACP ANC	Motor vehicle theft (×2), obtaining money by deception	12689/91	Currin Com	
Maseko	Johan Llimbi	ANC	Aanklagte van moord in die landdroshof te Eestehoek	7131/91	705	15/08/91

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Mashinini	Richard Percy Fana	ANC	Aanklagte van roof in die Streekhof te Ermelo in saaknommer 246/90 en saaknommer 248/90	12037/91	593	24/09/92
Masina	Themba	ANC	(1) Robbery, (2) Malicious damage to property	7630/91	649	31/07/91
Matentjie	Johannes	SAYCO	Illegal possession of a firearm and ammunition, Illegal pointing of a firearm in case number 147/91 in the Regional Court at Groblersdal	7179/91	824	18/09/91
Mathibela	Samuel	SAP	Aanklagte van moord en poging tot moord in die Streekhof te Pretoria in saaknommer 14/3900/90	12174/91	975	20/11/91
Mcubuse	Patrick	ANC	Vyf aanklagte van moord en twee aanklagte van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	7600/91	989	27/11/91
Mdlambe	Mlamini	ANC	Charges of murder and attempted murder in case number SH/B301/90 in a Court of the Cape of Good Hope Regional Division, held at Wynberg	4869/91	533	19/06/91
Metsing	Solomon	ANC	Aanklagte van moord in die Hooggeregshof te Johannesburg in saaknommer 8/52/90.	12007/91	795	11/09/91
Mfabana	Mlungisi Morgan	ANC	Aanklagte van moord in die Rondgaande Hof te Graaff-Reinet	7859/91	159	17/01/92
Mfeka	Dumo Petrus	ANC	Charged with murder (×6) in case B251/90 in the Durban Supreme Court	10244/91	949	06/11/91
Mhlaba	Jacob Thami	ANC	Charged with murder in case number 1176/90 in the Supreme Court, Bloemfontein	2910/91	750	29/08/91

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Mhlongo	Stembiso Mlozana	IFP	Aanklagte van moord in saaknommer B1494/90 in die landdroshof te Mtunzini	11546/91	123	17/01/92
Mholo	Bapeki Ismael	ANC	Die gebeure op 18 Junie 1990 te Heilbron waarop die aanklag van diefstal in saaknommer SH76/90 in die Streekhof te Heilbron gebaseer is	11019/91	136	17/01/91
Mkabile	Xolile Thomas	ANC	Charged with (1) public violence, alternatively malicious injury to property, (2) theft, (3) rape, in the Regional Court at Welkom in case number B152/90	11374/91	298	25/05/92
Mkatshwa	Simon	ANC	(1) Robbery, (2) malicious damage to property	7631/91	649	31/07/91
Mkhize	Diso	ANC UDF	Aanklagte in saaknommer H284/90 en saaknommer H285/90 in die landdroshof te Camperdown	4375/91	891	16/10/91
Mkhize	Mzikayifani Aka Ntombololo	ANC UDF	Aanklagte in saaknommer H284/90 en saaknommer H285/90 in die landdroshof te Camperdown	4376/91	891	16/10/91
Mkhize	Sipho Desmond	ANC	Charges of murder (×6) in case number B251/90 in the Supreme Court	10243/91	949	06/11/91
Mkhize	Muziwakhe James	ANC	Charge of assault with intent to do grievous bodily harm, in case number 41/1165/914 in a Court of the Natal Regional Division, held at Durban	2688/91	720	21/08/91
Mkhize	Siyabonga Richard	ANC	Aanklagte van moord in die landdroshof te New Hanover in saaknommer 1208/90	4380/91	918 643	30/10/91 31/07/91

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Mkhungo	Bongani Armstrong	ANC	Charge of assault with intent to do grievous bodily harm, in case number 41/1165/914 in a Court of the Natal Regional Division, held at Durban	2687/91	720	21/08/91
Mkize	Sazi Marx	ANC	Aanklagte van moord in die landdroshof te New Hanover in saaknommer 1208/90	4385/91	918 643	30/10/91 31/07/91
Mlaba	Daniel	ANC	Charge of assault with intent to commit grievous bodily harm, in case number 41/1165/914 in a Court of the Natal Regional Division, held in Durban	1123/90	444	07/06/91
Mndawe	Clement Dumisani	ANC	Aanklag van moord in saaknommer D110/88 in die Streekhof te Pretoria	1536/91	309	25/05/92
Mnikathi	Dumisani Patrick	ANC	Aanklagte van moord en roof met verswarende omstandighede in saaknommer G896/90 in die landdroshof te Pietermaritzburg	4407/91	163	17/01/92
Moagi	William	ANC	(1) Public violence, (2) assaulting a police officer, (3) robbery	13527/91	Currin Com	
Mofokeng	Bernad Henry	SYC	Moord	1127/90	817	25/05/92
Mofokeng	Bernett Motsie	NONE	Murder	246/93	Currin Com	
Mogale	Paul Lerono Elias	NONE	Aanklagte van oortreding van artikel 39(1)(l) van die Wet op Wapens en Ammunisie, 1969, alternatiewelik oortreding van artikel 39(1)(m) van vermelde Wet, in die landdroshof te Krugersdorp in saaknommer A346/91	12133/91	165	17/01/92

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Mohanoe	Tlhoriso Abraham	ANC	Aanklagte van moord (×3) in die landdroshof te Oberholzer in saaknommers B2112/90, B2161/90, B2162/90, B2165/90, B2007/90 en B2975/90	525/91	549	08/07/91
Mohlali	Ramaseki Petros	ANC	Charged with (1) public violence, alt malicious damage to property, (2) theft, (3) rape, in the Regional Court at Welkom in case number B152/90	11380/90	298	25/05/92
Mokoatleng	Diligent Masite	SYC	Aanklag van moord in saaknommer 1512/90 in die landdroshof te Thabamooph	1126/90	817	25/05/92
Mokoena	Mathoto Elizabeth	ANC	Charge of assault with intent to do grievous bodily harm in case number 64/90, in a Court of the Orange Free State Regional Division, held at Frankfort	676/91	445	07/06/91
Molatudi	Tshidiso Nicodemus	NONE	Aanklagte van moord in die Hooggeregshof te Johannesburg in saaknommer 8/52/90	12005/91	795	11/09/91
Molio	McDonald Oupa	ANC	Charge of assault with intent to do grievous bodily harm in case number 64/90, in a Court of the Orange Free State Regional Division, held at Frankfort	677/91	445	07/06/91
Moolman	Kenneth Francis	SAP	Charge of assault with the intent to do grievous bodily harm in the Regional Court at Barkly East	12141/91	886	16/10/91
Motaung	Shadrak Buti	ANC	Aanklagte van moord (×3) in die landdroshof te Oberholzer in saaknommers B2112/90, B2961/90, B2962/90, B2007/90 en B2975/90	504/91	549	08/07/91

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Motinyane	Mohlophemi Joseph	ANC	Charged with (1) public violence, alt malicious damage to property, (2) theft, (3) rape, in the Regional Court at Welkom in case number B152/90	11383/91	298	25/05/92
Mpetha	Thokoza	ANC	Vyf aanklagte van moord en twee aanklagte van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	4867/91	989	27/11/91
Mseleku	Bha Cyril	ANC	Charges of murder (×6) in case number B251/90 in the Durban Supreme Court	10239/91	949	06/11/91
Mseleku	Nkosi Sibusiso	ANC	Charges of murder (×6) in case number B251/90 in the Durban Supreme Court	10235/91	949	06/11/91
Msomi	Muntu Eric	ANC	Aanklagte van moord in die landdroshof te New Hanover in saaknommer 1208/90	4387/91	918 643	30/10/91 31/07/91
Mthethwa	Vana	IFP	Aanklagte van moord in saaknommer B1494/90 in die landdroshof te Mtunzini	11546/91	123	17/01/92
Mzakele	Goeffrey	ANC	Aanklagte van moord (×3) in die landdroshof te Oberholzer in saaknommers B2112/90, B2961/90, B2962/90, B2965/90, B2007/90 en B2975/90	526/91	549	08/07/91
Nantes	Nose	ANC	Vyf aanklagte van moord en twee van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	4868/91	989	27/11/91
Ndara	Moses Lokeni	ANC	Die aanklag van moord in saaknommer 5/91 in die Oranje-Vrystaatse Provinsiale Afdeling van die Hooggeregshof	2154/91	703	15/08/91

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Ndlambe	Miulami	COSATU	Charges of murder and attempted murder in case SH/B301/90 in a Court of the Cape of Good Hope Regional Division, held at Wynberg	4861/91	533	19/06/91
Ndlovu	Anna Puleng	ANC	Aanklagte van moord in saaknommer B2007/90 in die landdroshof te Oberholzer	471/91	552	08/07/91
Ndlovu	Doctor Sibusiso	ANC	Aanklagte van moord in die landdroshof te New Hanover in saaknommer 1208/90	4381/91	918 643	30/10/91 31/07/91
Nene	Duncan	ANC	Charge of assault with intent to do grievous bodily harm, in case number 41/1165/914 in a Court of the Natal Regional Division, held at Durban	2689/91	720	21/08/91
Ngcebe	Bheka Saul	ANC	Charge of assault with intent to do grievous bodily harm, in case number 41/1165/914 in a Court of the Natal Regional Division, held at Durban	2685/91	720	21/08/91
Ngcobo	Thami Erick	ANC	Aanklagte van moord en aanranding met die opset om ernstig te beseer in saaknommer 1491/91 in die landdroshof te New Hanover	7125/91	154	17/01/92
Ngcobo	Sipho Mmzwayibane	IFP	Aanklagte van moord, ontvoering en aanranding met die opset om ernstig te beseer in saaknommer G994/89	4402/91	618	24/07/91
Ngubane	Mbuyiseni	ANC	Aanklag van moord (×2) in die Hooggeregshof te Pietermaritzburg	11341/91	707	15/08/91
Nkambule	Happy Arthwell	ANC	Aanklagte van roof in die Streekhof te Ermelo in saaknommer 246/90 en saaknommer 248/90	12035/91	593	24/09/92
Nkate	Pule Isiah	ANC	Charge of murder in case number 1176/90 in the Supreme Court, Bloemfontein	1191/91P	750	29/08/91

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Nkosi	Moses	ANC	(1) Robbery, (2) malicious damage to property	7571/91	649	31/07/91
Nkosi	Nkaiman Lucky	ANC	(1) Moord, (2) brandstigting, (3) ontvoering, (4) verkragting	5486/91	892	16/10/91
Nkosi	Daniel Mtoli	ANC	Aanklagte van roof in die Streekhof te Ermelo in saaknommer 246/90 en saaknommer 248/90	13294/91	593	24/09/92
Nkosi	Erick Nhlanhla	ANCYL	Aanklag van moord in saaknommer 259/91 in die Streekhof te Witbank	12001/91	991	27/11/91
Nkosi	Paul Philile	ANC	Aanklagte van roof in die Streekhof te Ermelo in saaknommer 246/90 en saaknommer 248/90	12032/91	593	24/09/92
Nkuku	Marks	ANC	Vyf aanklagte van moord en twee aanklagte van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	4870/91	989	27/11/91
Nkwenkwezi	Thozamile Julius	ANC	Charged with (1) public violence, alt malicious damage to property, (2) theft, (3) rape, in the Regional Court at Welkom in case number B152/90	11378/91	298	25/05/92
Ntemane	Mojalefa Caleb	ANC	Die aanklag van moord in saaknommer 5/91 in die Oranje-Vrystaatse Provinsiale Afdeling van die Hooggeregshof	2155/91	703	15/08/91
Ntlaleng	Molato Charlie	ANC	Charge of murder in case number 1176/90 in the Supreme Court, Bloemfontein	12014/91	919	30/10/91

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Ntshenge	Robert Law	ANC	Aanklagte van moord in 'n hof van die Noord-Kaapse Provinsiale Afdeling van die Hooggeregshof van Suid-Afrika	10813/1	622	24/07/91
Ntuli	Sibusiso Busi	ANC	Aanklagte van moord in die landdroshof te New Hanover, in saaknommer 1208/90	4382/91	918 643	30/10/91 31/07/91
Ntuli	Isaac Mackson	ANC	Charges of attempted murder and unlawful possession of arms and ammunition in case number 453/90 in the Regional Court at Carletonville	11712/91	150	17/01/92
Nxele	Bongani Richard	ANC	Aanklag van moord in saaknommer A930/90 in die "B" hof, Pietermaritzburg	4372/91	862	02/10/91
Ocks	Victor	NONE	(1) Een aanklag van openbare geweld, alt twee aanklagte van aanranding met die opset om ernstig te beseer (2) Een aanklag van opsetlike saakbeskadiging (3) Drie aanklagte van aanranding op 'n polisiebeampte, alt verhindering van 'n polisiebeampte in die uitvoering van sy pligte, in die Streekhof te Vredenburg in saaknommer SH193/91	221/92	594	29/09/92
October	Phillip	ANC	Theft at Oudtshoorn	209/92	Currin Com	27/07/94
Pasha	Gertrud Bikelesi	ANC	The events which occurred on 27 July 1990 and on which the charge in case number 651/90 in the Winburg Magistrate's Court is based Contravention of section 27(1) of the Police Act, 1958 (Act No 17 of 1958—assaulted a member of the SAP	5162/91	925	30/10/91

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Phasha	Violet Kedibone	ANC	The events which occurred on 27 July 1990 and on which the charge in case number 651/90 in the Winburg Magistrate's Court is based Contravention of section 27(1) of the Police Act, 1958 (Act No 17 of 1958)—assaulted a member of the SAP	5161/91	925	30/10/91
Pienaar	Andrew	ANC	Motor theft (×2)	387/92	Currin Com	
Pike	Lucky	ANC	Vyf aanklagte van moord en twee aanklagte van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	4871/91		
Ramaoka	L P	ANC	Culpable homicide in Lydenburg Regional Court	12158/91	Currin Com	
Ramasedi	Teboho Richwell	ANC	Charge of murder in case number 1176/90 in the Supreme Court, Bloemfontein	2912/91	750	29/08/91
Raphuti	Polykarpus Medupi	ANC	Aanklagte van roof (×2), openbare geweld en aanranding op 'n polisiebeampte, in die Streekhof te Pretoria in saaknommer 14/2642/90	12703/91	304	25/05/92
Sadialunda	Dan	ANC	Charge of assault with intent to do grievous bodily harm in case number 64/90, in a Court of the Orange Free State Regional Division, held at Frankfort	675/91	445	07/06/91
Sampson	Elvin	ANC	Aanklag van openbare geweld in saaknommer SH/D425/90 in 'n hof van die Kaapse Streekafdeling te Wynberg	132/90	437	07/06/91
Schoeman	Vusile	ANC	Vyf aanklagte van moord en twee van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	4872/91		

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Seeber	Jeremry Leo	ANC	The causing of an explosion at the Devonshire Hotel, Braamfontein, case number 41/2434/90 in the Regional Division of the Southern Transvaal	28/90	582	24/07/91
Selepe	David Beso	ANC	Aanklagte van roof in die Streekhof te Ermelo in saaknommer 246/90 en saaknommer 248/90	12033/91	593	24/09/92
Selepe	Emmunuel Buti	ANC	Aanklagte van moord (×3) in die landdroshof te Oberholzer in saaknommers B2122/90, B2961/90, B2162/90, B2965/90, B2007/90 en B2975/90	505/91	549	08/07/91
Seliane	Thabang Wilfred	ANC	Charge of murder in case number 176/90 in the Supreme Court, Bloemfontein	2916/91	750	29/08/91
Semane	David Josha	SYC	Moord	1125/90	817	25/05/92
Shange	Sipho Modi	ANC	Aanklagte van moord, ontvoering en aanranding met die opset om ernstig te beseer in saaknommer G994/89 in die landdroshof te Pietermaritzburg	4401/91	618	24/07/91
Shiceka	Clifford Zwelibunga	ANC	Onwettige besit van 'n Makarov pistool, twee magasyne met agt rondes ammunisie elk en 16 los 9 mm rondtes ammunisie in die Streekhof te Krugersdorp	13251/91	196	07/04/92
Shwleni	Gladman	ANC	Charged with (1) public violence, alt malicious injury to property, (2) theft, (3) rape, in the Regional Court at Welkom in case number B152/90	1375/91	298	25/05/92

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Sibande	Jabu	ANC	Die aanklagte in saaknommer B201/91 in die landdroshof te Ermelo gebaseer is (1) Moord, (2) brandstigting, (3) ontvoering, (4) verkragting	5485/91	892	16/10/91
Sibiya	Dumisani	ANC	Charges of murder (x6) in case number B251/90 in the Durban Supreme Court	10241/91	949	06/11/91
Sikhakhane	Mfanafuthi Armstrong	ANC	Aanklagte van moord in die landdroshof te New Hanover in saaknommer 1208/90	4384/91	918 643	30/10/91 31/07/91
Sikhakhani	Mfanafuthi Armstrong	ANC	Aanklagte van moord in die landdroshof te New Hanover in die saaknommer 1208/90	4384/91	918	30/10/91
Silimela	Vyzi	ANC	Vyf aanklagte van moord en twee aanklagte van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	7602/91	989	27/11/91
Simelane	Jabu Reginald	ANC	Aanklag van moord in saaknommer D110/88 in die Streekhof te Pretoria	2513/91	309	25/05/92
Sishi	Sibongeni	ANC	Aanklagte van moord in die landdroshof te New Hanover in saaknommer 1208/90	4383/91	918 643	30/10/91 31/07/91
Sithole	Lucas Mazwi	ANC	Aanklagte van moord, ontvoering en aanranding met die opset om ernstig te beseer in saaknommer G994/89 in die landdroshof te Pietermaritzburg	4404/91	618	24/07/91
Sitshomo	Mzuvukile	ANC	Charged with (1) public violence, alt malicious damage to property, (2) theft, (3) rape, in the Regional Court at Welkom in case number B152/90	11376/91	298	25/05/92

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Snyman	Andries Stephanus	ANC	Fraud and theft	289/93	Currin Com	
Sosibo	Joseph	ANC	Aanklag van moord in die landdroshof te Pinetown	5926/91	860	02/10/91
Swarts	Pieter	NONE	(1) Een aanklag van openbare geweld, alt twee aanklagte van aanranding met die opset om ernstig te beseer (2) Een aanklag van opsetlike saakbeskadiging (3) Drie aanklagte van aanranding op 'n polisiebeampte, alt verhindering van 'n polisiebeampte in die uitvoering van sy pligte, in die Streekhof te Vredenburg in saaknommer SH193/91	228/2	594	29/05/92
Tlou	Joe (John)	ANC	(1) Public violence, (2) assaulting a police officer, (3) robbery	12528/91	Currin Com	
Tom	Koko Mhlangebezi	ANC	Vyf aanklagte van moord en twee aanklagte van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	4860/91	989	27/11/91
Tom	Timoty Mtoto	ANC	Vyf aanklagte van moord en twee aanklagte van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	4862/91	989	27/11/91
Tongo	Keke	ANC	Vyf aanklagte van moord en twee aanklagte van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	4866/91	989	27/11/91

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Van Heerden	Johannes Cornelius Bernardus	NONE	The events which took place on 6 October 1990 and upon which the charges of assault and crimen injuria against them in the Regional Court at Barkly East are founded	12142/91	169	17/01/92
Van Schalkwyk	Lodewyk Grobler	AWB	(1) Die plaas van twee bomme gedurende die nag van 10/11 Augustus 1990 te Bloedstraat waardeur daar 13 persone beseer is (2) Die plaas van 'n bom te P C Plus Consultants waardeur een persoon gedood is, in die Hooggeregshof van Suid-Afrika, Transvaal	980/90	291	10/04/91
Van Wyk	Cornelius Johannes	NONE	Aanklagte van (1) motordiefstal, (2) huisbraak met die opset om te steel en diefstal (×2), (3) roof met verswarende omstandighede, (4) onwettige besit van wapens en ammunisie, (5) onwettige besit van ontplofbare stowwe, (6) onwettige besit van traanrook, in saaknommer 14/3893/926 in die Streekhof te Pretoria (7) Drie moorde (in die Streekhof te Pretoria)	340/92	9	24/01/93
Van Eck	Arnaldus Mauritius	NONE	Fraud and theft, involving millions of rand, in case number D209/90 in the Regional Court at George	7144/91	652	31/07/91
Van Rhyn	Andre Pieter	SAP	Aanklagte van moord G/O 81/90 te Pinetown	12178/91	352	23/04/94

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Vellem	Dumile Andrew	ANC	Vyf aanklagte van moord en twee aanklagte van poging tot moord in die Streekhof te Wynberg in saaknommer SH/B301/90	4865/91	898	27/11/91
Vuyelwa	Msokoli Limbrose	SAP	Aanklag van moord in saaknommer A1443/91 in die Hooggeregshof te Grahamstad	12136/91	295	25/05/92
Wilsnacht	Lycell	NONE	(1) Een aanklag van openbare geweld, alt twee aanklagte van aanranding met die opset om ernstig te beseer (2) Een aanklag van opsetlike saakbeskadiging (3) Drie aanklagte van aanranding op 'n polisiebeampte, alt verhindering van 'n polisiebeampte in die uitvoering van sy pligte, in die Streekhof te Vredenburg in saaknommer SH193/91	223/92	Curriin Com	
Wolmarans	Deon	NONE	The events which took place on 6 October 1990 and upon which the charges of assault and crimen injuria in the Regional Court at Barkly East are founded	12139/91	1669 -	17/01/92
Xaba	Linda Llewelyn	ANC	Car theft—Pietermaritzburg	180/93	Curriin Com	
Xaluva	Thembekile	ANC	Charged with (1) public violence, alt malicious damage to property, (2) theft, (3) rape, in the Regional Court at Welkom in case number B152/90	11385/91	298	25/05/92

Surname	Christian Names	Party	Offences	File Number	SP Min	Date SP Min
Zikhali	Nke	ANC	Charges of murder in case B251/90 in the Durban Supreme Court	10238/91	949	06/11/91
Zitha	Petros Mandla	ANC	(1) Roof met verswarende omstandighede, (2) moord, en (3) poging tot moord, Germiston	5711/91	890	16/10/91
Zulu	Nkosi Giphilile	ANC	Aanklagte van moord in die Durban en Kus Plaaslike Afdeling van die Hooggeregshof van Suid-Afrika	1473/91	921	30/10/91
Zulu	Bongani Patrick	ANC	Charge of assault with intent to do grievous bodily harm, in case number 41/1165/914 in a Court of the Natal Regional Division, held at Durban	2686/91	720	21/08/91
Zuma	Philo	ANC	Aanklagte van moord in die landdroshof te New Hanover in die saaknommer 1208/90	4386/91	918 643	30/10/91 31/07/91
Zuma	Edward Fanazile	ANC	Charge of murder in case number R421/90 in the Umlazi Court	5936/91	139	17/01/92
Zuma	Mveli Walter		Aanklagte van moord in die landdroshof te New Hanover in saaknommer 1208/90	4388/91	918 643	30/10/91 31/07/91

Corporal punishment: investigation into constitutionality

(252)

62 Adv D P A SCHUTTE asked the Minister of Justice

Hansard 22/3/95

Whether, with reference to his reply to Question No 9 on 14 September 1994, his Department has completed its investigation into the constitutionality of the sections of the Criminal Procedure Act, 1977 (Act No 51 of 1977), providing for corporal punishment, if not, why not, if so, what were the findings?

N110E

The MINISTER OF JUSTICE

As I mentioned in my reply to Question No 9 of 14 September 1994 a strong possibility exists that the Constitutional Court may find the imposition of whipping as a sentencing option unconstitutional I have consequently directed my Department to investigate the whole issue regarding whipping as a sentencing option As part of this pro-active action a Bill, which purports to abolish all provisions in our statutory law, in terms of which corporal punishment may be imposed, has been prepared The Department has already submitted this Bill to me and in due course I intend publishing it in the Gazette for general information and comment

It is recognised that clear alternative sentencing options, which are effective, should be in place and available if corporal punishment is declared unconstitutional or is abolished This is one aspect of sentencing in general, which the SA Law Commission was asked to investigate As soon as the Law Commission's recommendations are available, they will be published and given further consideration

Criminal cases disposed of in supreme courts/magistrates' courts

77 Mr J W MAREE asked the Minister of Justice

(a) How many criminal cases were disposed of in (i) supreme courts and (ii) magistrates' courts in the Republic during the latest specified period of 12 months for which information is available, (b) what were the average costs related to the legal proceedings of such concluded criminal cases in each case and (c) how many staff members were needed to dispose of these criminal cases in each case?

N127E

The MINISTER OF JUSTICE

(a) (i) 1 481

(ii) 690 444

(b) and (c) In view of the fact that all court personnel are not exclusively utilised for the disposal of criminal cases it is unfortunately not possible to furnish the required information

Return all her documents, judge orders

The Argus Correspondent

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

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

Referring to magistrate I Olivier's reasons for issuing the warrants, he said: "The conclusion is so devoid of any factual basis that one can only conclude that he had not properly applied his mind to the matter."

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

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

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

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

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

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

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

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

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

● See page 5

Court: Police Raids Illegal

ARG 22/3/95

(252)

Truth Bill to be debated

Star 23/3/95 (252)

■ BY PATRICK BULGER
POLITICAL CORRESPONDENT

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

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

The commission provides for "investigation and the establishment of as complete a picture as possible of the nature, extent and causes of all gross violations of human rights committed within or outside the Republic during the period March 1 1960 to December 5 1993"

It provides for amnesty for violators and for reparation for the victims and families of victims of abuses

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

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

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

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

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

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

Truth commission draft almost ready

(252)

ADRIAN HADLAND

CAPE TOWN — Draft truth commission legislation is nearing completion and is expected to be presented to Cabinet next week. BD 23/3/95

MPs hope the Promotion of National Unity and Reconciliation Bill will be approved by Cabinet and Parliament by early April, paving the way for the appointment of between 12 and 14 commissioners and the establishment of the commission by July.

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

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

These clauses include the composition of the commission, the secrecy of some hearings, the liability of the State and political organisations, collective responsibility and the cut-off date for amnesty applications

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

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

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

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

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

Some doubt still lingers over the Inkatha Freedom Party's commitment to the process in its current form. The party indicated last month it would veto the Bill.

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

The committee, meanwhile, will be meeting "24 hours a day" to push the legislation through by the end of the parliamentary session on April 7.

'Truth' Act through Parliament soon

(252) CT 23/3/95

POLITICAL STAFF

LEGISLATION providing for a Truth Commission could pass through the cabinet and Parliament within the next two weeks.

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

THE CAPE

Omar starts assault on official gobbledygook

Bid to improve communication with masses

ARG 23/3/95 (252)

ROGER FRIEDMAN
Staff Reporter

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

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

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

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

The ministry's Susan de Villiers said reforming English language would be "a slow evolutionary process"

"If our task is to transform justice, part of that transformation is making courts accessible to ordinary people, using language understandable to all

"And the courts are part of a much larger programme aimed at human rights, education and making legislation accessible to all," Ms De Villiers said

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

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

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

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

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

"If we produce documents that are complex and inaccessible, how can we expect people to understand their rights and put them to good use?" Mr Omar asked

Proposals on Muslim law presented to Omar

(252) ARG 23/3/95

Supreme Court Reporter

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

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

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

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

He said past practises had caused hardship

"Justice must be done now there is no time to wait"

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

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

The proposals include.

- Prospective marriage partners must know the basic laws of a Muslim marriage before they will be granted a marriage licence
- The dowry must be given legal recognition
- No private and unilateral divorces will be given legal recognition
- Polygamous marriages will only be allowed if an established Higher *Shariah* Court is satisfied that there will be equality between wives
- Aggrieved wives may petition this court which will have the right to punish offenders

NEWS

Secrecy and amnesty date reconsidered

Argus 24/3/95 (252)

ANC compromise on truth Bill likely

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

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

In terms of the constitution, only the perpetrators of offences committed with a political motive before December 6 1993 would qualify for indemnity.

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

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

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

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

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

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

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

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

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

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

There's no work for MPs

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

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

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

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

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

phen and his brother Wayne were based on the total amount to be trans- tion of sentence. cineration was not recog-

Police unions warn of labour unrest over pay

CAPE TOWN — Predictions of police unrest and a refusal to work during the Rugby World Cup have followed news that there is "no possibility" of annual salary increases for policemen this year — nor any overtime payments for the World Cup.

A letter signed by the acting head of financial services, GC Coertze — and countersigned by police commissioner George Fivaz — warning that there was "no possibility" of a general salary increase was leaked to the SA Police Union (Sapu) yesterday. (251) BD 24/3/95

The letter was dated March 10.

Meanwhile, a second letter from management told the union there was no money for overtime work during the rugby World Cup beginning on May 25

Union regional secretary Andy Miller warned that the police force faced imminent labour unrest.

The Police and Prisons Civil Rights Union (Popcru) responded to both letters with "disbelief" National president Enoch Nelani said the contents were contrary to promises made by President Nelson Mandela in January

Miller said yesterday he was "dismally unimpressed with the contents of the letters . which, in themselves, could lead to labour unrest. We, as a union, will have to try to contain labour unrest caused by management

"After the President created the perception that police would be looked after, they drop this bombshell"

Miller said rumours were circulating in the police that lower ranks would be granted increases but senior ranks not, to narrow the gap between top and bottom structures. This could also lead to labour unrest, he warned

Sapu was to launch a signature campaign yesterday and planned to petition Mandela in the next week. A protest march was also in the pipeline.

As far as the World Cup was concerned, if there was no overtime money available Sapu members would simply refuse to work. "They can hire private security companies," Miller said.

☐ Detectives, administrative staff and mortuary workers in Port Elizabeth were due to begin a protest yesterday against a claimed non-payment of bonuses — Sapa

ANC caucus keen to retain amnesty deadline

(252) BD 24/3/95

ADRIAN HADLAND

CAPE TOWN — The ANC parliamentary caucus expressed the "strong view" yesterday that the cut-off date for amnesty applications should not be extended beyond December 5 1993.

If this is upheld by the Cabinet, political crimes that took place between that date and the installation of the new government will not be subject to the deliberations of the truth commission. Participants, some of whom are already in prison or awaiting trial, will also not be eligible for amnesty.

These crimes include the right-wing pre-election bombing campaign, the PAC raid on Cape Town's Heidelberg Tavern, political violence in KwaZulu/Natal and the Shell House shootings

ANC Senate chief whip Bulelani Ngcuka said while the caucus was opposed in principle to changing the date, President Nelson Mandela and Justice Minister Dullah Omar had been given the mandate to make a final decision. "If compelling reasons necessitate a review of the matter, we are not closing the door."

He told a media briefing that while the parliamentary justice committees were considering the draft legislation, the ANC caucus had the "overriding power" to veto any positions taken by the committees

A change in the cut-off date, proposed by several parties and groups, including the AWB and former police commissioner Gen Johan van der Merwe, will require a constitutional amendment

NP Justice spokesman Danie Schutte said earlier this week the NP would prefer the extension but did not regard the issue as critical

Ngcuka said the ANC caucus was also not in favour of the total discarding of the secrecy clause in truth commission legislation. "There may be circumstances, if the safety of the person testifying is at stake, to hold hearings behind closed doors"

This would provide human rights abusers with more of an incentive to come forward to give evidence. "We need to strike a balance."

Other "problem areas" discussed by the caucus yesterday related to the time-frame of the truth commission and the inclusion of the Norgaard principles in the Promotion of National Unity and Reconciliation Bill

The caucus thought 18 months, rather than the currently prescribed one year, would be a more appropriate period for the commission to conduct its affairs, with the possibility of a further extension

The Norgaard principles, which are alluded to in the legislation, say crimes should be deemed political only if a proportional relationship exists between the criminal act and the political objective.

Ngcuka said the ANC would oppose the NP's attempts to have the principles expunged from the Bill

The National Assembly's justice committee continued yesterday to finalise amendments to the Bill ahead of its passage to Cabinet.

ANC caucus to investigate secret truth body hearings

(252) ARG 24/3/95

TYRONE SEALE
Political Staff

THE African National Congress caucus has agreed to investigate the issue of secret hearings for the proposed Truth and Reconciliation Commission.

This decision, taken after extensive discussion at yesterday's caucus meeting, comes less than two months after the national assembly justice committee rejected a cabinet agreement to hold commission hearings on amnesty applications behind closed doors

ANC spokesman Bulelani Ngcuka said the caucus had decided that while there might be problems with the secrecy provision — "it could well be unconstitutional" — it should nevertheless be considered for inclusion in the Promotion of National Unity and Reconciliation Bill.

Mr Ngcuka said the caucus had felt the need to look into the matter and to see how the in-camera provision could be drafted to provide "some incentive to those who will want to come forward and confess".

However, he said, a balance had to be struck and the justice committee would have to establish criteria.

If the proceedings of the commission were, by and large, going to be conducted in the open, there might be circumstances where, in the interests of individuals' safety, they could be allowed to testify in secret

The committee would have to take this up with the minister of justice and the cabinet to find a formulation of proposed legislation that would please everyone.

Mr Ngcuka said there had been a lot of pressure from members of civil society, particularly victims of politically motivated crimes, for hearings to be held in camera.

The ANC wanted to see a bill that complied with the provisions of the constitution, as well as a mechanism that sought to address potential witnesses' concerns, he said.

Yesterday the ANC caucus also proposed that the amnesty cut-off date of December 5 1993 be retained and that the commission's lifespan be extended from a year to 18 months.

Mr Ngcuka said a decision on the cut-off would have to be taken in consultation with the president and the minister of justice who had been mandated to decide on this issue should any "compelling reasons" arise on moving the date

- The caucus referred the issue of the Inkatha Freedom Party's threat to withdraw from the constitutional assembly, unless international mediation was a clear reality by April 4, to the ANC national executive committee.

- Mr Ngcuka said it was unclear when the Promotion of National Unity and Reconciliation Bill would be finalised, but it was unlikely to be April 4 as originally anticipated.

'Truth' draft bill still not ready

(252)

CT 24/3/95

ANTHONY JOHNSON
POLITICAL CORRESPONDENT

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

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

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

Decision

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

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

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

In camera

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

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

But it was unlikely that a bill would be approved, as planned, before the Easter recess, he said

Death penalty ruling in May

Star 25/3/95 (252)

JULIETTE SAUNDERS

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

Court president Arthur Chaskalson had, however, given judicial staff no indication of when the finding would be ready, official Marie Neinhaber said.

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

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

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

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

"In a country which is as ridden with crime as we are, it would be fatal to diminish our sentencing options. Only where you have a reasonably low crime rate can you afford this luxury," Von Lieres said. — Reuter

Constitutional Court Bill 'incorrect'

(252)

CLIVE SAWYER
Political Correspondent

A BILL dealing with the running of the Constitutional Court may end up being challenged in that court.

The Constitutional Court Complementary Bill is being opposed by the Democratic Party, Freedom Front and Inkatha Freedom Party

The senate yesterday could not pass the Bill because fewer than 45 senators — the voting quorum — were present

DP senator James Selfe said his party believed the Bill to be procedurally incorrect because what was being attempted was an amendment to the constitution.

If it is passed by the senate, it will be sent to the national assembly for ratification

The constitution allows the president of the senate or the speaker of the national assembly to refer legislation to the constitutional court

If the Bill is passed by both houses, any individual has the right to ask the Constitutional Court to overturn it

Last year parliament passed a constitutional amendment to create the post of acting president of the Constitutional Court

This "Goldstone Amendment" was passed because Mr Justice Richard Goldstone, one of the 11 Constitutional Court judges, will be away prosecuting war criminals from the former Yugoslavia

In the senate yesterday Mr Selfe said "Last year we created an acting president by means of an amendment to the constitution, while this year we seek to create a deputy president by statute"

"One or other of the procedures must be wrong, and we submit that the Bill before us is procedurally the incorrect way to proceed"

Mr Selfe said proposals for the court to have a quorum of eight judges, or to be able to sit elsewhere than Johannesburg, were tantamount to amending the constitution

ARG 25/3/95

"There may be very good reasons to have a quorum of eight judges, or to hold sessions in places other than Johannesburg, or to have a deputy president of the court

"We argue differently. What the senate has in front of it is not a Constitutional Court Complementary Bill, but a Constitution of the Republic of South Africa Amendment Bill"

Decision on death penalty in May

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

"We haven't been told when they will give their judgment

I think we might only get it in May because we will be in recess for the whole of April," said court spokeswoman Martie Neinhaber

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

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

There are 442 people on death row, most of them black men (252)

A leading psychologist said South Africa is the world's most violent country — with the exception of those at war — Sapa-Reuter ARG 25/3/95

New citizenship law

DRAFT legislation to bring South Africa's citizenship law into line with the interim constitution has been published in parliament. (252)

The South African Citizenship Bill states that people who obtained citizenship of the former TBVC states by naturalisation are required to apply for South African citizenship by naturalisation. ARG 25/3/95

The Bill also allows for temporary or permanent residence permits to be granted in deserving cases to individuals who lost or forfeited their South African citizenship acquired through naturalisation

'Cruel and degrading' punishment lashed in court

(252) ST 26/3/95

By CARMEL RICKARD

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

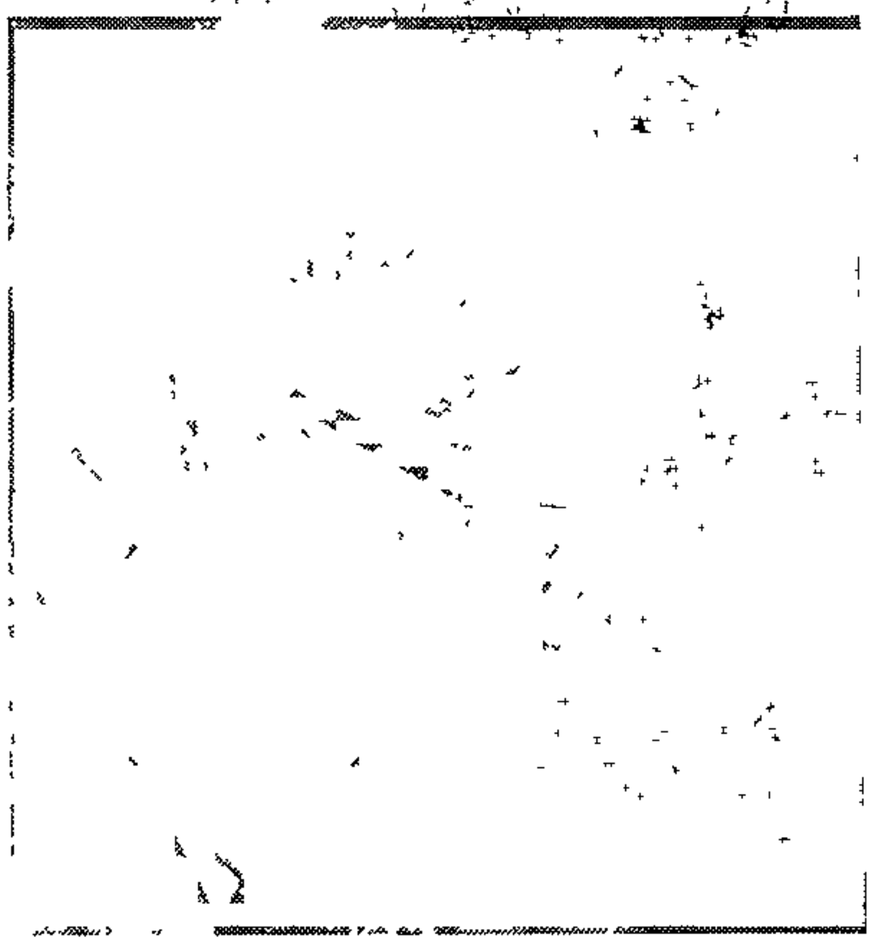
Cape advocate Lee Bozalek, arguing on behalf of a number of youngsters sentenced to whipping, said that this form of punishment differed from imprisonment in that the intention was the deliberate infliction of physical pain.

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

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

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

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



BURNING ISSUE .. Judge Johann Kriegler challenged argument in favour of corporal punishment by law

During the debate, gender issues were raised at the court for the first time, with Justice Kate O'Regan taking a significant lead.

Mr Slabbert said that girls were not whipped because of the influence on the law of "Western civilisation" which was concerned about the frailty and sensitivity of women.

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

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

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

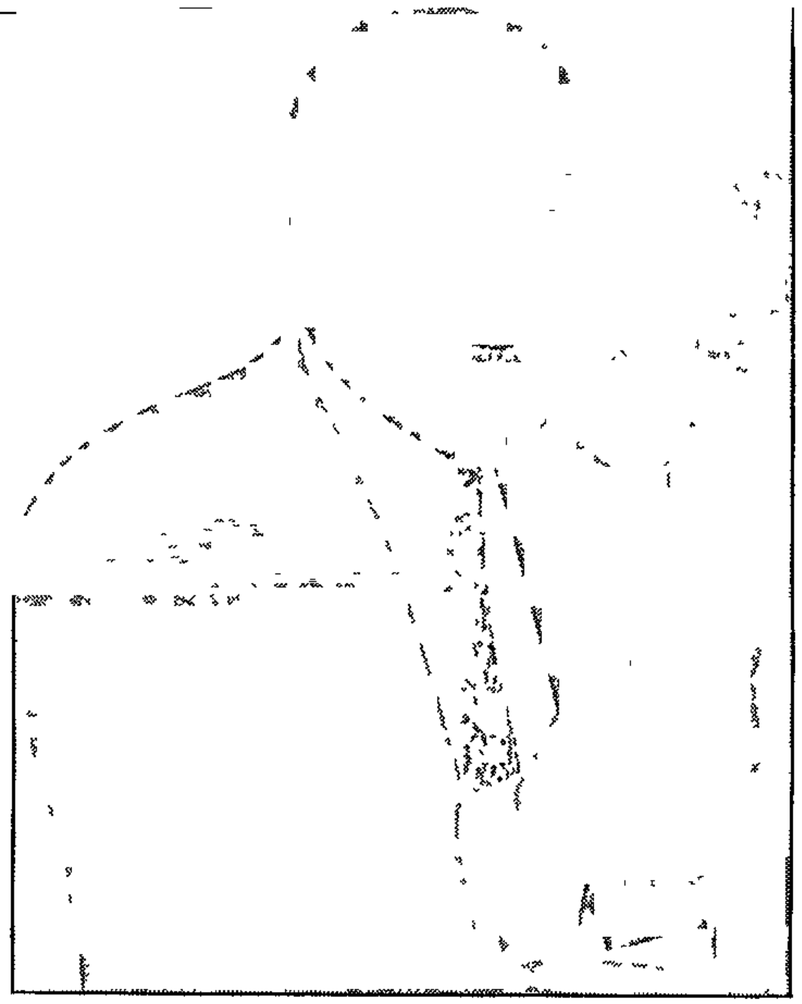
During the lunch break, the boys said that they had wanted to see the Constitutional Court in action because of its importance to every member of society

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

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

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

His colleague, Werner Eiselen, said that "cuts" should continue at school, but "it is taking things too far when police lash someone till he bleeds"



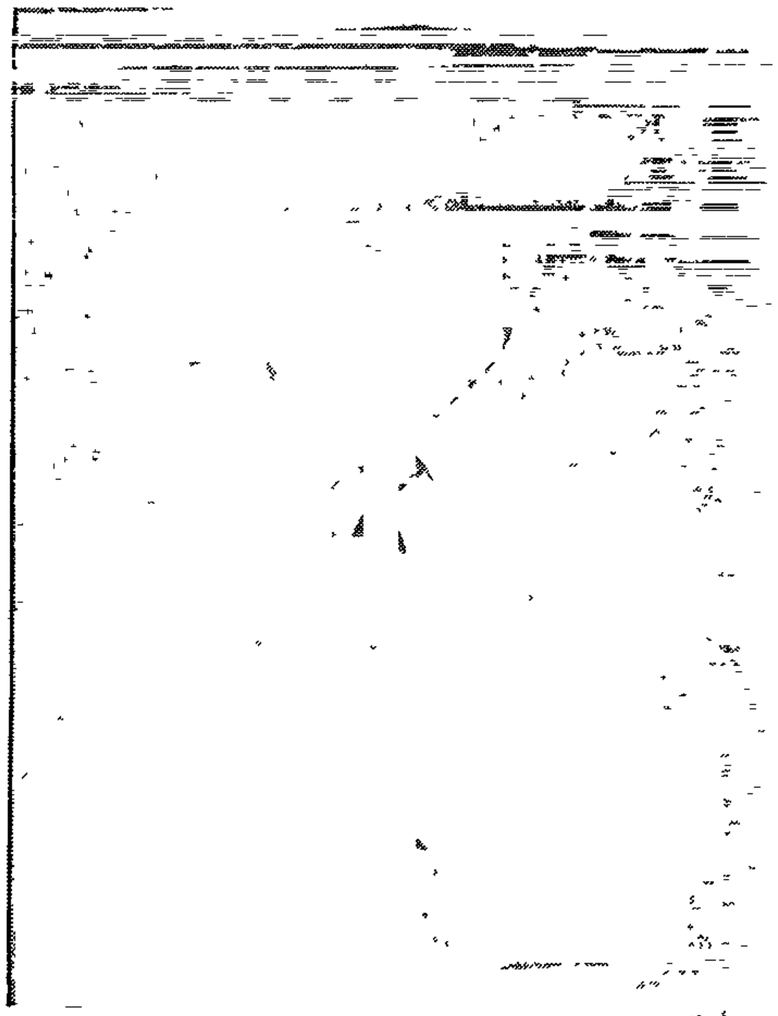
THABO MBEKI . . . questioned scrapping of secrecy clause

MBEKI CAMP

'People from Kwazulu Natal would feel that their lives were threatened'

OMAR CAMP

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



DULLAH OMAR . . . argued that commission should be [illegible]

(252) ST 26/3/95

Government bigwigs slug it out over small print in the Truth Bill

By EDYTH BULBRING
Political Correspondent

DEPUTY President Thabo Mbeki and Justice Minister Dullah Omar went head to head over two key clauses in the Truth Commission Bill during the ANC's parliamentary caucus meeting this week.

The two clauses concerned the hearing of amnesty applications in secret and a clause which says that crimes should only be deemed political if a proportional relationship existed between the act and the political objective

Mr Mbeki and his supporters in the caucus were questioning the scrapping of the secrecy clause and arguing that the second clause be softened

The debate in the caucus resulted in heated accusations from Mr Omar's supporters that members of the Mbeki camp were being "disingenuous" and were attempting to use a "heavy hand to knock the caucus into shape"

The ANC holds its weekly caucus meeting behind closed doors. However, sources in the meeting said this week that parliamentary Justice Committee chairman Johnny de Lange had briefed the caucus on the controversial areas in the Bill. These clauses are to be voted on in the multiparty parliamentary committee on Tuesday

The sources said that Mr Mbeki stood up after the presentation and asked if Mr de Lange's committee had considered the effect of the Norgaard principles in the Bill which prevented people from being indemnified if their actions were disproportionate to their cause

Mr Mbeki cited the example of a bomb attack which left three military officials dead, but which also caused the death of civilians He argued that the Norgaard principles would disqualify the perpetrator from being indemnified

Mr de Lange disputed this contention

Mr Mbeki then asked whether the committee had considered whether people who had committed political crimes would seek indemnity from the commission if the hearings were held in the open

He was backed by Natal MP Pierre Cronje who argued that people from Kwazulu Natal would feel that their lives were threatened if they sought indemnity in public

Mr Omar rejected their concerns and stated emphatically that there was no way that the secrecy clause in the Bill could be maintained.

Mr Omar and his camp are in favour of all hearings being held in public, with the Truth Commission being allowed the discretion to close the hearings if lives are threatened, or in the interests of justice

When no agreement could be reached, one of Mr Mbeki's supporters, Essop Pahad, recommended that the secrecy clause be referred to the ANC's 17-member National Working Committee for a decision, as there was disagreement between Mr Omar and Mr Mbeki and between members of the caucus.

He said "a little committee" [illegible] Justice Committee — could not [illegible] such a serious matter

His proposal was greeted with out[illegible] from members of the caucus. Mr [illegible] Lange claimed Mr Pahad's suggestion was disingenuous and that it would set bad precedent if matters were referred to the NWC every time the caucus [illegible] not agree

Another Omar supporter, Pravin Gordhan, said that the caucus did [illegible] need a "heavy hand to knock it [illegible] shape" when it could not agree. The suggestion was then dropped

The controversial clauses will be [illegible] on in the Justice Committee on Tuesday and committee members are adamant that they will scrap the secrecy c[illegible] and retain the Norgaard principles. The National Party opposes these steps.

The controversial clauses will be presented to the cabinet the following day The cabinet could overturn the committee decision to reach a compromise [illegible] the NP

The cabinet will also consider extending the cut-off date — December 5 1993 to May 1994.

While the caucus believed the cut-[illegible] date should remain unchanged, [illegible] agreed that the cabinet could be flex[illegible] on the issue as it was not a matter [illegible] principle

Whipping flayed by law group

(252)

Star 27/3/95

■ BY HELEN GRANGE

The effectiveness of whipping, currently imposed by courts as a sentence for juvenile offenders, has been discredited and is, at best, unproved, the Constitutional Court has been told.

It was hearing argument on Friday by Lee Bozalek of Cape Town's Legal Resources Centre.

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

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

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

Judgment on the matter was reserved.

Court hears views on whipping

(252)

CT 27/3/95

SPECIAL CORRESPONDENT

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

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

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

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

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

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

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

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

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

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

Judgment in the matter was reserved

Draft Bill on Truth Commission hits snags

(252)

Sowetan 27/3/95

Sowetan Correspondent

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

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

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

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

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

Some confidentiality

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

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

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

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

On the final issue, that of timeframes, the ANC wants the commission's work to stretch over 18 months and not 12 months as the Bill presently states

The debate in the National Assembly has been provisionally set down to begin next week

Reconciliation Bill to be reviewed

(252) Sowetan 28/3/95

By Ismail Lagardien
Political Correspondent

■ CRITICAL ISSUES Cut-off date and secrecy clause to be considered:

THE CABINET IS expected to make the last few adjustments tomorrow to the Promotion of National Unity and Reconciliation Bill, which provides for the establishment of a Truth Commission

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

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

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

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

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

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

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

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

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

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

A compromise could be struck by allowing preliminary hearings in secret and consequent court hearings in public This seems like a likely outcome of the process

Lay assessors help create 'user-friendly' courts

CT 28/3/95 (252)

BY EUNICE RIDER

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

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

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

PICTURE: JACK LESTRADE

'Responsible'

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

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

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

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

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

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

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

Magistrate's courts' civil limits to rise to R100 000

ARG 28/3/95 (252)

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

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

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

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

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

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

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

Crisis looms as magistrates' morale slumps

(252)

CLIVE SAWYER
Political Correspondent

ARG 29/3/95

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

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

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

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

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

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

Mohseen Moosa (ANC) agreed that officials were overworked and underpaid

The budget allocation for the justice department was among the lowest

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

Mr Omar said his department had a "very close and cordial relationship with the Magistrates' Commission"

ANC used short cuts, says NP

(252) ARG 29/3/95

TYRONE SEALE, Political Staff

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

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

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

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

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

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

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

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

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

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

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

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

The test applied to these prisoners had simply been whether their offences could be related to the conflict of the past and whether their releases would contribute to reconciliation. This test had been much less stringent than that contained in the Norgaard principles

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

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

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

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

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

These questions, based on information which the NP had painstakingly obtained after receiving no help from the ANC-dominated portfolio committee on justice, would be submitted to the committee for discussion before the finalisation of the truth commission bill, Mr Maree said

R55 million for truth commission

(252) ARG 29/3/95

Political Staff

NEARLY R55 million has been allocated in this year's national budget for use by the proposed Truth and Reconciliation Commission.

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

When this would happen was not clear.

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

MPs among 20 000 freed, indemnified

ARG 29/3/95 (252)

TYRONE SEALE, Political Staff

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

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

- Pravin Gordhan (ANC), senior constitutional expert, who faced charges under the Terrorism and Arms and Ammunition Act, including recruitment, training and arming of people to seize power from the government, storing of arms and ammunition and explosives, setting up communications networks and possessing machine-guns, rifles, limpet mines, hand-grenades and war material
- Hein Grosskopf (ANC), for planting a bomb in Johannesburg city centre on July 30 1987, in which 29 people were injured and 33 cars damaged
- Paul Johannes Kruger, (Orde van die Boerevolk), for causing an explosion at the NP offices in Pretoria in September in 1990 and at the United States embassy at Waterkloof, Pretoria, a month later
- Michael Lumbambo (ANC), convicted of offences including planting two limpet mines at Cape Town airport, storing ammunition, grenades and limpet mines, possession of an AK 47 and a Makarov pistol
- Mac Maharaj (now Transport Minister), who faced Internal Security Act, Terrorism Act and Arms and Ammunition Act charges for his role in Operation Vula when he allegedly stored arms and ammunition and explosives, possessed machine guns, rifles, limpet mines, hand-grenades and other weapons, and infiltrated South Africa
- Gerhardus Petrus (Conservative Party) for arson at the Roman Catholic Church in Boekenhoutfontein near Rustenburg in June 1990 and the possession of firearms, the importation, supply and possession of arms and explosives, assisting Piet "Skiet" Rudolph while the latter was a fugitive, and possessing an R1 rifle for handing to Piet Rudolph
- Billy Nair (ANC), now an MP, for his role in Operation Vula in which he allegedly smuggled and possessed arms and recruited and armed people to overthrow the government
- Siphiwe Nyanda (ANC), now head of the national defence force's integration programme, for alleged involvement in Operation Vula, including infiltrating the country, the storing of weapons and smuggling of explosives into the country
- Siphiwo Qila (ANC), convicted of placing a huge bomb — detected before it could explode — in a stolen car outside Dions shopping centre in Parow in July 1986 He caused two grenade explosions at private homes in 1987, and fired on police on three occasions
- Jenni Schreiner (ANC), an MP, who had been convicted of terrorism, including the storing and smuggling of weapons and explosives, and the planting of two limpet mines at Cape Town airport
- Lumka and Tony Yengeni, who were convicted along with Ms Schreiner Mr Yengeni who is now an MP, is former leader of the ANC in the Western Cape

AMNESTY, CONFIDENTIALITY ARE CRITICAL ISSUES

Truth Bill: Final battle

CT 29/3/95

(252)

ANC and NP ministers are trying to resolve differences over the Truth Commission as a parliamentary committee is scheduled to begin voting. **SPECIAL CORRESPONDENT**

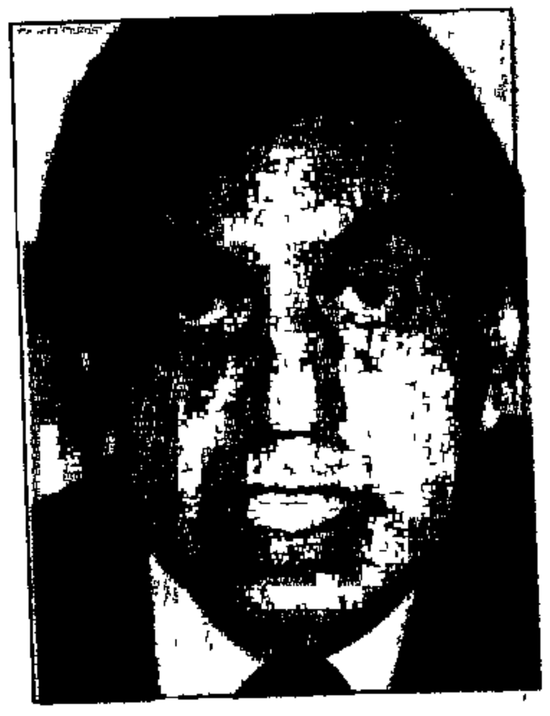
Top-level talks are taking place between the ANC and the National Party in a last-ditch attempt to resolve critical differences over the proposed Truth Commission

Good progress was being made in the discussions between Justice Minister Mr Dullah Omar, Constitutional Development Minister Mr Roelf Meyer and General Services Minister Mr Chris Fismer, sources said

It was expected that these talks would form the basis for further discussion in the cabinet on the Truth Commission Bill

The parliamentary justice committee, which was scheduled to begin voting yesterday on the Promotion of National Unity and Reconciliation Bill, instead discussed non-contentious issues while the talks continued behind the scenes.

The talks at ministerial level centred around a confidentiality clause, the cut-off date for granting amnesty and the inclusion of the so-called Norgaard principles that deal with the relation between a crime and the political motivation for committing such a crime



NEGOTIATING: Minister of Justice Mr Dullah Omar

It is understood that agreement has been reached between the ANC and NP that the Truth Commission would conduct open hearings but provision was made for in-camera proceedings should there be such a need.

The differences over the cut-off date for amnesty could be more difficult to resolve as the ANC wanted to retain December 5, 1993 as stipulated by the Interim Constitution while the NP — along with the Inkatha Freedom Party, PAC and Afrikaner Weerstandsbeweging — favoured an extension of the date to the inauguration of President Nelson Mandela on May 10 last year

Renaming

On the third difference, the ANC was arguing for the inclusion of the Norgaard principle, which was applied in Namibia, while the NP wanted it to be excluded from the draft legislation

In yesterday's parliamentary committee meeting the IFP's Mr Farouk Cassim proposed that the bill be renamed the Fact-Finding and Reconciliation Committee Bill as only certain aspects of the truth were likely to emerge from the Truth Commission.

Supporting Mr Cassim, NP MP Mr Danie Schutte proposed that the committee consider renaming the bill the Amnesty, Reconciliation and Reparation Bill

Omar: NP has 'tried to delay'

(252)

SPECIAL CORRESPONDENT

CT 29/3/95

JUSTICE Minister Mr Dullah Omar said last night the NP had sought "to delay and obstruct" discussion within the parliamentary justice committee on the proposed Truth Commission Bill.

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

The minister was reacting to an earlier NP statement that it had experienced enormous difficulties in planning before the committee information on the existing indemnity process.

Mr Omar said the government was being asked for information on the previous government had failed to provide.

He accused the NP of misleading the public about the state of affairs around the indemnity process.

He said the legislation was a trade-off to a family, the amnesty was in return for the truth and it is the truth that the NP seeks to keep hidden.

CLAIMS OF UP TO R100 000 MAY BE HEARD

Magistrate's courts changes welcomed

CT 29/3/95 (252)

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

A DRAMATIC increase in the jurisdiction of magistrate's courts which will allow them to hear civil actions for claims of up to R100 000 has been welcomed by the legal community

Justice Minister Mr Dullah Omar announced yesterday that from May 1 the civil jurisdiction of magistrate's courts would increase from R50 000 to R100 000 for liquid claims (where it is known what amount is being claimed) and from R20 000 for illiquid claims (in which one has to prove the value of the claim)

Mr Omar said this was aimed at ensuring the "greater accessibility of the courts, and to enable more persons to approach the less expensive magistrate's courts"

Cape Law Society president Mr Andries Landman welcomed the move He said it was "definitely in the public interest and would certainly make litigation cheaper"

To litigate in the Supreme Court one needs an advocate and an attorney

Also, the process tended to be more time consuming, he explained

"Some advocates may feel it is taking away some of their bread and butter, but we must look at the public interest and not at those of any entrenched groups," he said.

Load

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

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

'ACCESSIBLE': Mr Dullah Omar.

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

Omar takes swipe at Nats

■ BY ESTHER WAUGH
POLITICAL CORRESPONDENT

Cape Town — The NP has sought to delay and obstruct discussion within the parliamentary justice committee on the proposed Truth Commission Bill, says Justice Minister Dullah Omar. (252)

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

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

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

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

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

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

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

Maree said these principles excluded amnesty being granted for murder

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

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

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

STAR 29/3/95

Truth commission Bill bogged down as parties contest clauses

(252) BD 29/3/95

ADRIAN HADLAND

CAPE TOWN — Hopes that truth commission legislation would be passed before Parliament's Easter recess were dashed yesterday as MPs and a Cabinet committee failed to reach any significant agreement on the more controversial clauses

NP justice spokesman Danie Schutte said there was "not a snowball's chance" of the Promotion of National Unity and Reconciliation Bill being completed by the end of the session next week

Parliament's justice committee was scheduled to have debated and voted on contested clauses within the Bill, such as the secrecy provisions and the inclusion of the Norgaard principles, by last night.

But the committee became bogged down and abandoned its task 90 minutes early. It will resume work today.

While reports were received yesterday of progress within the Cabinet subcommittee charged with examining tricky issues referred to it by the justice committee, little evidence of this was apparent.

The NP was adamant yesterday it would not compromise on the removal of the Norgaard principles from the Bill either at Cabinet or committee level The principles dictate that the perpetrators of serious crimes cannot win political amnesty.

Sapa reports Justice Minister Dullah Omar accused the NP of trying to keep the truth about human rights violations hidden. He said the NP was delaying the proceedings of the committee and obstructing discussion on the Bill He also accused the NP of distorting information on the indemnity process between 1990 and 1994 made available by his department.

Schutte held a news conference yesterday claiming he had not been allowed to address the committee on the indemnity issue. He said that as the principles had been abandoned in the 1992 Further Indemnity Act, it would not be even-handed to include them in the current Bill

The ANC caucus voted last week to include the principles in the Bill although reports suggest the party is divided on this

It is possible that the Cabinet subcommittee has come close to agreement on secrecy provisions but it is unlikely any decision has been made on extending the cut-off date for amnesty applications

ANC MP Willie Hofmeyr told the committee that while the Cabinet had achieved some progress it needed more time

Meanwhile, the committee was considering new proposals to restructure the Bill, take the word "truth" out of the commission's title and refashion the commission's objectives and means of appointment.

The Inkatha Freedom Party proposed it be titled the Fact-finding and Reconciliation Commission while the NP suggested the Amnesty, Reparations and Reconciliation Commission. The ANC remained in favour of the original title.

Divided views on death penalty

EUNICE RIDER

[illegible] — [illegible] — [illegible] to return the death penalty, but [illegible] brothers and sisters are divided on the issue

According to the results of a comp[illegible] poll which w[illegible] yesterday, 80% of whites question[illegible] and be retained, but only 49% of blacks agreed

The surveyors, Research Surveys, said only 12% of white respondents from all the major metropolitan areas wanted the death penalty abolished, and 8% abstained from the opinion poll

Although 49% of blacks felt the death penalty should be retained, 34% felt it should be abolished and 17% abstained

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

The qu[illegible]d of respondents was: "There has been a fair amount of discussion recently, in the newspapers and at governmental level, as to whether the death sentence should be abolished. In the near future the new Constitutional Court will have to rule on this issue In your opinion, do you think the death sentence should be abolished in South Africa?"

(252)

The [illegible] al Court is expected to [illegible] emotive death penalty issue [illegible] time in May, before its [illegible] recess, a court spokeswoman [illegible] early this week.

She said all 11 judge[illegible] heard argument for and against the death penalty in Febr[illegible]

The spokeswoman said [illegible] punishment was suspended [illegible] then President F W de Kler[illegible] 1990.

CT 29/3/95

35 000 police start national go-slow

(252) CT 30/3/95

JACKIE CAMERON
CRIME REPORTER

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

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

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

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

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

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

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

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

WEEKLY MAIL & GUARDIAN
March 31 to April 6 1995

Truth commission still in the doldrums

WM 31/3-6/4/95 (252)

Controversy continues to dog the proposed truth commission as the ANC and NP blame each other for delays, reports **Gaye Davis**

A ROW between the National Party and Justice Minister Dullah Omar over accusations that the NP was delaying truth commission legislation erupted this week. This has put paid to hopes that the bill would be tabled in Parliament before it breaks for the Easter recess next Friday

One reason for this is that a ministerial task group appointed to thrash out contentious issues on which the committee could not agree did not report to cabinet this week as expected.

NP justice spokesman Danie Schutte, who has challenged minister Omar to a public debate over his claims that the NP was delaying progress on the bill, suggested this week the reason the matter "was not even raised" was because the ANC itself was divided on the contentious issues and "was having second thoughts".

The issues are whether or not amnesty hearings should be in secret, the so-called Norgaard principles (where a crime is deemed political only if its nature is in proprtion to its political objective), and the cut-off date for offences qualifying for amnesty

The NP wants secrecy provisions built into the bill but rejects the inclusion of the Norgaard principles on the basis that previous indemnities were issued without these being applied. It has argued that if the bill is to be an instrument of reconciliation it cannot be founded on double standards The ANC's counter argument is that its own members will have to seek indemnity on the same basis.

ANC committee members want the secrecy provisions out and the Norgaard principles retained — but weekend reports indicated the party itself is not at one on these points

■ To PAGE 4

The Norgaard Principles

THE Norgaard principles are named after Carl Aage Norgaard, a Danish national and president of the European Commission on Human Rights, who was asked at the time of the Namibian settlement to frame guidelines defining the concept of a political prisoner.

For a crime to be deemed a political offence, he stipulated the following should to be taken into account:

- **an offender's motive (whether it was personal or political);**
- **the circumstances in which the offence was committed (whether it was committed during an uprising, for example);**
- **the nature of the political objective (such as overthrowing a government) and the offence and its gravity;**
- **the object of the offence — whether it was directed against government agents or property or ordinary citizens) and**
- **the relationship between the offence and the political objective.**

In the United States, acts directed against civilian targets causing indiscriminate injury and destruction have been regarded beyond the parameters of a political offence. Swiss and Dutch courts consider the proportionality between the offence and the political objective to decide whether the political element of a mixed offence predominate.

Norgaard argued against a narrow approach in considering whether or not an act was political where reconciliation was the aim.

However, in the Namibian context, where Swapo's battle was directed against overthrowing the South African regime and not against Namibians, Norgaard felt serious acts of indiscriminate violence against civilians or civlian property could not be regarded as having a sufficiently direct relationship to Swapo's political objective to be deemed political offences.

■ From PAGE 2

These issues, as well as whether the cut-off date for offences qualifying for amnesty be extended from December 5 1993 to May 1994, were referred by the committee to Cabinet, which appointed the task group comprising Omar, Constitutional Affairs Minister Roelf Meyer and General Services Minister Chris Fismer

ANC MP Willie Hofmeyr said it was hoped the task group would report to Cabinet when it meets next Wednesday He said the ANC caucus wanted the cut-off date of December 5 1993 to stay, but had agreed that cabinet could decide whether it should be extended to May 1994, which would cover the rightwing's pre-election bombing campaign, the Shell House shootings and KwaZulu/Natal violence

"Changing (the cut-off date) would depend on the ultra-right committing itself to peace and ending its armed struggle," Hofmeyr said "It would involve a constitutional amendment which would have to be initiated by Cabinet."

He said the committee's work had been bogged down by an NP strategy of raising one amendment after another in a "filibustering process"

Schutte rejected this, saying his party had put its views before the committee "from day one" He said the ANC had senior members in government who presently enjoyed temporary indemnity who could run the risk of not getting indemnity should the Norgaard principles remain in the bill It was clear there were two camps within the ANC on the issue and the organisation "was having second thoughts"

The justice committee started considering the bill — now in its fourth draft — in November Hofmeyr said "We're trying to finish the committee's work by Friday and will consider the impact of any Cabinet decisions next week. If the issues are resolved we can discuss them and table the bill when parliament resumes."

Jewish divorce law disarmed?

(252)

CLIVE SAWYER
Political Correspondent

ARG 31/3/95

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

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

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

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

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

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

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

"Limping marriages are established in this way"

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

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

Jewish husbands seemed to be in better bargaining positions, the commission said

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

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

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

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

The commission rejected suggestions that Jewish law be changed

The commission said it had distributed 400 copies of its proposed legislation throughout South Africa There had been 34 responses, 21 unreservedly favourable

Sparks fly over truth bill

ARGT 1/4/95 (252)

■ Wrangling between the NP and the ANC over truth commission ethics continues furiously, but the end could be in sight.

CLIVE SAWYER
Political Correspondent

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

The bill could be discussed by the cabinet next week

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

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

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

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

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

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

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

The two parties have disagreed on

■ The cut-off date for amnesty;

■ The definition of acts associated with a political objective,

■ Secrecy provisions for the amnesty committee;

■ Admissibility of certain evidence,

■ Mechanisms for appointing commissioners

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

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

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

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

"Maybe they (the NP) don't know how to use the library"

He said it was a gross distortion to say that many ANC people had benefitted from indemnity of the basis of no criteria.

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

"In the 14 000 category-based applications, there was no violence, death or injury"

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

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

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

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

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

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

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

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

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

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

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

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

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

The list of 3 500 applications had included a cabinet minister and the country's top policeman, General Johan van der Merwe.

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

It was hard to believe the government of the day had not known about the applications.

THE FIRST SIX WEEKS OF THE 'MAGNIFICENT ELEVEN'

The noose, the rod ... and the trifling matter of a cigarette butt under an armpit

ST 2/4/95

(252)

By CARMEL RICKARD

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

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

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

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

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

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

The court is still dominated by judges Mahomed and John Didcott, whose strong, colourful style of argument often provides the most dramatic moments But judges Albie Sachs and Johann Kriegler enter the debate almost as freely, although with a completely different approach. Justice Kriegler barks out memorable one-liners like his remark on juvenile whipping "Why don't you burn them under the armpits with cigarette butts?" Justice Sachs is more tentative, often prefacing his remarks with comments about the nature of the "suggestion" or "contribution" he is about to offer.

The most recent case, which dealt with whether a court may sentence juvenile offenders to be whipped, pulled the debate into two subjects not canvassed before

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

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

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

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

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

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

A thread running through a number of cases has been how far the judges should be influenced by public opinion The Constitution says they must promote the values underlying "an open and democratic society based on freedom and equality" But in doing so, should they reflect public attitudes found in present South African society, or the views and values of an "ideal" democratic public even if these differ from current public opinion?

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

ON one occasion, during a debate on the role of public opinion, Judge Didcott commented. "We are here to interpret the Constitution, not to conduct a poll among members of the public"

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

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

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

While the Appeal Court hears about 200 cases a year, the Constitutional Court could manage about 50. this is because the Appeal Court judges sit in panels so that several cases can be heard in one day The Constitutional Court on the other hand, sits *en bloc* with all 11 judges hearing each case

This has meant imposing a strict time limit on lawyers, many of whom are used to delivering argument often at wearisome length So far they have kept to the strict time allocation, and each case has finished crisply on schedule

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

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

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

Judge Chaskalson said he could not say when the first judgment would be given, nor what the average delay would be between subsequent decisions It would depend on the complexity of the case and the issues raised

No convention has yet emerged for choosing which judge will write which decision, nor is it clear whether a formal arrangement will develop. it is done on an ad hoc basis, with the writing shared out among the 11 "We arrange for a draft to be prepared for discussion," said Judge Chaskalson "Then either the person who has done the draft will go ahead on the basis of the discussion, or others will write their separate views."

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

ASKED whether he would prefer his colleagues to reach consensus where possible, he said that minority views ought to be expressed and that this would be the case in the Constitutional Court "If the judges are not unanimous, full minority judgments will be given So will separate concurring judgments if necessary. anyone will be free to do so"

Judge Chaskalson said he had been delighted that Judge Kentridge had joined the court for its first term, standing in for Justice Richard Goldstone who is prosecuting Bosnian war crimes in The Hague "Judge Kentridge is one of the greatest lawyers ever produced in South Africa," he said

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

Judge Chaskalson said he did not find it a problem that politically sensitive issues, on which the government had taken a firm position, were referred to the court, such as the death penalty, juvenile whipping and imprisonment for debt He said all constitutional courts had to deal with disputes about whether legislation was constitutional. "We do not keep our eye on what the government is doing Nor should we," he declared

ST 2/4/95 (252)

JUDGE ARTHUR CHASKALSON ... tackling sensitive issues

Magistrates poised for pay revolt

(252) Star 3/4/95

BY BRENDAN TEMPLETON

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

Many hold LLB law degrees but are earning only R33 000 a year

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

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

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

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

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

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

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

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

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

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

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

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

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

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

St James: State calls for life

ARG 3/04/95 (252)

PATRICK FARRELL
Supreme Court Reporter

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

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

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

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

State Advocate Willie Viljoen said Makoma deserved the heaviest possible sentence

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

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

The courtroom was packed today with Makoma's supporters

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

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

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

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

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

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

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

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

(Proceeding)

Mr Justice Marais is on the Bench and Willie Viljoen appears for the State

THE CAPE

(252) ARG 3/04/95

Interdict on subsidy cut

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

Mr Acting Justice Selwyn Millar ruled that the government should view judgement by Mr Acting Justice J N Moodely.

The Transkei Public Servants' Association took the matter being heard before judge Moodley to court when the government announced it was cutting the R1 200 monthly subsidy. — Sapa

Western Cape magistrates may start go-slow today

(252)

CT 3/4/95

SPECIAL CORRESPONDENT

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

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

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

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

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

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

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

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

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

Single national legal system likely for SA

(252) ARG 4/4/95

Political Correspondent

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

This emerged at a constitutional committee meeting yesterday

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

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

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

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

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

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

There should be provincial constitutional courts.

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

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

This clause could go for drafting, he said

The issue will be debated in the constitutional assembly, which will meet on April 28

The assembly has until May next year to produce a new constitution to come into effect in 1999

Single, national legal system wins favour

ADRIAN HADLAND

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

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

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

Constitutional committee chairman Cyril Ramaphosa said Inkatha had the opportunity to canvass support for its views while the clause was being drafted and could state its attitude during the full assembly debate BD 4/4/95

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

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

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

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

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

Funds needed to ease strain on UIF coffers

BD 4/4/95

ERICA JANKOWITZ

WIDENING the scope of the Unemployment Insurance Fund (UIF) to include high earners would boost contributions by about R55m a year, National Labour and Development Institute (Naledi) senior reasercher Ravi Naidoo said yesterday.

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

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

Sharing the same platform and speaking in his personal capacity, Labour Ministry official Gerard van Wyk said other funding methods should be urgently sought to ensure the UIF could meet the basic needs of SA's estimated 32% jobless population and extend its scope to job placement, training and retraining.

A recent survey suggested that an unemployment policy which paid the jobless in line with the poverty datum line would cost the state R43bn a year, almost half its current tax revenue, Van Wyk said.

The fund was only a handout system which did nothing to create jobs or stimulate economic growth This should be rectified in light of SA's development needs.

Naidoo said no unemployment assistance existed in SA which meant only those who had been active in the labour market could qualify for current benefits These only lasted for a maximum of six months and paid 45% of the most recent basic wage without a minimum payment level.

Also, the fund catered for maternity and sickness benefits and was not confined to those connected to job loss.

Recent problems in the fund which were the result of the severe economic recession experienced in the early 1990s, were partially due to the UIF being originally designed to cater only for white unemployed. Since its extension to include other race groups, it was not restructured to ensure its long-term viability.

However, Van Wyk said the fund had met all its commitments for the past seven months without a deficit.

Plans to eradicate social welfare fraud

ERICA JANKOWITZ

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

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

BD 4/4/95

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

Western Cape University economics head Pieter le Roux said a recent study confirmed that welfare fraud totalled about R1bn a year and was escalating.

Williams said government was revising the social security system to rationalise existing grants and consolidate the plethora of legislation into a single statute. Complete parity would be achieved soon and a single database of recipients would help eradicate fraud.

Magistrates' go-slow is put on hold

GAVIN STAFFORD

CAPE Peninsula magistrates, who threatened to start a go-slow yesterday, would abide by a Magistrates' Association of SA decision not to embark on the action until a meeting on Friday, association president Jan Venter said yesterday.

BD 4/4/95

Venter was reacting to media reports that they would begin a go-slow yesterday

A central committee meeting of the association on Thursday, however, requested that Mitchell's Plain magistrates should not embark on the action until all members had been consulted

Venter said magistrates' grievances revolved "mainly" around salaries, but the circumstances of their employment was also an issue as they were carrying a "heavy workload".

He could not comment on what the outcome of the meeting would be, but said "Magistrates are very responsible people and would not doing anything drastic."

Sapa reports two Western Cape chief magistrates said their courts had not been affected by go-slows.

Bertus Jooste, responsible for the West Coast and Karoo, and Jaco van Reenen, responsible for Mitchell's Plain to George, said courts were functioning normally

Helen Suzman named for Human Rights Commission

ARG 5/4/95 (252)

Nominees are sharply divergent

CLIVE SAWYER
Political Correspondent

HELEN Suzman is among nominees to the Human Rights Commission by a parliamentary joint committee.

The veteran civil rights campaigner and former Progressive Federal Party MP is on a list of commissioners from sharply divergent political backgrounds announced in parliament yesterday

Those nominated are

- Brigalia Bam, general secretary of the SA Council of Churches,
- African National Congress MP Max Coleman Dr Coleman, a founder member of the Detainees' Parents Support Committee and in 1988 of the previous Human Rights Commission, will have to resign as an MP to take up the appointment,
- Chris de Jager, a former judge and Conservative Party MP,
- Charles Dlamini, rector of the University of Zululand,
- Karthigashen Govender, a legal consultant at Natal University's community law centre and an Independent Mediation Services of SA mediator,
- Rhoda Kadalie, gender equity officer at the University of the Western Cape,
- S Mabusela,
- Barney Pityana, theologian at the University of Cape Town and a long-time campaigner against racism,
- Anne Routier, a National Party delegate to Codesa and spokeswoman for its gender advisory committee, and
- Pansy Tlakula, acting director of the Black Lawyers Association

Helen Suzman

The constitution requires the commission to promote the observance of and respect for human rights

The commission will make recommendations to all levels of government on "progressive measures" to promote human rights

It will be able to ask any organ of state to supply it with information on any legislative or executive measures adopted by it relating to fundamental rights

The commission will investigate alleged violations of human rights, on its own initiative or after a complaint

It will help complainants "in so far as it is able" to get redress

The nominations will have to be approved by a 75 percent majority at a joint sitting of the national assembly and senate

St James killer

Chanting youth gets 23 years for church massacre

PATRICK FARRELL
Supreme Court Reporter

ST James Church killer Gcinikhaya Makoma led his supporters in a chant of "One settler, one bullet" in the Supreme Court today after he was sentenced to an effective 23 years in jail for the attack.

Makoma, 19, was convicted last week by Mr Justice Marais of 11 murder charges, the attempted murder of nearly 60 people and illegal possession of guns and ammunition

As sentence was passed, Makoma shrugged and smiled, then turned to his supporters in the packed court, gave an open-handed Pan-Africanist Congress salute and led the chanting of "One settler, one bullet".

Today, during sentencing, Judge Marais said the attack on the church in July 1993 was "totally unjustifiable" Fundamental change had already been set in course in South Africa in the negotiations which were to lead to democracy in 1994

He said the death penalty was not appropriate because Makoma was under the age of 18 when the offence was committed

If Makoma had been a "mature adult" when he took part in the attack, the court would have thought that life imprisonment was appropriate But the court recognised that Makoma was a first offender, that he was a youth when the offence was committed and he had been influenced by others.

"Hopefully the sentence will reflect the abhorrence of the court and society at these crimes."

The attack was not committed impulsively but had been planned

"Eleven people were killed and many seriously injured, some maimed for life The handgrenades used had been deliberately modified with nails to maximise injuries"

The judge said the attack on the church was on "the softest and most defenceless target imaginable"

The attackers had not cared who they had killed or whether the members of the congregation were supporters of the government or not

A motive for the attack was that it was "to punish the whites" for "atrocities" committed by certain whites against blacks.

"The court is aware of the sad history of this country and institutionalised and uninstitutionalised political violence The court can also understand the smouldering resentment"

The judge said the court was unable to determne what part Makoma played in the attack

"He may have been one of the gunmen or thrown the grenades All that is clear is that he was knowingly a participant in the attack, and that alone is enough to warrant severe punishment"

Judge Marais sentenced Makoma to 20 years in prison on each of the 11 murder charges but he ordered that all would run concurrently.

He sentenced him to 12 years for the attempted murder and ordered that nine years would run concurrently

On the two charges of illegal possession of guns and ammunition he was sentenced to 5½ years, which was also to run concurrently, making an effective sentence of 23 years' imprisonment

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Secrecy clause to be ditched

(252)

Cabinet rules on disputed truth Bill

BD 5/4/95

ADRIAN HADLAND

CAPE TOWN — Cabinet gave vital impetus to establishing SA's truth commission yesterday by ruling on controversial aspects of draft legislation which had divided the parties and threatened to bog down the process.

After an emotive appeal from President Nelson Mandela to speed up finalisation of the Promotion of National Unity and Reconciliation Bill, Cabinet took decisions on measures ranging from the secrecy clause and cut-off date to the appointment of the truth commissioners

The secrecy clause, which was initially appended to the Bill by Cabinet, was ditched by the executive yesterday.

Cabinet spokesman Jakes Gerwel said all hearings of the committees making up the truth commission — the amnesty committee, the reparations and rehabilitation committee and the human rights violations committee — would be held in public

Cabinet agreed that if the perpetrators of human rights violations applied to have hearings conducted in private, this request would be considered at a pre-hearing.

If the amnesty committee concurred that testimony given in public would be contrary to the administration of justice or constituted a threat to life, provision would be made to hear evidence in camera. This would be the case where "gross" violations had occurred and would also apply to hearings of the human rights violations committee where a clause was required to prevent recrimination, Gerwel said.

Cabinet, in the form of a bipartisan committee made up of Justice Minister Dullah Omar, General Affairs Minister Chris Fismer, Constitutional Affairs Minister Roelf Meyer and Water Affairs Minister Kader Asmal, also agreed not to move the cut-off date for amnesty applications beyond December 5 1993.

This means all political crimes committed after that date, including the PAC's attack on the Heidelberg Tavern, the Shell House shootings, the right-wing pre-election bombing campaign and various acts of violence in KwaZulu/Natal, will not be entitled to amnesty.

Despite arguments that Parliament, a special committee or the leaders of all political parties should appoint the 12 to 15 truth commissioners, Cabinet agreed the President would undertake this "in consultation" with Cabinet, Gerwel said.

The Norgaard principles would also be kept in the Bill The principles, which dictate that serious crimes such as murder should not receive amnesty, had been a particular sticking point within the justice committee, Cabinet and the ANC.

A compromise was fashioned, however, so that applicants who had committed serious crimes could ask for previous indemnity legislation — which was passed in 1990 and 1992 — to be taken into account. This means it is unlikely the principles will be applied to their most rigorous extent.

Meanwhile, the national assembly justice committee continued to work on the Bill's fourth draft yesterday. However, Cabinet's resolution of the controversial elements will speed up the process. The Bill is expected to be tabled in late April or early May with the truth commission coming into full operation around July.

Nominations for human rights body

(252) BD 5/4/95

ADRIAN HADLAND

CAPE TOWN — A multiparty parliamentary committee yesterday released the names of 11 people, including former MP Helen Suzman and serving ANC MP Max Coleman, it would recommend for SA's new human rights commission.

The commission, which is being established in accordance with the interim constitution, is essentially a watchdog body charged with investigating complaints of human rights abuses and promoting the observance of, respect for and protection of fundamental rights in SA.

The 11 candidates must be approved by two-thirds of a joint sitting of the National Assembly and Senate before being formally appointed by the President.

The other candidates are the SA Council of Churches' and women's rights campaigner Brigalia Bam, University of Zululand rector Charles Dlamini, Natal University law lecturer Karthay Govender, National Council for Children's Rights director Shirley Mabusela, University of the Western Cape gender equality unit director Rhoda Kadalie, University of Cape Town Christianity institute senior researcher Barney Pityana, Black Lawyers' Association acting director Pansy Tlakula, former President's Council member Anne Routier and former CP negotiator and MP Chris de Jager.

The commission will elect its own chairman.

According to the constitution, the commission will be responsible for developing an awareness of fundamental rights in SA and will examine legislation to ensure it is consistent with international human rights law. It will be able to investigate complaints of alleged human rights violations and assist in the securing of redress.

It can make recommendations "to organs of state at all levels of government where it considers ... action advisable for the adoption of progressive measures for the promotion of fundamental rights".

Parliament is expected to vote on the nominations during its next session beginning later this month.

Report crackdown bears fruit

BD 5/4/95

ADRIAN HADLAND

CAPE TOWN — A crackdown on the late delivery of government institutions' financial reports had resulted in significant progress in tighter monitoring of bodies ranging from local authorities to agricultural control boards, Auditor-General Henri Kluever said yesterday.

In his special report on outstanding financial statements and incomplete audit reports, which was tabled in Parliament, Kluever said these had declined by 58% from 976 in the year ending 1 July 1992 to 414 in the year to 30 June 1994.

Of the 414, 157 represented financial statements still not received more than 9 months after they were due while 257 had been received with audits incomplete.

Institutions contributing to the figures included almost 300 local authorities, 17 regional services councils, 4 hospital boards and 30 local councils.

Kluever said pressure was being continually applied at a high level to ensure the institutions complied with deadlines. This included the empowering of directors-general to assist or act against the CEOs of local authorities.

Auditing staff had also been exchanged among cost centres to ensure their optimal utilisation and to dispose of backlogs.

All possible efforts would be made to ensure the backlog of 414 institutions was substantially eliminated in the current financial year, Kluever said.

The inability of smaller institutions to submit statements, the deficiency of these statements when they were submitted and "strikes, labour unrest and the general indifference of staff in the former self-governing territories and TBVC-states" complicated the situation.

In a second report on the Multilateral Motor Vehicle Accidents Fund, which was also tabled in Parliament yesterday, Kluever confirmed the findings of the fund's annual report for 1993/94 which indicated an operating loss for the year of R648m.

Although the fund could meet its current expenses on a cash basis, the actuarial deficit by April 30 1994 had risen to R4,4bn.

Earlier this year, the fund's board called for a more regular review of fuel levies

NEWS Accord will enable township r

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Whites in favour of death penalty

Cowetan 5/4/95

MOST white South Africans want the death penalty to be retained while blacks are divided on the issue, a nationwide poll by the Research Surveys group shows

The group said yesterday that 80 percent of whites interviewed felt the death penalty should be retained, 12 percent felt it should be abolished while eight percent abstained. The survey also showed that 49 percent of blacks felt it should be retained, 34 percent thought it should be abolished and 17 percent abstained

Thousands of respondents were drawn from major metropolitan areas across the country for the survey.

The poll also showed that Afrikaans-speaking white men wanted to retain the death penalty more so than their English-speaking counterparts

There has been a moratorium on the death penalty since 1990, when political negotiations between the then white minority government and black liberation movements started Since all-race elections in April last year ushered in a power-sharing government and an interim constitution, the prickly issue of capital punishment has been referred to a newly-created constitutional court for debate

The court is expected to rule in May on whether the death penalty is constitutional or not A dramatic increase in crime and violence in South Africa has frightened a number of white lobby groups into calling for the gallows in Pretoria to be utilised once again — *Sapa-AFP*

Nominees for HRC named

Sowetan 5/4/95 (252)

A FINAL list of 11 candidates for the Human Rights Commission, including former MP Mrs Helen Suzman and women's rights activist Ms Brigalia Bam, was released yesterday

The list, drawn up by a multiparty parliamentary committee after several weeks of hearings, has to be approved by at least 75 percent of MPs in a joint sitting of the National Assembly and Senate

Formally appointed

The commissioners will then be formally appointed by President Nelson Mandela

The full list is· Ms Brigalia Bam, deputy head secretary of the South African Council of Churches and a women's rights activist; Dr Max Coleman, ANC MP, Mr Chris de Jager, former MP and chief negotiator for the Conservative Party before his resignation from the party, Professor Charles Dlamini, Rector of the University of Zululand, Mr Karthay Govender, senior public law lecturer at the University of Natal, Ms Rhoda Kadalie, Director of the University of the Western Cape gender equality unit; Ms Shirley Mabusela, Director of the National Council for Children's Rights, Mr Barney Pityana, senior researcher at the University of Cape Town's Research Institute on Christianity in South Africa;

Ms Anne Routier, former member of the President's Council, Suzman, former MP and veteran human rights activist; and Ms Pansy Tlakula, acting director of the Association of Black Lawyers

The multi-party committee did not suggest a chairman for the Commission

If Parliament does not approve a nominee, the committee will put forward another candidate — *Sapa*

Admissibility denied by Constitutional Court

Landmark ruling on written confessions

(252) Star 6/4/95

■ STAFF REPORTER and SAPA

The Constitutional Court yesterday handed down its first decision when it invalidated a section of the Criminal Procedure Act dealing with the admissibility of confessions at a trial.

Mr Justice Sydney Kentridge said the ruling invalidated section 217(1)(b) of the Act in future cases and all cases outstanding from April 27 last year.

The effect of the ruling is that the court can no longer presume a written confession to a crime by an accused was made freely and voluntarily before a magistrate and admit it as evidence.

The State must now prove that such a confession was indeed made freely and voluntarily. "The presumption factor has been knocked out," a legal expert commented

Yesterday's decision applies to outstanding trials begun on or after April 24 last year.

"The interests of individuals must be weighed against the interest of avoiding dislocation to the administration of justice and the desirability of a smooth transition from the old to the new," Mr Justice Kentridge said.

Accused's rights

The Criminal Procedure Act subsection states that a confession is presumed admissible and to have been made voluntarily in sound and sober mind unless the contrary is proved. An accused who before trial admits guilt bears the onus of proving his innocence; and if the accused claims the confession was forced, must prove this.

ONUS of proof that statements were made freely and voluntarily now rests with the State

The subsection was introduced after the 1977 Botha Commission of Inquiry into criminal procedure and evidence.

Mr Justice Kentridge said the provision, intended to speed up trials and make it more difficult for an accused to make false allegations of duress, ignored an accused's rights if a confession had indeed been forced. It had not succeeded in shortening trials

Incompetent

In the case before the court, two men were accused of killing a farmer and a domestic worker in the Umkomaas Valley in KwaZulu-Natal

They made confessions before their trial in the Supreme Court, but contested the admissibility of the confessions on the grounds they were assaulted by police.

The trial court unanimously concluded the accused had failed to prove that the confessions were not made freely and voluntarily. The case was referred to the Constitutional Court on August 18 last year

Mr Justice Kentridge said the referral was incompetent because Supreme Court judges were able and duty bound to make their own decisions.

However, the matter needed to be resolved because prolonged uncertainty hindered the administration of justice in the country's courts

He said section 25 of the interim constitution embodied provisions which were not new to South African law

They had existed for 150 years but were eroded by statutes and, in some cases, judicial decisions

The common law, requiring the State to prove a confession was made voluntarily, was an integral part of SA law.

This included the right to remain silent after arrest and not to make a confession or give evidence against onself.

The judge said the "reverse burden of proof", meaning the accused had to prove innocence, seriously compromised and undermined all these rights

Discretion

He rejected the State's submission that judges could use their discretion to rule a confession inadmissible

"The presumption of innocence cannot depend on the exercise of discretion," he found.

"I believe this interpretation promotes the values which underlie an open and democratic society and is entirely consistent with the language of section 25 (of the interim constitution)."

Yesterday's judgment does not apply to other "reverse burden of proof" provisions, such as marriage registration in bigamy cases — Sapa.

Truth in, secrecy out

Controversial commission approved despite opposition

(252) Star 6/4/95

DECISION to retain the December 5 1993 amnesty cut-off date has been endorsed

■ BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — The Cabinet yesterday approved legislation to establish a truth commission in the face of NP opposition and outright rejection by the IFP.

A long-standing NP demand for hearings to be conducted in secret has been rejected but applications for secrecy will be considered at a preliminary hearing The Cabinet had earlier agreed that the controversial secrecy clause be included in the Bill.

With the Cabinet's approval, the Bill will be fine-tuned and passed when Parliament reconvenes after Easter recess

The truth commission will investigate human rights violations committed by both the defenders and opponents of apartheid, investigate and make reparations to victims, and confer amnesty.

President Mandela moved immediately after the debate had ended to smooth over differences that emerged in what was described as a "lengthy and heavy" Cabinet meeting He assured ministers the ANC did not want the other parties to feel they were being asked to "rubber stamp" decisions.

Cabinet secretary Jakes Gerwel told a media briefing there had been a surprising degree of co-operation between ministers in the Cabinet

He also said the decision to retain the December 5 1993 cut-off date for amnesty, which the NP and other parties wanted to shift to May 10 last year, had been endorsed.

However, sources said in the discussion on each of four contentious issues, the NP's opposition to several major aspects of the Bill, which its negotiators in the parliamentary committee on justice have been haggling over for months, was overruled.

The two NP ministers were overruled by their ANC counterparts in the bipartisan committee set up to assist the Bill's passage through the Cabinet

President Mandela wrapped up the meeting by saying he and the ANC were committed to the GNU not becoming an "empty shell", Gerwel said.

Provincial Affairs and Constitutional Development Minister Roelf Meyer and General Affairs Minister Chris Fismer argued against several key proposals.

An NP proposal that the chairman of the amnesty committee be appointed by the president in consultation with the Cabinet was defeated, as was an NP proposal to have an in-camera pre-hearing procedure in the committee on human rights

The NP ministers suffered their third defeat when the Cabinet decided to retain the Norgaard principles which attempt to decide whether the gravity of the crime committed matched the political objective it was meant to achieve

However, the Norgaard principles would be read in con-

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Truth in, secrecy out

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◀ From Page 1

junction with the principles used by the former NP government to grant indemnity to achieve "historical equity".

The Cabinet reversed an earlier compromise that proceedings of the amnesty committee be held behind closed doors Instead, it decided that all hearings before the amnesty committee would be open in the same way that court proceedings are open

However, the committee would be able to deal with cases without a hearing where there had not been gross violations of human rights.

Gerwel added that the IFP had reserved its position on the commission.

ıursday April 6 1995

ANC, NP resolve their truth differences

(252)

ARG 6/4/95

CLIVE SAWYER
Political Correspondent

AFRICAN National Congress and National Party cabinet ministers have resolved their differences over the truth and reconciliation commission

A bipartisan cabinet committee yesterday announced it had reached agreement on key issues

President Nelson Mandela told a cabinet meeting the agreement was proof that the government of national unity was not just an arrangement where minority parties were no more than rubber stamps

The issues agreed on by the cabinet committee were referred to it by the parliamentary justice committee, which is scheduled to continue its discussion of less contentious clauses

The cabinet committee, consisting of Dullah Omar and Kader Asmal from the ANC, and Roelf Meyer and Chris Fismer from the NP, agreed

- The appointment mechanism for the president to choose the commission in consultation with the cabinet should stay as set out in the bill
- The cut-off date for amnesty should remain December 5 1993, as specified in the constitution
- The amnesty committee would have the option of holding hearings behind closed doors, if this was in the interests of justice, except when dealing with evidence on gross violations of human rights.
- The committee on human rights violations would have a procedural protection against intimidation of witnesses
- The Norgaard principles, which defined whether an act was committed with a political objective, would be used, the committee agreed

cuddle from head of paediatric surgery Joao Fonesca before flying home

Watershed ruling by Constitutional Court on confession

(252)

☐ *Onus on state to prove no duress*

ARG 6/4/95

JOHANNESBURG — South Africa's most powerful court has ruled invalid a law which put the burden of proof on suspects who said they made confessions under duress.

The 11 judges of the Constitutional Court, in their first ruling since the court was opened by President Nelson Mandela in February, said it was unconstitutional for the onus to be on suspects wanting confessions ruled invalid, while common law ordered the prosecution to prove guilt.

"It is declared that section 217 (1) (b) (ii) of the Criminal Procedure Act of 1977 is invalid," Mr Acting-Justice Sydney Kentridge said in a brief judgment read with the agreement of the judges.

Judge Kentridge said the decision would be effective from the time of the elections last year to make it fair to suspects whose trials had not yet been finalised

"This declaration shall invalidate any application . in any criminal trial which commenced on or after April 27, 1994 and in which the verdict has not . . been given"

The ruling arose from a case brought by Durban lawyer Archie Findlay on behalf of two men charged with killing a farmer and a worker in the Umkomaas valley in KwaZulu-Natal

In his argument to the court, Mr Findlay said the law "violates their constitutionally entrenched right to be presumed innocent and to remain silent during plea proceedings or trial"

"It also undermines the right of an accused person not to incriminate himself," he added.

Mr Findlay said the problem with the rule could be overcome easily if the burden of proof rested with the state.

"There is no difficulty for the state calling the evidence it needs to establish if a confession is freely and voluntarily made, nor is there any pressing social need which justifies the reversal of the onus of proof," Mr Findlay said.

Judge Kentridge said the court agreed that the section which read that a confession should be accepted to have been made freely "unless the contrary is proved" was unconstitutional

"The rights interfered with are fundamental to our concepts of justice and forensic fairness

"Even if it did release the police or prosecution from the inconvenience of marshalling and calling their witnesses . . . I cannot regard those inconveniences as outweighing and justifying the substantial infringement . of a suspect's rights."

Constitutional Court rules on confessions

CT 6/4/95 (252)

WILLEM STEENKAMP

THE Constitutional Court, in its first judgment, yesterday declared invalid a subsection of the 1973 Criminal Procedure Act dealing with the admissibility of confessions before a trial

And in a related move yesterday, Lieutenant-General Wouter Grove, head of the police national crime investigation service (NCIS), said in a statement that, in keeping with policy on "transparent and accountable policing", the NCIS was "moving away from a 'confession-orientated' investigation of incidents to a professional reliance on investigative skills"

Constitutional Court judge Mr Justice Sydney Kentridge said in the first finding of the court that section 217(1)(b)(ii) of the Criminal Procedure Act — which stipulated that confessions were regarded as freely and voluntarily made "unless the contrary is proved" — was in conflict with accused persons' constitutional rights that, he said, were "fundamental to our concepts of justice and forensic fairness"

"Even if it did release the police or prosecution from the inconvenience of marshalling and calling their witnesses, I cannot regard those inconveniences as outweighing and justifying the substantial infringement of a suspect's rights," he said

"I believe, too, that this interpretation promotes the values which underlie an open and democratic society"

Onus of proof

Judge Kentridge found that the section, introduced in 1977 on the recommendation of the Botha Commission, contrasted with the common law principle of the state bearing the onus of proof

He said the ruling would apply from the time of last year's elections, to make it fair to those whose trials had not yet been finalised

The decision was welcomed yesterday by attorneys' bodies, who said they felt the particular section had been "anomalous"

Mr William Kerfoot, the director of the Legal Resources Centre, said he welcomed the decision

Mr Vincent Saldanha, national general secretary of the National Association of Democratic Lawyers (Nadel), also said his organisation welcomed the "landmark" ruling and was "encouraged by the boldness of the Constitutional Court"

Cape attorney-general Mr Frank Kahn said the ruling was "a switch in onus"

SWIFT ACCEPTANCE EXPECTED AFTER EASTER (252)

Truth Bill ready for Parliament's approval

CT 6/4/95

DRAFT legislation to establish the Truth Commission has been agreed upon in cabinet, even though the NP opposed several clauses, a **SPECIAL CORRESPONDENT** writes.

THE cabinet yesterday broke the logjam blocking approval for a Truth Commission on apartheid crimes, but rejected a right-wing appeal to amend an amnesty provision

Cabinet secretary Professor Jakes Gerwel said the cabinet approved a package of compromises which should ensure swift parliamentary approval of the National Unity and Reconciliation Bill.

But he said the cabinet refused to extend the cut-off date for political offences eligible for amnesty from December 6, 1993, to May 10 last year, the date of President Nelson Mandela's inauguration as South Africa's first black president

"The minister of justice now goes with the cabinet's approval to Parliament to seek approval for the bill," he said

The decision to approve the legislation is a major breakthrough for the government

The Truth Commission will investigate human rights violations committed by both the defenders and opponents of apartheid, and investigate and make reparations to victims

It may also grant amnesty to people who confess to politically-motivated human rights offences committed between 1960 and December 6, 1993

The cabinet reversed an earlier compromise that proceedings of the amnesty committee be held behind closed doors

But the committee will be able to agree to a closed hearing if it is in the interests of justice or if there is a chance that a person could be harmed if proceedings are open

The committee will also be able to deal with cases without a hearing where there has not been gross violations of human rights

The draft legislation, which is already in the form of a bill, will be fine-tuned and passed when Parliament convenes after the Easter recess

Sources said that the NP's opposition to several major aspects of the bill was overruled by their ANC counterparts in the cabinet committee The IFP "had reserved its position on the commission", Prof Gerwel said.

Grabouw shacks moved after clash

CT 6/4/95

ABOUT 12 shacks had been transported to alternative state land by late yesterday as unrest subsided after a clash between squatters and police in Grabouw.

At least 31 people were injur — eight possibly by police rubbe bullets — when squatters tried to resist being forcibly removed from their shacks,a police spokesman said

In terms of a Cape Town Supreme Court ruling, squatters were given until April 1 to move off the land which has been earmarked for informal housing

The demolition of about 250 shacks is expected to continue today

About 8am yesterday, police fired rubber bullets and teargas to "ward off" squatters armed with planks, pipes and other objects

Last night, ANC Western Cape leader Mr Chris Nissen said the Western Cape cabinet had decided to evict the illegal squatters on recommendations of Grabouw's Transitional Local Council — Crime Reporter, Political Staff

Constitution 'must entrench property rights'

(252)

ADRIAN HADLAND

CAPE TOWN — Property rights needed to be unambiguously entrenched in SA's new constitution, the SA Chamber of Business said in a consolidated submission presented to the Constitutional Assembly yesterday.

Entitled A Business Perspective on a Final Constitution for SA, Sacob said property rights were widely recognised as an essential element of an effectively operating economy.

The primary economic freedoms, including rights of ownership and freedom to engage in business activity, represented the "basic chemistry" required for wealth generation and material upliftment

The document outlined Sacob's position on a wide range of constitutional issues and more specific submissions made earlier to individual theme committees. BD 6/4/95

"We dined a la carte on the constitution and picked out issues which are relevant to the business community," Sacob director-general Raymond Parsons told a media briefing.

Sacob, which represents about 50 000 businesses across the economy, said it fully supported the separation of the powers of the legislature, executive and judiciary.

It reiterated its stance on federalism, saying maximum powers should be devolved to provincial and local government while remaining under the umbrella of national uniformity.

Constitutional provisions for local government were inadequate.

Financial institutions such as the Reserve Bank and the auditor-general's office should be kept independent "within, but not of the system"

Thursday April 6 1995 SOWETAN

Court scraps Act used to extract confessions

(252) Sowetan 6/4/95

By Mzimasi Ngudle

THE Constitutional Court yesterday struck down section 217 of the Criminal Procedure Act — the section that police have used extensively since 1944 to extract confessions of guilt from crime suspects

Delivering the court's first judgment since its first sitting on February 15, Mr Justice Sydney Kentridge, sitting with Judge President Arthur Chaskalson and Judges Pius Langa, Yvonne Mokgoro, Catherine O'Regan and Johann Kriegler, declared the section invalid

Kentridge ordered that such a declaration would invalidate the application of the section in any criminal trial which commenced on or after April 27 1994 and in which a verdict had not been given before yesterday's order

Cause injustice to accused

Conceding that the application of the section might "well have caused injustice to accused persons", Kentridge said the court could "not repair all past injustices by a simple stroke of the pen"

He added "Weighing all relevant considerations, it seems that proper balance can be struck by invalidating the admission of any confession in reliance of the section before this order only in respect of trials begun on or after April 27 1994"

The judge said the section, which places the onus on the accused to rebut a presumption that a confession was freely and voluntarily made, seriously compromised the right to a fair trial that is entrenched in the constitution

Concepts of justice

"The rights interfered with are fundamental to our concepts of justice and have existed in this country for over 150 years until the drastic alteration brought about by the section," Kentridge said, adding that there was nothing in the Act which compelled a magistrate to inquire into the voluntariness of the confession"

Parties at odds on public protector

Dispute over role of new ombudsman

(252)

CLIVE SAWYER
Political Correspondent ARG 7/4/95

CONSTITUTIONAL negotiators are at loggerheads about several aspects of a future office of the public protector — including the official's title.

A minority viewpoint is that the traditional title of ombudsman be used

The public protector will be the watchdog on the government and the public sector, including the administrative functions of the Department of Justice

A theme committee report said some disagreements referred to matters which did not have to be included in the constitution and could be dealt with in ordinary legislation.

The report, tabled at a constitutional assembly management committee meeting, said points of disagreement included the extent to which the constitution should govern the workings of the protector

While there was agreement that the protector should be appointed by a parliamentary process, parties did not agree on exactly how this should work

On the issue of term of office, some felt the protector should be appointed for a seven-year non-renewable term, others that reappointment should be allowed and others that appointment should be until retirement

There was significant disagreement over the relationship between national and provincial public protectors.

The African National Congress said the national protector should be able to operate at all levels of government

While there could be provincial protectors, provincial legislation should not derogate from the powers of the national protector

The Inkatha Freedom Party said national and provincial protectors should have separate spheres of influence and jurisdiction The national constitution should not dictate the role and scope of the provincial protector, the IFP said

The Democratic Party said a way of resolving potential conflict between national and provincial protectors would be to spell out areas of exclusive and concurrent responsibilities

Another issue was whether traditional leaders should be subject to the protector

"While there seemed to be general agreement in the various submissions and public hearings that traditional leaders should be subject to the public protector, the concern was raised by the IFP that traditional leaders may perceive the public protector as a threat to their traditional role as mediators in the community."

Points of agreement included that the protector should be independent, but should be accountable and report annually to parliament.

No secrecy, only the truth

(252)

Sowetan 7/4/95

DRAFT legislation on the truth and reconciliation commission has been set down for debate in parliament on April 25 and 26, Constitutional Development Minister Mr Roelf Meyer said yesterday

He told a meeting of the Constitutional Assembly's management committee that parliamentary whips had decided on the dates.

A bipartisan cabinet committee reached agreement on Thursday on contentious clauses in the Promotion of National Unity and Reconciliation Bill

The committee agreed on the retention of the Norgaard principles, which define political acts for which amnesty may be sought, and said amnesty hearings would be open unless the interests of justice dictated otherwise

It ruled out calls for the cut-off date for amnesty to be extended beyond December 5, 1993

Meanwhile, Democratic Party human rights spokeswoman Ms Dene Smuts said a DP proposal to alter the appointment procedure for commissioners was defeated in the parliamentary committee on Wednesday night

The DP had recommended that commissioners be nominated by a joint committee of both Houses of Parliament and approved by a 75 percent majority at a joint sitting of the National Assembly and Senate

The Bill provides for the commissioners to be appointed by the President in consultation with the cabinet

Smuts said appointment of commissioners by the legislature would have been preferable to appointment by "the same people responsible for the previous indemnity process and for the conflicts of the past" — *Sapa*

First appointments to Rights Commission

(252)

CT 7/4/95

BY BARRY STREEK
POLITICAL STAFF

PARLIAMENT yesterday approved the nominations of the first 11 members of the Human Rights Commission by an overwhelming majority of 329 votes to two, with three abstentions.

The new commission, which will include at least five full-time members, has been empowered in the constitution to "promote the observance of, respect for and protection of fundamental human rights"

As a permanent watchdog it will be able to intervene wherever human rights have been contravened or threatened

The new commission, nominated by an all-party committee after extensive public interviews, contains a wide cross-section of political and legal experts, ranging from a former Conservative Party MP to an Africanist lawyer

They also include two Cape Town academics, the Rev Barney Pityana and Ms Rhoda Kadalie, and two Natal academics, Professor Charles Dlamini and Mr Karthy Govender.

Nominees

One of the nominated members of the commission, Mr Max Coleman, is an ANC MP but he will have to resign from Parliament to serve on the commission

The other nominees are Ms Brigalia Bam, the secretary-general of the SA Council of Churches; Mr Chris de Jager, an advocate and former Conservative Party MP, Ms Shirley Mabusela, a children's rights advocate, Mrs Anne Routier, a former National Party member of the President's Council, Mrs Helen Suzman, the former Democratic Party MP for Houghton, and Ms Pansy Tlakula, a well-known Africanist who is the acting director of the Black Lawyers' Association

Mr Pityana, who lectures in religious studies at UCT, is a former president of the black consciousness-supporting South African Students' Organisation and close associate of the late Steve Biko.

Ms Kadalie is head of the Gender Equity Unit at the University of the Western Cape and a trustee of the Open Society Foundation

Professor Dlamini is the rector of the University of Zululand, while Mr Govender is the acting director of the Institute of Socio-Legal Studies and a lecturer in public law at the University of Natal

In grip of kangaroo court

It's jungle justice, say many – but others praise 'notorious' Imbizo

TEFO MOTHIBELI reports from the Vaal town of Boipatong where there are reports of beatings and 'atrocities' committed by a vigilante court backed by the local civic association.

Star 8/4/95 (252)

BOIPATONG residents claim they are being terrorised by a kangaroo court known as the "notorious Imbizo (hearing)", and say some leading members of the local civic association are behind this "jungle justice".

These startling allegations were made by local businessman and community leader Jonas Motsele He said he narrowly escaped death during an attack by heavily armed people "led by the leadership of the association".

Atrocity allegations by the imbizo were retold to WeekendStar by many residents interviewed at random this week.

Civic association chairman David Mthimkulu said. "The imbizo operations have the full blessing of the community and they have consistently quashed any suggestions of its disbandment

Mthimkulu has denied the direct involvement of civic association members in Imbizo "The Boipatong Community Forum Against Crime (Imbizo) was formed after a public meeting called by the civic association as a measure to combat and prevent crime."

Mthimkulu claimed the Imbizo was co-operating with the police as part of the Boipatong Community Policing Forum.

Asked about the R50 000 donation, he said: "The purpose of that money was for a gardening project and job creation. I am happy to say it has served its purpose."

It is said the activities of the Imbizo resulted in the suicide last week of a resident of Boipatong's Lusaka 2 squatter camp

The deceased (known to the WeekendStar) apparently hanged himself after receiving an invitation to a "people's court trial" on his marital problems He will be buried today.

Some residents expressed disapproval of the Imbizo mediating on family affairs. Puleng Madonsela (46) said: "Clearly this Imbizo is now overriding our value systems. Who are they and what right do they have to involve themselves in other people's affairs? Traditionally only elders from the two families are best qualified to mediate — not just anybody who is power drunk like that brutal Imbizo."

The people are happy"

Motsele, president of the newly formed Boipatong branch of the Vaal Hostel Residents' Association, said. "The problem started when the people started questioning the legitimacy of the civic association following their tenacious grip on power beyond the end of their term of office

"People wanted to have a democratically elected leadership. The people were simply asking questions like 'What exactly happened to the R50 000 donated by local industries for Boipatong development projects?'."

Motsele and some residents strongly believe the civic leadership are using the Imbizo to divert attention from their inability to assist the community and for fear of not being re-elected to positions of power.

WeekendStar also learnt of the community's demand that the civic association account for money raised for community self-defence.

They had also accorded themselves the right to impose a curfew and beat people at night, said a woman who wished only to be identified as Mma-Disebo.

She claimed her niece was severely beaten up by members of the Imbizo while strolling with her boyfriend at night. "She was beaten all over, from her thighs to her head, while her boyfriend was beaten on his private parts with a knobkerrie."

She said her niece had instituted legal proceedings

Sydney Twala (28) showed the WeekendStar scars all over his body and said. "The Imbizo just beat me up before establishing the facts. Somebody alleged that I had shattered his windows — without any proof. I was not tried at all. I only saw a group of people gathering in my yard and was dragged to the ground and kicked about, sjambokked and beaten with a knobkerrie. I hate this Imbizo."

Twala claimed he had laid a charge with the police and nothing had been done

Meanwhile, some residents feel the people's court has resulted in crime decreasing in the area. "It is now much safer than before the resurfacing of Imbizo. Criminals have no breathing space now," Thuli Mabaso said.

Nonki Mndaweni said: "I think they are doing a good job with criminals but I only wish they could co-operate with the police"

Vaal SAPS spokesman Lieutenant-Colonel Piet van Deventer said police were aware of the existence of the "so-called people's courts". He said police did not have a problem with community structures helping to combat crime but warned it was wrong to take the law into their own hands.

Van Deventer disputed claims the police were not doing anything about charges laid against the Imbizo. Most people did not report their cases to police, he said.

SCARRED: "Court" victim Sydney Twala *PHOTOGRAPH TJ LEMON*

COMPROMISE: The ANC's Dullah Omar (left) and the NP's Roelf Meyer helped forge an agreement on contentious issues

Caucus adjourns after MPs clash with ministers

Deep rift in NP over truth Bill

Star 8/4/95 (252)

NATIONAL Party MPs this week rebelled against deals on the truth commission struck by their ministers, reports Weekend Star Political Correspondent ESTHER WAUGH.

CAPE TOWN — Sharp cracks appeared in National Party parliamentary ranks this week over the proposed truth commission, leading to an extraordinary adjournment of the party's caucus meeting.

The meeting, described by sources as unusually heated, adjourned at 12.30pm on Thursday, but resumed later in the day after Parliament completed its session.

The caucus row followed Wednesday's cabinet meeting, in which the ANC and NP reached a compromise agreement on the controversial issue of the truth commission. This followed several meetings of a cabinet committee comprising Justice Minister Dullah Omar, Water Affairs and Forestry Minister Kader Asmal, Constitutional Development Minister Roelf Meyer and General Services Minister Chris Fismer.

Fismer reportedly briefed the NP caucus on the Cabinet's deliberations. Sources told the Weekend Star some members felt the NP representatives on the parliamentary justice committee, which has been discussing the truth commission Bill since the start of the session, had argued for a better deal than had been secured in the Cabinet.

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WW 8/4/95 (252)

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In an apparent attempt to heal the rift, the caucus resolved that the NP members on the justice committee could make proposals to the caucus after the recess, which began yesterday.

The Cabinet compromise involved an agreement on the cut-off date, the inclusion of international principles on amnesty, and the confidentiality of amnesty hearings.

The caucus meeting was chaired by Environment Affairs and Tourism Minister Dr Dawie de Villiers, in the absence of Deputy President F W de Klerk. The truth commission Bill was discussed from 11am until 12.30pm.

The NP dissenters believed that the proposed test for indemnity was stricter than in previous legislation drafted under the former government, and which was applied to ANC members.

The dispute set NP MPs up against the party's ministers.

The MPs felt it was unacceptable that the ANC had been "favoured" by the old legislation and this would be compounded in the proposed new legislation.

Another contentious aspect of the Bill was the

TO PAGE 2.

♦ Truth Bill splits NP

(252)

scrapping of the clause requiring that the chairman and members of the truth commission be appointed by the president in consultation with the Cabinet

In terms of the draft legislation, only the members of the truth commission are to be appointed in this way

When the caucus meeting had to be closed because of time pressures, De Villiers reportedly said he assumed there was consensus over the draft legislation. This was not forthcoming, however, and the second meeting had to be convened.

The evening meeting was apparently attended by about 50 MPs, as many had already booked early flights out of Cape Town

NP MP and spokesman on justice Danie Schutte yesterday told a media conference that his party was "grateful for the breakthrough in Cabinet".

Asked whether there had been conflict between the NP ministers and the party's MPs on the justice committee, Schutte replied. "Not as far as I know."

On the NP's insistence that the cut-off date for amnesty be moved from December 5 1993 to May 10 1994, Schutte said the December date — set in the Cabinet — had not been fully agreed to.

Real reconciliation could not take place without the involvement of all parties, he said.

Schutte said the truth commission Bill was scheduled to be debated in Parliament on April 25 and 26, allowing time for "dynamic processes in this regard" The cut-off date could not be moved without amending the interim constitution.

Star 8/4/95

Schutte said his party had agreed to the December date in the Cabinet as part of the compromise He added that the NP was still in favour of changing the date "But we can't move it on our own, it is part of negotiations."

Schutte reiterated the NP's commitment to the truth commission as a real instrument of reconciliation.

After the Cabinet agreed that the amnesty hearings would be public, with provision for in-camera hearings, Schutte said it had been dealt with in a "fair way". The NP had wanted these hearings to be closed.

Differences within NP ranks over the amnesty process emerged earlier this year when the ANC refused to recognise 3 500 indemnity applications made shortly before last April's election.

Reuter reports that the parliamentary justice committee last night finalised the Truth and Reconciliation Bill but left the issue of a cut-off date for amnesties to the Constitutional Assembly.

NP is split over proposals for the Truth Bill

ARG 8/4/95 (252)

Political Correspondent

CAPE TOWN — A heated National Party parliamentary caucus meeting has thrown in sharp relief serious differences within party ranks over the proposed truth commission.

In an extraordinary move, the NP caucus adjourned its meeting at 12 30 pm on Thursday, but resumed the meeting later that day after the parliamentary session

In an apparent attempt to paper over the cracks, the caucus resolved that the NP members on the parliamentary justice committee could make proposals to the caucus on the Truth Commission Bill after the recess, which began yesterday

The row in the caucus followed Wednesday's Cabinet meeting where the ANC and NP reached a compromise agreement after several meetings of a Cabinet committee comprising Justice Minister Dullah Omar, Water Affairs and Forestry Minister Kader Asmal, Constitutional Development Minister Roelf Meyer and General Services Minister Chris Fismer

The IFP reserved its position on the bill in Cabinet

The compromise involved an agreement over the cut-off date, the inclusion of the Norgaard principles and the confidentiality of amnesty hearings

It is understood that Mr Fismer gave the caucus a report on the Cabinet deliberations

The meeting, chaired by Environmental Affairs and Tourism Minister Dr Dawie de Villiers in the absence of Deputy President F W de Klerk, discussed the Truth Commission Bill from 11 am until 12.30 pm.

Sources told the Weekend Argus that some members felt the NP members on the parliamentary justice committee had negotiated a better deal than had been the case in Cabinet

It was further believed that the test for indemnity was higher than in the previous legislation It was unacceptable that the ANC had been 'favoured' by the old legislation and that this was still the case in the proposed draft legislation

A aspect of the bill which was unacceptable for some NP members was that its insistance that the chairman as well as the members of the Truth Commission be appointed by the President in consultation with the Cabinet, had been overruled In terms of the draft legislation, only the members of the truth commission are to be appointed in consultation with Cabinet.

When the meeting had to be closed at 12 30 pm due to pressure of time, Dr De Villiers apparently said he assumed there was consensus over the draft legislation.

But, in the face of no consensus, a second meeting had to be convened.

NP MP and spokesman on justice Danie Schutte told a press conference yesterday his party was "grateful for the breakthroughs in Cabinet"

On the NP's insistence that the cut-off date for amnesty be moved from December 5, 1993 until May 10 last year, Mr Schutte said the December date — which was what the Cabinet agreed upon — was not inclusive. Real reconciliation could not take place without the involvement of all parties, he said.

But Mr Schutte noted that the Truth Commission Bill was scheduled to be debated in parliament on April 25 and 26, which would allow time for "dynamic processes in this regard"

The cut-off date could not be moved without amending the Interim Constitution, he added

"But, we can't move it on our own, it is part of negotiations," he said

Mr Schutte reiterated the NP's commitment to the Truth Commission as a real instrument of reconciliation

NP dismay at amnesty cut-off date in truth bill

THE Parliamentary Justice Commission yesterday finalised the Truth and Reconciliation Bill, but left the contentious issue of a cut-off date for amnesties to the Constitutional Assembly. (252)

Earlier yesterday, National Party (NP) justice spokesman Danie Schutte outlined his party's unhappiness with the December 5 1993 amnesty cut-off date.

Several NP Members of Parliament said they believed their cabinet members could have fought harder for the cut-off point to be pushed forward to May 10 1994

The committee left the issue open by not giving a specific cut-off date in the final draft of the bill. Instead, it said the cut-off date would be set down in the constitution

Yesterday, the main bones of contention were criteria for deciding who should be granted amnesty and the confidentiality of evidence gathered by the commission

The last few committee meetings have been boycotted by the Inkatha Freedom Party, which has rejected the bill. The Freedom Front (FF) has also not attended. Several sources said yesterday the FF had decided to vote against the bill.

Committee chairman Johnny de Lange said at the end of the last meeting that completing the bill had been "a tremendous achievement on everybody's behalf .. it has been tense at times, but never devisive or destructive". ARG 8/4/95

"We have tried to accommodate all views without making it not workable," said Mr De Lange — Reuter

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Tortie/white, Woodstock
Ginger/white Goodwood
Tabby/white, young adult Green Point
Black young adult Green Point
Black, little white, Panorama
Black Kraalfontein
Tortie/white Athlone

Nat rebels triumph on indemnity

(252) ST 9/4/95

NATIONAL PARTY backbenchers, who rebelled in the party caucus against an agreement concluded by their ministers, have succeeded in forcing a change in the criteria for receiving indemnity.

By RAY HARTLEY and EDYTH BULBRING

NP members raised their concerns about compromises reached by a cabinet committee this week in a stormy caucus meeting which reflected the tensions between NP backbenchers and ministers

The compromises reached by a committee comprising Justice Minister Dullah Omar, Water Affairs Minister Kader Asmal, General Services Minister Chris Fismer and Constitutional Affairs Minister Roelf Meyer were ratified by cabinet on Wednesday

Among the key agreements which will establish a Truth Commission was consensus that

- The "Norgaard principles" — international standards defining what constitutes a political act — would apply when the commission makes a decision on indemnity But commissioners could use their discretion to consider past indemnity legislation in certain cases where an applicant admitted to an offence similar to that committed by people granted indemnity under the previous laws,
- Indemnity hearings would be open unless application was made for in-camera status and this was agreed to by a closed hearing of the commission,
- The cut-off date for political crimes would remain December 5, 1993

Following the caucus row, the Justice Committee met on Friday and changed the wording of the agreement relating to the Norgaard clause to say

"In applying the criteria contemplated in subsection 2 (the Norgaard principles) the Committee shall take into account the criteria in the Acts repealed (Indemnity Acts) "

The wording of the cabinet compromise had said that the "committee shall have the right to take into account the criteria applied under the Indemnity Act 1990 and the Further Indemnity Act of 1992"

NP justice spokesman Danie Schutte said yesterday that this change meant that applicants would be subject to the same criteria applied to people who obtained indemnity in terms of the existing indemnity procedure.

"We welcome this because it will ensure there are no double standards for the granting of indemnity or amnesty," he said

He believed the changes were in line with the cabinet decision but that it was "definitely not cleared with my people I don't know if the ANC cleared it with theirs"

However, ANC Justice Committee member Willie Hofmeyr said yesterday "Our understanding is that the Norgaard principles should be applied broadly They must take into account the two previous indemnity laws, but there's nothing that forces them to apply them."

Mr Schutte said that the concerns raised by NP caucus members had been premature as the Justice Committee had still to translate the cabinet compromises into legal language after the caucus had met

Mr Schutte said it was further decided at the Justice Committee that applications for amnesty could in certain circumstances be decided on the papers alone without hearings

NP management committee chairman Dawie de Villiers said in a statement yesterday that the impression created in various newspapers that there was a division in the NP caucus about the legislation concerning the Truth Commission was "incorrect".

Rebellion on amnesty date

(252)

ANTHONY JOHNSON

CT 10/4/95

Secrecy agreement on truth body probes

(252) ARG 11/4/95

☐ *MPs approve confidentiality clauses for draft legislation*

CLIVE SAWYER
Political Correspondent

STRICT measures will protect the confidentiality of investigations by teams working for the Truth and Reconciliation Commission

Clauses to this effect were agreed to last week at a meeting of the national assembly committee on justice

Oaths of secrecy will be administered to commissioners and staff on taking office

It will be against the law for anyone not authorised to have confidential information to "seek to have access" to it, a clause which could prevent journalists trying prematurely to uncover details of allegations made to the committee

While a cabinet deal has precluded a blanket ruling that the commission's amnesty committee will meet behind closed doors, applications may be made for hearings to be in-camera

Willie Hofmeyr, leader of the African National Congress caucus in the justice committee, said the measures were meant to accommodate "legitimate concerns" about untested allegations being aired in public.

Making the commission's investigations confidential would give them the same status as a police investigation

"It goes without saying that if someone like (former police captain) Dirk Coetzee comes to the commission and starts naming 30 to 40 people there will be an investigation of what he has said to see what can be verified"

Each of the commission's committees will report to it, and the commission will hand a report to the president

This report will contain names and deeds of those given amnesty

The president will have three months to table the report in parliament, and will be required to disseminate its contents throughout the country

Mr Hofmeyr said it was doubtful the measures would be used against journalists who made simple inquiries about investigations

"It is likely it will be narrowly interpreted, to cover things like breaking into buildings to try to get access to information"

The committee rejected a proposed clause which would have required witnesses to take oaths of secrecy

The rejected clause would also have required an oath of secrecy from other interested parties allowed to be present at a hearing

Mr Hofmeyr said the confidential status of information gathered during an investigation could be lifted at the start of a hearing, on the ruling of the commission

A final draft of the bill is being prepared by officials

FW gets Nats behind Truth Bill

■ BY JO-ANNE COLLINGE

Deputy President F W de Klerk moved speedily yesterday to contain the damage of press reports that the National Party has been bitterly divided by the Truth and Reconciliation Commission Bill.

Although Parliament is in recess, De Klerk called an urgent meeting of members of the NP caucus, the party's cabinet members and its representatives on the justice portfolio committee

After the meeting, he declared. "The NP is united in going forward with the Bill"

In fact, he said, unity had already been achieved by the end of last week's turbulent caucus meeting which gave rise to reports of a split.

De Klerk said that nobody in the NP was entirely satisfied with the Bill. "But there is acceptance by those who feel more unhappy that we will go forward with it as it is."

The deputy president did stress, however, that the thorny issue of the cut-off date for amnesty would not be dealt with in the Bill. The cut-off date could be extended only from December 5 1993 to May 10 1994 by an amendment to the interim constitution, he pointed out.

It was the ANC and not the NP which stood in the way of such a constitutional change, De Klerk stated more than once.

"The NP was and remains of the opinion that, should the moving of the date to May 10 1994 result in more parties supporting the (truth commission) legislation . . thereby leading to true national reconciliation, then the moving of the date is the smallest sacrifice that can be made and the NP will then support such a move"

He said the NP had not taken this stance in its own interests as "our support base has not been involved in political violence"

(252) Star 12/4/95

Truth commission has full NP support

BD 12/4/95

STEPHANE BOTHMA (252)

PRETORIA — The NP's parliamentary caucus was unanimous in its support for the establishment of a truth commission although the support was not unqualified, NP leader FW de Klerk said yesterday.

The deputy president denied that the NP was divided on the issue of such a commission.

"Even those in the NP more opposed to certain aspects of the Bill have now accepted the compromises which had to be made."

The NP, however, demanded that the commission be based on fairness and equal treatment for all, regardless of a person's political beliefs and that it engaged as wide support as possible on a voluntary basis.

He said the lively debate on the envisaged legislation had led to considerable progress being made to improve the Truth Commission Act, including that it was now compulsory that the criteria of the earlier Indemnity Acts would apply in the application for amnesty and that applicants would now, under certain conditions, be granted amnesty through written application only, without a hearing.

He said the changing of the cut-off date from December 5 1993 to May 10 1994 had never been a problem for the NP The moving of the date was a constitutional matter

reached between the township's crisis committee and the council that electricity be reconnected temporarily. Soldiers kept protesting residents, right, from entering the council offices during the meeting. It was agreed residents would have to repay arrears, accumulated since January, if they did not want their power disconnected again.

Picture: NICKY DU BLOIS

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He said the changing of the cut-off date from December 5 1993 to May 10 1994 had never been a problem for the NP. The moving of the date was a constitutional matter.

Inkatha raps members after 'irregularities'

BD 12/4/95

FAROUK CHOTHIA

DURBAN — An Inkatha Freedom Party disciplinary committee had recommended that seven of its leaders — including Gauteng strongman Themba Khoza and parliamentary chief whip Koos van der Merwe — be "publicly censured" for alleged financial irregularities in Gauteng during last April's election.

The other five are: Humphrey Ndlovu, Hennie Bekker, Peter Magwaza, Anthony Lamula and Angelina Dhlomo.

The report, dated April 7 1995 and leaked to Business Day yesterday, also instructed the seven to repay Inkatha R41 880,50 as no proper accounting records could be found for an account with First National Bank's Rissik Street South branch in Johanesburg.

The report recommended that if the seven refused to repay the money, their suspension be announced publicly at Inkatha's annual conference in July.

The report also proposed that Inkatha treasurer-general Arthur Konigkramer be censured as he was ultimately responsible for the management of funds.

Inkatha secretary-general Ziba Jiyane refused to comment as the "sensitive" matter was being dealt with "internally".

The disciplinary committee made its recommendations after receiving a report from a commission appointed to investigate the disappearance of election funds in the Gauteng region.

The commission report said withdrawals left the Rissik Street South account with an overdrawn amount of R35 537,63, resulting in FNB taking legal action against Inkatha and obtaining judgment.

Inkatha was also listed with the Credit Bureau and needed to settle interest accrued on the debt.

Among the alleged irregularities were the fact that Van der Merwe lent R5 000 in election funds to Khoza, while Khoza instructed that R13 480,50 be used to purchase food.

The amount is seen to be excessive.

The commission also investigated the whereabouts of R250 000 deposited at United Bank in Johannesburg in May last year, saying the possibility of large-scale fraud and theft could not be ruled out.

"The commission recommends that the matter be handed to the commercial branch of the SA Police Service for investigation," the report said.

However, the disciplinary committee recommended that another committee be appointed to investigate this issue.

berton, Helderstroom and Maritzburg prisons, Budhu said.

Dullah Omar misquoted in report, admits SABC

ARG 20/4/95 (252)

Staff Reporter

SABC radio news has admitted misquoting Justice Minister Dullah Omar and has said one of their reporters made the wrong assumption

Johannesburg SABC radio news editor Johan Kriek said the report incorrectly quoted Mr Omar as saying the African National Congress opposed the death penalty because of the racial bias of white judges

Mr Omar was reported to have made the remark at a meeting in Lenasia on Wednesday last week

Mr Omar categorically denied making the remark, saying the SABC report was "grossly inaccurate"

It became clear when the reporter returned from holiday in the Transkei this week that he had made the wrong assumption, said Mr Kriek

Mr Kriek said "We made a mistake and we stand by the correction."

The correction, which was broadcast before the reporter's return, said Mr Omar had told the meeting that one of the submissions before the constitutional court said there had been racial bias in the application of the death penalty because of years of apartheid

Mr Kriek said the reporter had been warned to be more careful.

Justice Ministry spokeswoman Sue de Villiers said "We're taking up the issue formally and directly with the SABC"

A return to fair trial

Sowetan 20/4/95

Justice returns to South Africa as a Constitutional Court ruling ends 17 years of unjust convictions made on the basis of confessions exacted under threat of torture, reports **Mzimasi Ngudle**: (252)

WHILE BONGANI ZUMA and Mgcabeli Jili were the first to evade 17 years of legislative intrusion into the process of fair trial, many others may have to put up with unlawful convictions and jail terms

The Constitutional Court has declared an unjust piece of legislation providing evidentiary material for their prosecution invalid

Zuma and Jili had confessed to killing a farmer and his servant They alleged police assaulted them to force the confession

While duress was not the issue when they challenged section 217 (1) (b) (ii) of the Criminal Procedure Act, the Constitutional Court must have had the inherent probability of duress in mind when it struck down the section

The gravamen of their lawyer's objection was the section's unconstitutionality, as it impeded rights to a fair trial, a right entrenched in the Constitution

Unjust copnvictions

Hidden behind the objection was a myriad of unjust convictions that policemen secured by torturing crime suspects to confess, and thereafter making them admit to magistrates that they made the confessions freely and voluntarily All this took place under the threat of torture and assault

One needs no statistics to know that those who fell foul of this practice were mainly unrepresented black accused, if not exclusively so

This was facilitated by a statute that crept into the law in 1977, creating a presumption which eased the task of the State in prosecution

Before that, going back to pre-Union legislation, the golden rule that the State should prove the guilt of the accused beyond reasonable doubt held fast and steady

This golden rule derived from 300 years of English legal history It was introduced in the country in the Evidence Ordinance of the Cape Colony in 1830

According to this rule

"A confession forced from the mind by the flattery of hope or by the torture of fear comes in so questionable a shape, when it is to be considered as evidence of guilt, that no credit ought to be given to it "

The rule held sway until recommendations of the Botha Commission were incorporated into the Criminal Procedure Act, which previously had a universally acceptable clause on admission of confessions

Unduly long trials

The reasons for the change was that, the Botha Commission said, some accused attempted dishonestly to retract confessions that they have made before a magistrate This led to unduly long trials

The justification for the amendment was that it would make it more difficult for the dishonest accused to make false allegations of duress and that this would shorten trials

Acting Constitutional Court Judge Mr Sydney Kentridge.

Delivering his judgment, Acting Judge of the Constitutional Court Mr Justice Sydney Kentridge said the commission overlooked the interests of an accused who has been subjected to duress This is exactly where the section went wrong

Vcluntary confirmation

Justice Kentridge noted that an apparently voluntary confirmation of a confession before a magistrate may, in the words of the commission, "be misleading, where the confession was forced beforehand by improper interrogation or inducement by the police "

Kentridge said there was nothing in the Act that "obliges a magistrate to conduct any particular preliminary enquiry into voluntariness"

Kentridge said the inconveniences countenanced by prosecution in gathering evidence could not outweigh substantial infringement of rights to fair trial, as entrenched in the constitution

Accordingly, the court restored the *status quo* before the introduction of section 217 (1) (b) (ii), weaving back into the pre-1977 legislation the thread placing the onus on the State to prove the guilt of the accused beyond reasonable doubt

But sadly, the thread stretches back only to April 27 1994, leaving out 17 years of the section's application

Without foreclosing the fate of those who bore the brunt of this section during this period, Mr Justice Kentridge said

"But if we were to give our declaration full retrospective effect so as to invalidate such earlier rulings on admissibility the likely result would be numerous appeals with the possibility of proceedings *de novo*

"In proceedings *de novo*, the necessary evidence of voluntariness may no longer be available "

The judge cited section 98(6) as constraining the court in extending the date further backwards

The section provides that any court's declaration of the invalidity of a law existing at the commencement of the Constitution, shall not invalidate anything done or permitted in terms of such law before the coming into effect of such declaration or invalidity

Invalidate the application

Exercising the court's discretionary powers in the interests of good government according to the section, Mr Justice Sydney Kentridge said, the judgment would invalidate the application of the section back to April That is in cases where the verdict had not been given at the time of the court's judgment

Kentridge went on

"The application of the section may well have caused injustice to accused persons, but we cannot repair all past injustice by a simple stroke of the pen "

At least the door should not be closed to those who still have a gripe about their convictions secured through evidence marshalled under the section

The Constitution can be amended to alleviate harsh injustices meted out under this section

In any event, how does one justify the redemption of political atrocities back to March 1 1960, as with cases that may be brought before the Truth Commission, while denying the same to iniquitous acts of legislation during the same period?

Maybe it's high time that the legislature intervened to remove the absurdity once and for all

Supreme Court candidates

BD 20/4/95

SUSAN RUSSELL

HUMAN rights attorney Kathy Satchwell and tax specialist attorney Basil Wunsh are among the nine legal practitioners who will be interviewed by the Judicial Services Commission next month as candidates for appointment to the Supreme Court bench

This is the first time the commission will interview candidates in public since it did an about-face last month on a decision to conduct proceedings behind closed doors.

The commission, chaired by Chief Justice Michael Corbett, initially bowed to pressure to hold proceedings in the open when it interviewed short-listed Constitutional Court candidates publicly last year. However, the public was subsequently barred from interviews with Supreme and Appeal Court candidates

The commission changed its mind last month after Industrial Court vice-president Mohamed Bulbulia, after an unsuccesful bid for a Supreme Court post, accused the commission of racism.

Candidates short-listed for the four vacancies in the Transvaal and Cape Provincial Supreme Court divisions will be interviewed at a Midrand hotel on May 29 and 30 There are two attorneys among the candidates The rest are advocates, four of them senior counsel.

It is only recently that attorneys have been permitted to serve on the Supreme Court bench, which had been restricted to senior members of the Bar.

Wunsh, a Johannesburg attorney, has an honorary professorship in mercantile law

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☐ To Page 2

Supreme Court

(252)

☐ From Page 1

from Stellenbosch University and, according to Butterworths 1992 SA Legal Who's Who, is a director of several companies, including Consol, Standard Bank and Transnet. Satchwell, also a Johannesburg attorney, is one of several legal practitioners on the short list known for their human rights work.

BD 20/4/95

Mahomed Navsa is a senior member of the Legal Resources Centre's constitutional litigation unit. Pretoria advocate Bernard Ngoepe, who was interviewed for the Constitutional Court, has experience in human rights work and political trials as an attorney and as an advocate, and helped draft the interim constitution.

Senior advocates Johannes Wynand Louw, who took silk in 1989, and Barend Christiaan van den Heever, both from the Pretoria Bar, will be interviewed, as will Cape Town advocate Siraj Desai, who has human rights experience.

Others on the short list are Johannesburg advocate Lucy Mailula and Johannesburg Bar member Desmond Duke.

CONSTITUTIONAL COURT

Finding a niche

(252) FM 21/4/95

Among the multitude of problems besetting the transition to democracy is disrespect for authority While it's most apparent in fractiousness over federalism, a comparable headache lies in the all-embracing sphere of law and order A frequent contempt for legal institutions contributes to high crime, rents and services boycotts and a seedy moral climate in which corruption can flourish

The Constitutional Court has yet to establish its power as the ultimate arbiter on personal freedom and its legal limitation But there is little doubt that the Court has become the focus of high hopes that the rule of law can be re-established This would be the best guarantee of a stable shift to a human rights culture, with concomitant assurances of personal security

The difficulty facing the Court is how to fit in with the existing judicial system, with various divisions of the Supreme Court and the hitherto all-powerful Appellate Division A committee of the Constitutional Assembly (CA) has considered the matter and outlined certain options

The Constitutional Court cannot be isolated from the legal procedures of other courts — even though its establishment by the interim constitution appears to mandate precisely that Its brief is to determine the constitutionality of existing laws in relation to the fundamental rights negotiated at Kempton Park, to examine new legislation in the light of its guiding principles, and to inquire into executive actions that might contravene those principles

The Court is on firm ground in determining the constitutionality of the death penalty, imprisonment for debt, the legality of gay marriages and so on These judgments will form a broad framework for the other courts, including the Supreme Court

In reality, as the CA committee found, there is one huge grey area relating to cases in other courts where the defence claims a constitutional right as justification for an act, and a "factual dispute" arises This could occur at any point in a hearing — even in a magistrate's court — yet "the procedure by which a constitutional matter can be raised and taken to the Constitutional Court appears to nearly all concerned to be uncertain, cumbersome and defective"

If a constitutional issue has to be decided in a normal trial, it seems that it would have to be done by referral to the Constitutional Court (overburdened as it is likely to become) The issue would not simply be a "trial within a trial" but a major disruption of the civil and criminal rolls, effectively putting the case on ice while the bigger issue is decided

The time wasted would impede justice and only once the Constitutional Court had given judgment could the trial resume, assuming it still had a place in the rolls

Of the options assembled by the CA committee, what is termed the Chaskalson Proposal (Arthur Chaskalson is president of the Constitutional Court) offers some of the most practical suggestions Excluding the validity of legislation — on which the Constitutional Court would retain sole right to judge — the essential proposed reform is that all courts could deal with constitutional issues The system of appeals would remain — from magistrate's to Supreme Court to Appellate Division — and the Constitutional Court would remain final arbiter

The logic is that constitutional matters cannot be artificially segregated from the overall application of the law, but formal processes of review should ensure that the development of a growing body of constitutional jurisprudence is not compromised by local miscarriages of justice

The Association of Law Societies takes the process of spreading constitutional jurisprudence throughout the system further by suggesting that the Constitutional Court should "preferably be a chamber of the Appellate Division" The ANC, for its part, believes that "the Supreme Court can be given jurisdiction to hear cases dealing with the constitutionality of parliamentary legislation, easing the burden on the Constitutional Court

"The Appellate Division could become a second tier for constitutional review, with the possibility of appeal to the Constitutional Court"

The CA committee found consensus that the Constitutional Court should continue to sit as a separate entity for its present term (seven years) Clearly, before this expires, constitutional issues will materialise in courtrooms across the land and a way will have to be found to deal with them

Since the constitution is the ultimate law of the land, it permeates all legal proceedings, if only tangentially Yet court time is notoriously limited and the rolls are packed Logic would seem to dictate that the specific role of the Constitutional Court may in the end be limited to considering the validity of legislation and constitutional appeals from other courts Partial fusion with the Appellate Division appears equally logical Otherwise it will get snarled up with the referred minutiae of an already-groaning legal system ■

LAND AFFAIRS

Speculators beware

FM 21/4/95

Though government favours demand-driven land reform, property owners who inflate the value of land to "unrealistic" levels in the hope of making a "quick buck" out of the recently launched land reform programme, face tough action, says Land Affairs Minister Derek Hanekom

The reform programme is a cornerstone of government policy and an important cog in the RDP machine It provides mechanisms to restore the rights of people who were forcibly removed and denied land by previous governments

Restitution of rights will be considered within a claims procedure set out in the Restitution of Land Rights Act, which was arguably the most significant legislation approved by parliament last year

Essentially, the programme will redistribute land to those who need it to improve their quality of life New owners will be supported by government as they become established

However, says Hanekom, government recognises the rights of both current and future land owners There is no intention to disrupt the forces of supply and demand in an open market or to confiscate land The programme will be "needs driven" and based on the assumption that where private land becomes available and there is a willing buyer and a willing seller, the buyer will be assisted

But "unscrupulous practices" such as artificially inflating land values will not be tolerated "If reasonable measures are frustrated and do not succeed, government will

Irate justice staff pack their bags

ST 23/4/95 (252)

By SUE BLAINE

MORE than 50 top state advocates, registrars and masters of the Supreme Court and top managerial staff members in the Justice Department have applied for early retirement this year

The staff were called in, one by one, and asked to reconsider their applications, but refused to do so, said a top legal source who declined to be named.

The source said he had heard "around 55" top state legal staff had become disgruntled after a "management team" was inserted between the Justice Department's director-general, Advocate Jasper Noeth, SC, and his deputies, Advocates André Bosch, Dave Swanepoel and Johan Geyser, to oversee the department.

He said the stipulation that "everything" the staff did had to be authorised by the management team, which comprises staff from the former homelands' justice departments, had apparently caused a sense of demoralisation among the staff.

Justice Ministry spokesman Sue de Villiers confirmed the existence of a management team placed "directly below" Mr Noeth, but said Justice Minister Dullah Omar had said there was no connection between the new management team and the early retirements. "They applied for early retirement long before the team was appointed in early March," she said.

She confirmed that the team's members were justice department officials from the former homelands.

The source said it seemed that the predominantly white staff were objecting to having to submit the work they had always done to blacks The criminal justice system is further beleaguered by the exodus of state advocates leaving for better salaries in the private sector, especially in the Witwatersrand Division, and the recent "go-slow" threat from magistrates

The go-slow was averted at a meeting on April 7, where magistrates agreed to continue working at their usual pace because it was clear that Mr Omar was concerned about their poor salaries, said Marius du Preez, the Magistrates' Commission secretary.

Witwatersrand Attorney-General Klaus von Lieres und Wilkau, who has had to contend with a 20 percent vacancy in his office for more than a year, said the state's efficiency in catching and prosecuting criminals was weakened by the poor salaries staff were paid.

Trial ODS: All the victims were detected on a shoe found in Mr The trial continues

Staff Reporter

Top judges earn R26 167 a month

CT 26/4/95 (252)

THE salaries paid to Chief Justice Mr Justice Michael Corbett and the president of the Constitutional Court, Mr Arthur Chaskalson, amount to R314 000 a year, or R26 167 a month, the Minister of Justice, Mr Dullah Omar, revealed yesterday

Appeal and Constitutional Court judges are paid R294 000 a year, he said in reply to a question by Mr Douglas Gibson (DP).

Judge Presidents are paid R292 200 a year, Deputy Judge Presidents R287 500 and judges R285 000 All judges also receive a R3 500 yearly allowance, medical aid and a car allowance

The highest average salary paid to magistrates, including benefits, is R200 076 a year, Mr Omar said — Political Staff

'3 TV channels needed'

CT 26/4/95

JOHANNESBURG: The South African Broadcasting Corporation "desperately" needs three television channels to meet its obligations as a public broadcaster, the Independent Broadcasting Authority was told here yesterday.

On the second day of its third submission to the IBA triple inquiry, Mr Ken Modise, SABC communications chief, said a two-channel public television service in South Africa "would tend to force the SABC back into the racially divided black and white television model of the past"

"If the SABC were restricted to two channels, programme schedules for each channel would not reflect the varied character of South African audiences"

The SABC proposal to the IBA suggested three national networks, all offering a full complement of information, education and entertainment

In another part of its submission, the SABC proposed that 25% of all television programmes, excluding news productions, be independently produced

It said this would give audiences access to diverse South African talent and creativity and suggested that the system be phased in over three years. — Sapa

Four Cape radio licences

JOHANNESBURG [illegible] independent broadcasting authority has granted 111 more community radio licences, bringing the total number [illegible] Mr Peter [illegible] Muldbaye in IBA [illegible] announced yesterday

Four of the [illegible] were granted in the Western Cape, three in the Eastern Cape, [illegible] and four in Gauteng

A student and two Christian community radio stations are among the new licences to be awarded in the Western Cape, the IBA said in a statement

They include Helderberg Community Radio in Somerset West, Radio Matie and Radio Namaqualand — Sapa

Death penalty 'does not prevent crime'

(252)

CT 27/4/95

STAFF REPORTER

MANY studies had shown there was no clear relationship between the number of executions and the level of crime, Professor Denis Davis said last night

He was speaking during a debate on capital punishment with Rabbi David Hoffman attended by about 200 people.

The death penalty was not a deterrent and merely served to brutalise society, and there could be no rational justification for its retention, he said.

Rabbi Hoffman, reading a letter from the parents of Mr Robert Perlmutter, who was murdered in the Knysna forest, said he advocated the death penalty for proven premeditated murder It was not fair that someone should kill and then be allowed to enjoy life

Capital punishment was also the compassionate thing to do if you cared about the family of the victim and was the only way society could mete out punishment

The only argument against the death penalty was if an innocent person was executed, he said.

The ANC and the Constitutional Court still retained a moratorium on the death penalty because they knew the vast majority of people supported it That was anti-democratic and sent the wrong message to gang bosses, he added

Asked during question time what punishment should be meted out to the Oklahoma bombers, Prof Davis said they should be jailed for life because they were not deterred by death and believed they were saving the world

Mandela amnesty: 15 000 to go free

ARG 28/4/96 (252)

Political Staff

JOHANNESBURG — Prison authorities will today begin releasing an estimated 15 000 prisoners from jampacked jails.

In terms of the special Freedom Day amnesty announced by President Mandela yesterday, only sentenced child abusers will not benefit from the six-month "special remission" of sentence

It is expected the move will reduce the prison population from an all-time high of about 117 000 prisoners to just above 100 000

President Mandela made his announcement in a nationally televised address in front of about 25 000 people at Gauteng's Freedom Day celebrations at the Union Buildings in Pretoria

A Correctional Services department spokesman, Major Koos Gerber, said the goodwill measure would go a long way to relieving chronically congested prisons, especially in major urban areas

Prisoners sentenced to terms of less than two years' would have a quarter of their sentences remitted.

President Mandela also announced an unspecified remission for people charged with illegal possession of arms and explosives before December 6 1993.

A government source said the measure was aimed mostly at rightwing "political offenders"

Major Gerber said all prisoners would be affected by the remission, but those with six or less months to serve would be freed immediately

"About 15 000 will be released as from today The releases will be carried on until the process has been finalised," said Major Gerber

In an indication of how serious prison overcrowding had become, Correctional Services Minister Sipho Mzimela told parliament recently he was considering invoking the "bursting clause" in the Correctional Services Act that allowed him to discharge prisoners if overcrowding produced inhumane conditions

Major Gerber said Pollsmoor prison was "201 percent full"

Pictures DOUG PITHEY, The Argus

GET AHEAD: Freedom Day went to the head of Daluxolo Hoho who came to celebrate with a unique head dress.

Mandela cuts prisoners' sentences in act of Freedom Day goodwill

(252) BD 28/4/95

GAVIN STAFFORD

ESIDENT Nelson Mandela yesterday ıounced a reduction in sentences for tain categories of prisoners as an act of ɔdwill on the first anniversary of SA's ɪt democratic elections.

Speaking at Freedom Day celebrations Pretoria yesterday, Mandela announced eduction of one-quarter of all prisoners' ıtences, with a maximum of six mont s, 1 was greeted with applause when he d this would not include prisoners s ced for child abuse.

He also announced a remission of se.. ces for prisoners convicted before December 6 1993 solely for possession of arms, ammunition and explosives associated with political conflict.

Correctional Services spokesman Maj Koos Gerber said the remission would apply to all offenders sentenced on or before April 27 this year, and would be granted to prisoners on the remainder of their sentences after previous remissions and amnesties had been deducted.

Gerber said his department still had to determine which prisoners qualified for remissions related to weapons possession.

Mandela told the large crowd at the Union Buildings a message was being sent to prisoners that they should "mend their ways and make a fresh start".

SA had come through a long and painful process, and the ultimate goal of a better life for all had not yet been realised. There is no "short cut" and hard work was required from all sectors of society.

Democracy and freedom would be meaningless if crime and violence were not dealt with firmly, said Mandela. More resources would be allocated for training of police officers, improving facilities previously ignored under apartheid and setting up police community forums.

Mandela said this would be funded by shifting priorities within the police ministry and from the reconstruction and development fund.

☐ Deputy President FW de Klerk said in Cape Town yesterday that the new constitution had entrenched sovereignty of the law and had freed all South Africans from many burdens of history.

☐ Sapa reports about 10 000 Inkatha members gathered at Currie's Fountain in Durban yesterday prior to marching through the city to protest against Freedom Day celebrations being conducted when the party's demands for international mediation had not been addressed.

Earlier, protesters blocked the N2 and R102 routes into Durban from the South Coast — prompting fears that ANC supporters might be trying to prevent Inkatha members from joining the march. However, after police had cleared the roads, it became clear that the protest was to do with a local land rights issue.

● See Page 4

Rightwingers benefit from Freedom Day remission

15 000 convicts to go free

Star (252) 28/4/95

MANDELA'S six-month reduction in sentences will ease overcrowding in jails

BY PATRICK BULGER
POLITICAL CORRESPONDENT

Prison authorities will today begin releasing an estimated 15 000 prisoners from jam-packed jails in terms of the special Freedom Day amnesty announced by President Nelson Mandela yesterday

Only sentenced child abusers will not benefit from the six-month "special remission" of sentence that will reduce the prison population from an all-time high of about 117 000 prisoners

Mandela made his announcement in a nationally televised address to about 25 000 people at Gauteng's Freedom Day celebrations at the Union Buildings in Pretoria.

He linked the remission to a call on prison populations to "mend their ways and make a fresh start" after the wave of prison riots in the past few months, which have been attributed to poor conditions and overcrowding

Correctional Services Department spokesman Major Koos Gerber said the goodwill measure would go a long way to relieving chronically congested prisons, especially in major urban areas. Prisoners sentenced to terms of less than two years would have a quarter of their sentence remitted.

Mandela also announced an unspecified remission for people charged with illegal possession of arms and explosives before December 6 1993. A asure was

Convicts go free

Star 28/4/95 (252)

◀ From Page 1

of the president's.

Mandela has on previous occasions expressed alarm at prison overcrowding, saying that more prisons would have to be built as a stop-gap measure until government action brought down the soaring crime rate.

In an indication of how serious prison overcrowding has become, Correctional Services Minister Sipho Mzimela told Parliament recently that he was considering invoking the "bursting clause" in the Correctional Services Act that allows him to discharge prisoners if overcrowding has produced inhumane conditions

Gerber said that, at 117 000, the prison population was at one of its highest levels ever Pollsmoor in Cape Town was "201% full" — having twice the number it was designed to hold

Mandela's second remission, aimed in the main at convicted rightwingers charged only for the possession of arms and explosives, extends to people "associated with political conflicts, irrespective of their political affiliation"

"We hope that through this act of goodwill we are sending a message to all prisoners that they should mend their ways and make a fresh start We appeal to society to help them resettle in communities as responsible and law-abiding citizens," Mandela said

Celebrating a miracle ... crowds gather at the Union Buildings in Pretoria for yesterday's Freedom Day celebrations.

PICTURE MOTLHALEFI MAHLABE

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28/4/95

aimed mostly at right-wing "political offenders".

Gerber said all prisoners would be affected by the remission but those with six months or less to serve would be freed immediately

"About 15 000 will be released as from today The releases will be carried on until the process has been finalised," Gerber said.

Those released would be subject to the usual parole conditions and correctional supervision applicable to prisoners released under normal circumstances

Both the bonus for prisoners and the exclusion of child abusers are special concerns

▶ To Page 3

Happy day . . . President Mandela and Education Minister Sibusiso Bengu celebrate. PICTURE DEBBIE YAZBEK

Indemnity breather is set to expire

(252) ARG 3/5/95

Political Staff

AS South Africa celebrates its first year of democracy, many MPs and some cabinet ministers have another, less festive, anniversary approaching

May 17 is the expiry date for the temporary immunity or indemnity granted to some cabinet ministers who were instrumental in negotiations that flowed immediately from the unbanning in February 1990 of the African National Congress

In a note to the parliamentary select committee on justice yesterday, the Department of Justice said both the 1990 Indemnity Act and temporary indemnities granted in terms of this legislation, would expire on May 17 unless extended for another year

This was particularly necessary in the light of delays in finalising the Truth Commission bill, the justice department note said

Last year, the Act was extended for a year when the government of national unity took office

The department said a provision in the Promotion of National Unity and Reconciliation Bill — that temporary immunity or indemnity would remain for six months after the repeal of existing legislation — might not be long enough

If the Truth Commission did not finalise all the cases of people enjoying temporary immunity within the six month period, those whose cases had not been finalised would run the risk of civil and criminal action against them

● Yesterday, the Democratic Party said a clause in the Truth Commission bill requiring that criteria used in the Further Indemnity Act also be taken into account in granting amnesty, was unconstitutional

The clause, the result of objections by the National Party, was inserted as a result of a cabinet compromise on controversial aspects of the bill

DP human rights spokesperson Dene Smuts proposed an amendment to bring the clause into line with the constitutional criteria for amnesty — that acts should have been committed with a political motive during the conflicts of the past

"It will prevent perpetrators of gratuitous acts of violence which bear no objective relation to the conflicts of the past from receiving amnesty," she said

Commission 'would be a model for Africa'

ADRIAN HADLAND

CAPE TOWN — The establishment and successful operation of SA's truth commission would provide an important model for other African countries, UN Human Rights Commission president Carl Norgaard said this week.

Norgaard, 70, who assisted in framing the original draft of the Promotion of National Unity and Reconciliation Bill, said the international community was watching events in SA with "great hope and excitement"

SA had the opportunity to create a model that could help many other African countries deal with their pasts, he said.

The Bill, which includes the Norgaard principles, had been substantially improved since the first draft and had a real chance of being successful and bringing reconciliation to SA, Norgaard said.

The principles, framed in 1989 by Norgaard during the Namibian transition, state that a political crime must be proportionally linked to the political objective in order to qualify for amnesty.

As a result, a person who planted a bomb in a bank in Namibia which killed 30 people had remained in jail, he said yesterday.

The inclusion of the principles caused considerable controversy within the NP, the ANC and Cabinet.

On the political compromise the Bill now contains, which includes the principles but allows commissioners to "take into account" previous amnesty legislation, Norgaard said pragmatism and realism were needed to get a process such as the truth commission up and running.

"What really matters is reconciliation and a situation where the past is finished and doesn't go on for years and years."

Norgaard said he was pleased the essential elements of his principles, the proportionality and motive of political crimes, were retained within the Bill.

He added he was "positively surprised" by the good spirit and high level of debate within the parliamentary committee considering the Bill

"Reconciliation has already been reached within the committee."

Norgaard lectures for half the year at Aarhus University in Denmark and chairs the EU's Human Rights Commission in Strasbourg for the remaining period.

About 3 000 cases are heard a year at the commission, mostly dealing with fair trials, freedom of expression, expulsion and extradition.

The Justice committee is expected to finalise the Bill on Tuesday next week, while Parliament is scheduled to debate the Bill on May 17

Inquiry seeks misappropriated funds

EDWARD WEST

CAPE TOWN — A public inquiry to find out what happened to about R750 000 misappropriated from Allan Boesak's Foundation for Peace and Justice would be convened in Bellville on July 21.

The inquiry — being convened by the trustees of the insolvent estate of former foundation financial director Freddie Steenkamp — was not normal procedure in insolvent estates, but could be convened when "trustees were of the opinion that something was missing", trustee Bernard Gutman said yesterday.

Steenkamp has admitted to the law firm Bell, Dewar and Hall — which acts for Danish aid agency Danchurch — that he misappropriated funds from the foundation. The government legal adviser who investigated allegations of misappropriation against Boesak, Mojanku Gumbi, has reportedly noted that Danchurch's allegations appeared to have been drawn mainly from Steenkamp.

Gutman said at least R750 000 was involved and witnesses would be subpoenaed to the inquiry.

He said that depending on the outcome of the inquiry, litigation or civil proceedings could follow.

Meanwhile, Office of Serious Economic Offences executive director Jan Swanepoel said the office's investigation into Boesak was expected to last until the end of the year — barring any unexpected extraordinary delays.

Unexpected factors which have held up past investigations were bureaucratic delays overseas because SA had not yet signed mutual legal and criminal assistance treaties, and legal actions which might arise from an investigation, such as a recent objection to a subpoena by the Office of Serious Economic Offences on constitutional grounds.

Government makes it tough to get bail

(252) Star 4/5/95

■ BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — The Cabinet has approved legislation to make it more difficult for criminal suspects to be allowed bail.

The Criminal Procedure Amendment Bill contains most of the provisions outlined in a recent South African Law Commission report on bail.

The amendment, which will come before Parliament shortly for approval, introduces a range of criteria to help magistrates decide whether bail should be withheld.

The 1993 constitution, in terms of which criminals have often been granted bail as a mere formality, stipulates that bail can be withheld only if it is "in the interests of justice".

The new criteria makes the judicial officer responsible for investigating the precise circumstances of each bail application.

Evade trial

Factors such as the likelihood of an accused attempting to evade trial, the means and travel documents held by an accused, the extent to which an accused person can forfeit bail, and the gravity of the charge must all be taken into account.

The bail Bill was one of two crime measures considered by the Cabinet.

Also agreed was the establishment of an interdepartmental ministerial committee to develop a national crime combating strategy.

The Cabinet also made a number of decisions on a wide range of issues.

STEPS TO CURB HUMAN RIGHTS ABUSES

New body to probe police

(252)

CT 8/5/95

NEW LEGISLATION will enable the establishment of an Independent Complaints Directorate to deal with police abuses. Our **SPECIAL CORRESPONDENT** reports.

JOHANNESBURG: The new Police Act expected to be passed later this year would enable the government to create an independent body to investigate complaints against the police, Safety and Security Minister Mr Sydney Mufamadi said at the weekend

He was responding to a report compiled by human rights organisations which alleges gross human rights abuses by the police in the past four years

Mr Mufamadi said he was "deeply concerned" about the report by the Network of Independent Monitors, the Trauma Centre for Victims of Violence and Torture and the Independent Board of Inquiry

"When the Police Act is passed, it will be possible to establish the Independent Complaints Directorate envisaged in the constitution

"This Directorate will be responsible for investigating complaints (of) police misconduct The structure and operation of the Directorate will be debated by the Standing Committees of Parliament and the Senate, and will therefore carry the confidence of the broad public," said Mr Mufamadi

He said current channels for processing complaints of human rights violations by the police were inadequate and his ministry, with the authors of the report, would be looking at interim measures

At the same time, however, Mr Mufamadi said the new generation of police managers should tackle the problem firmly

He said a culture had to be encouraged which did not tolerate abusive and violent behaviour and in which transparency and honesty were valued more highly than covering up for colleagues

He said the change-management and restructuring processes already underway would address many of the concerns raised by the authors of the Breaking With The Past report

A new approach to organisational structure, intended to alleviate some of the problems related to specialised units, had already been adopted The approach emphasised the role of station and area commanders responsible for all policing matters in their area

He added new disciplinary regulations were being finalised and training in human rights had been integrated into new curricula

New regulations 'to improve accessibility' of SA's courts

(252)

ADRIAN HADLAND

CAPE TOWN — Many new attorneys will begin to practise in SA following the announcement of new regulations at the weekend by Justice Minister Dullah Omar.

The regulations define the "appropriate legal experience" required for admittance according to the Attorneys Amendment Act of 1993.

Omar said if any person had served for five years as a magistrate, a public prosecutor in a regional court or as a director-general or deputy director-general in the Justice Department, they would be admitted as attorneys.

Candidates would, however, have to take the appropriate examinations.

The new regulations would make it easier for those who had failed to secure articles or clerkships to enter the profession.

Omar said the Act and regulations were aimed at improving accessibility.

He said draft legislation governing bail would be tabled in Parliament shortly.

The Criminal Procedure Amendment Bill was approved by the Cabinet last week following recommendations by the SA Law Commission.

The Bill would lay down guidelines which the court must consider, Omar said.

The Promotion of National Unity and Reconciliation Bill, which establishes SA's truth commission, would be finalised tomorrow, ANC justice committee member Willie Hofmeyr said.

The Bill, which must also be considered by the Senate, will be debated in Parliament later this month.

SUSAN RUSSELL reports that Lawyers For Human Rights on Friday welcomed the proposed amendments to bail legislation, which it said would now conform with the right to bail in the Constitution.

LHR's national director: litigations Ahmed Motala said they were especially pleased police were now obliged to inform an arrested person of their right to bail.

The LHR was also pleased the courts would be obliged to consider bail even if not raised by an accused person.

Motala said the detailed guidelines to the courts setting out criteria they would have to consider in a bail request would allow the courts to exercise discretion.

"At the same time it grants the courts the authority to refuse bail when it is in the interests of justice."

NEWS Justice Minister accused of rele

Magistrates lash out at Omar

(252)

Sowetan 9/5/95

DISTORTED TRUTHS Natal law officers livid over salaries:

MAGISTRATES IN NATAL HAVE accused Minister of Justice Mr Dullah Omar of "a distortion of half truths" when he disclosed what judges and magistrates earned about a week and a half ago

The minister released the average salary figures, inclusive of benefits for magistrates, judges and assessors, in reply to a question from Mr Douglas Gibson in the national assembly

Recently Durban magistrates had threatened a go-slow for better pay and working conditions

However, Mr Wynand Bezuidenhout of the Natal Regional Committee of the Magistrates Association of South Africa was angry at the figures which he believed were inflated He could not understand how they arrived at the amounts.

He said Omar revealed that a regional magistrate earned R176 867 but in reality the minimum salary for a regional magistrate was R111 867 and the maximum was R126 411

For a senior magistrate the maximum salary was R116 715 but Omar's figure was R157 126 The salaries released by the minister for first- to third-leg magistrates were also not accurate, according to Bezuidenhout

Even if benefits were included in the salary, Bezuidenhout said it was inexplicable how the final figures were attained

"They are weakening our bargaining position It's a transparent attempt by the minister to get public opinion on his side

> **"Until he released it, people in the private sector agreed that we were being paid less"**

"He printed the inflated figures so that when people read it they will wonder what the magistrates are complaining about

"Until he released it, people in the private sector agreed that we were being paid less," he said According to Bezuidenhout, magistrates were "livid" when they read the report in the newspaper

He said "The salary figures for members of the Industrial Courts and for magistrates in the former TBVC states were deliberately not released as they are paid substantially more than us"

Bezuidenhout showed us a copy of the pay slip of a magistrate who was at the bottom of the salary scale

In 1993 the magistrate took home R6 091 after deductions but in 1995 his net salary was R6 071 which was R20 less

He said if the salary the minister had revealed was valid, then the magistrate would earn a great deal more — *Sowetan Correspondent*

'Truth Commission to start healing process'

ARG 10/5/95 (252)

TYRONE SEALE
Political Staff

THE Truth and Reconciliation Commission will never provide the whole truth about past abuses of human rights, but will help the nation come to terms with its past and begin the healing process

This is the view of African National Congress MP Willie Hofmeyr, who chaired yesterday's landmark meeting of the parliamentary portfolio committee on justice, which passed the Promotion of National Unity and Reconciliation Bill The bill establishes the Truth Commission

At the meeting, which followed at least 130 hours of debate spread over several months, the Freedom Front voted against all the provisions of the bill, while the Inkatha Freedom Party abstained from voting on various clauses

Still, the bill was passed as fit for scrutiny by the national assembly and the senate

The Freedom Front's Corné Mulder said his party's major objection was the retention of the December 5, 1993, cut-off date for amnesties

In a clear reference to rightwingers who had violated human rights in pre-election violence, Dr Mulder said moving the date to May 10, 1994, the day on which President Mandela was sworn in, would allow "a group of our supporters" to be included in the reconciliation process

Mr Hofmeyr, leader of the ANC caucus in the committee, said the Freedom Front's concerns were noted, but he pointed out that instead of specifically referring to the 1993 date, the bill referred to "the latest date allowed as the cut-off date by the provisions of the constitution under the heading National Unity and Reconciliation"

Danie Schutte (NP) said his party also supported an extension of the cut-off date as it would make the process more inclusive, but he acknowledged that the bill in its present form linked the cut-off date to the constitution and a constitutional amendment would have to be addressed elsewhere

Bill clears way for Truth Commission

(252)

CT 10/5/95

DRAFT legislation providing for a Truth and Reconciliation Commission to investigate past human rights abuses was approved by the parliamentary justice committee yesterday.

The Promotion of National Unity and Reconciliation Bill was finalised after about 130 hours of deliberation, and "literally hundreds of amendments", said acting chairman Mr Willie Hofmeyr

The IFP abstained and the Freedom Front opposed the bill

Dr Corné Mulder said failure to extend the December 5, 1993 cut-off date for amnesty meant that Front supporters would not qualify The Front wanted the cut-off date extended to May 10, 1994

Mr Hofmeyr said a decision on the cut-off date fell outside the committee's competence as any change would require a constitutional amendment

He said Parliament could finalise its deliberations on the bill by the end of May and the commission could be operational by the end of July or early August

A further month would be required for President Nelson Mandela to appoint commissioners

"We have gone out of our way to make the amnesty process an even-handed one and ensure that we do not undo all the good we have achieved," Mr Hofmeyr said

The NP welcomed the agreement on the Truth Bill, but warned that great care was needed in the appointment of the commissioners, who should not be perceived to be politically biased

"This was the first test of our new constitution We have been able to reach a compromise," it said — Sapa

Assembly approves truth Bill

(252)

ADRIAN HADLAND

CAPE TOWN — Heavily amended draft legislation was approved by the National Assembly's justice committee yesterday in a major step towards establishing a truth commission.

Committee members predicted that the commission could be fully functional by August or September.

However, Cabinet would be asked to investigate whether the Promotion of National Unity and Reconciliation Bill should be passed on to the Constitutional Court for verification while a political initiative to change the cut-off date for amnesty applications gained momentum

The Freedom Front voted against every clause of the Bill yesterday in protest against the December 5,1993 cut-off date for amnesty on politically motivated crimes Freedom Front supporters would be excluded from the reconciliation process if the deadline was not moved to a more appropriate date such as May 10 1994, the day of the presidential inauguration, Freedom Front MP Corne Mulder told the committee. Such a change would affect right-wingers now on trial in connection with a spate of pre-election bombings.

BD 10/5/95

NP and ANC sources confirmed high-level discussions were under way on adding a clause to the Constitution Amendment Bill being considered by the constitutional committee, to permit a change in the cut-off date.

☐ To Page 2

Truth Bill

(252) BD 10/5/95

☐ From Page 1

As the cut-off date is specified in the constitution, only a constitutional amendment can alter it.

The ANC has argued that changing the date would be like granting a "licence to kill" by encouraging the notion that amnesty for serious crimes could be expected in perpetuity. "It would undermine the whole basis for the rule of law," said ANC MP Willie Hofmeyr.

After 130 hours of committee deliberations, months of public hearings and submissions, the creation of a special Cabinet committee to iron out controversies, the drawing up of seven draft Bills and the acceptance of more than 300 amendments, most members of the committee were euphoric yesterday that the Bill had finally been approved. "It is a source of great satisfaction and relief that we have managed so much consensus on contentious issues," Hofmeyr said.

NP justice spokesman Danie Schutte described the passage of the Bill as the first real test of the government of national unity as envisaged in the constitution. He warned, however, that danger lurked if the Bill was not implemented correctly by responsible and credible commissioners.

The DP expressed satisfaction that some of its suggested amendments had been incorporated in the Bill. The Inkatha Freedom Party abstained from voting.

ANC MP Priscilla Jana said Cabinet would be asked to judge whether aspects of the Bill, or the Bill in its entirety, should be passed on to the Constitutional Court for verification. The truth commission process, limited to an 18-month investigation period, could not afford to become snagged by protracted legal arguments. While the committee was confident the Bill was constitutional, the concerns of some legal experts — about matters such as extinguishing a victim's rights to civil restitution — needed to be clarified, she said.

The Bill will be debated in the National Assembly next week before being passed to the Senate.

Hofmeyr predicted truth [illegible] would be appointed in June, the commission would begin operating by July and would be functioning at "full steam" by August or September.

Battle over cut-off date for amnesty

(252)

■ BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — Legislation to establish a Truth and Reconciliation Commission to investigate past human rights abuses was approved in Parliament yesterday, but a new battle is looming over the cut-off date for amnesty.

ANC and NP members indicated there were moves to shift the cut-off date from December 5 1993, as prescribed by the interim constitution, to May 10 1994, the day of the president's inauguration.

The Freedom Front, the only party to oppose the Bill (the IFP abstained), indicated it would seek an amendment to the constitution to change the cut-off date

The portfolio committee on justice, which yesterday finalised the Bill for its approval by the National Assembly next week, agreed earlier this year to omit a specific date. Instead, the committee said, it would agree to the date in the constitution — December 5 1993.

The FF, the NP and the PAC asked that the date be changed to May 10 1994 If the constitution is changed, the Truth and Reconciliation Bill legislation will automatically recognise the new date

The acting chairman of the justice committee, the ANC's Willie Hofmeyr, confirmed that discussions were taking place on the date and that the Cabinet could decide to alter it.

Hofmeyr warned, however, that shifting the cut-off date was "like a licence to kill"

The NP's chief negotiator, justice spokesman Danie Schutte, said the NP supported shifting the cut-off date if it led to a more inclusive agreement He said he sensed that the ANC was "uncomfortable in opposing an extension"

Star 10/5/95

Terror

The FF said the retention of the "disputed and arbitrary date means that no members or supporters of parties like the FF and the IFP and others involved in acts of terror after December 5 1993 would get amnesty"

Victims of the Shell House massacre, the Heidelberg Tavern killings and the families of the AWB members killed in the putsch in Bophuthatswana would not receive reparations.

Thumbs up for Truth Bill

(252) Sowetan 10/5/95

By Vuyo Bavuma
Political Reporter

THE investigation of gross human rights abuses of the anti-apartheid era came a step closer when draft legislation for a Truth and Reconciliation Bill was yesterday approved by a parliamentary select committee on justice

The Bill, which was sometimes debated in acrimonious exchanges between the National Party and African National Congress, is to be tabled in Parliament next Wednesday

After that it will be sent to the Senate before it can be promulgated as law

It is expected that the commission will be operational by early August

Yesterday three parties — the ANC, Democratic Party and National Party — supported the Bill The Freedom Front opposed it, while the Inkatha Freedom Party abstained

The rightwingers objected to the Bill because the committee refused to extend the December 5 1993 cut-off date for amnesty, saying this would exclude many of their supporters.

The FF also said it wanted the date to be extended to May 10 1994, the date of President Nelson Mandela's inauguration

An elated Mr Willie Hofmeyer, ANC acting chairman of the justice committee, said it was a great relief that consensus had finally been reached on such a contentious bill

On the issue of the cut-off date, Hofmeyer said the committee could not change the December 5 1993 date because it was prescribed by the Constitution

JUSTICE (252) FM 12/5/95

End of the road

Witwatersrand attorney-general Klaus von Lieres und Wilkau shocked personnel on Tuesday morning when he announced that he was resigning with immediate effect He then cleared his office and left the AG's offices on the top floor of the Supreme Court building

Von Lieres's sudden departure is due to ill-health In a statement on behalf of Justice Minister Dullah Omar, Von Lieres was thanked for his valuable service to the department since he took office in 1981 Omar also wished him a speedy recovery Advocate Kevin Attwell will meanwhile deputise until a permanent appointment is announced

While Von Lieres's medical history has not been public knowledge, many in the legal profession expected him to leave sooner rather than later — but not as suddenly

A lost battle with the Department of Justice over what Von Lieres saw as an unfair obstacle to promotion, must also have taken its toll He took the department and Justice director-general Jasper Noeth to the Industrial Court, claiming that he had been promised the position of deputy DG He lost the case — and the decision was upheld by the Supreme Court, which refused an appeal to Bloemfontein

It is also known that Von Lieres, like all other attorneys-general, totally rejected moves by Omar to appoint a "super AG" to oversee the various offices in the provinces At the same time colleagues say that a lack of funds and a continuous spate of resignations frustrated Von Lieres

Recently Von Lieres led the legal team in argument before the Constitutional Court to debate the retention of the death penalty, of which he is a strong supporter It was Von Lieres who argued successfully in the Supreme Court to have the ultimate penalty imposed on Chris Hani's murderers, Janus Waluz and Clive Derby-Lewis *Eddie Botha*

TRUTH & RECONCILIATION

FM.12/5/95

A compromise is reached

(252)

The Promotion of National Unity & Reconciliation Bill is likely to pass into law soon — and SA will then be set to learn at least some of the truth about the political excesses of its past But there are strong safeguards on confidentiality. The fear of a witch-hunt that some have expressed seems to have been allayed.

The Democratic Party was concerned that political crimes should be proportional to the political objective and not just a ruse whereby criminals could claim a higher justification for their deeds This has been accepted, as have the so-called Norgaard Principles, which seek to quantify the criteria whereby amnesty can be granted.

The Norgaard Principles — which take motive, circumstances, gravity of offence and the physical target of the act into account — were devised by the president of the European Commission on Human Rights to deal with a comparable situation in Namibia In SA, entrenchment of the principles has been considered desirable by parties such as the DP since this would provide a reasonably objective measure for the conditions under which amnesty can be granted in exchange for information.

The National Party's Danie Schutte feels the tortuous process of negotiation to which the Bill has been subjected "was, perhaps, the first real test of the new constitution — and we've reached compromise."

A key provision of the Bill relates to what has been termed a "post-amble" to the constitution — a clause which states that to advance reconciliation and reconstruction, "amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past To this end, parliament under this constitution shall adopt a law determining a firm cut-off date, which shall be a date after October 8 1990 and before December 6 1993"

Part of the controversy that has surrounded the Bill has been due to the fact that the cut-off date would exclude the perpetrators of the Heidelberg Tavern shootings, the Shell House massacre and the bombings on the eve of the 1994 national election However, to bring the date closer to the present would require an amendment to the constitution It is possible that this will occur.

The balance the legislators are seeking is between leftwing and rightwing terror on the one hand and between information and silence on the other. Schutte feels that it is "crucial that the right people are appointed" as commissioners Public perceptions of these figures will be all-important — and at this stage it has been agreed that their political profile should not be "too high"

Once constituted, an amnesty committee will begin hearings on politically motivated crimes, by way of applications for amnesty or demands for investigations of gross violations of human rights Parallel committees are to assemble a comprehensive history of human rights violations and assess possible reparations ■

Prosecutors 'earn less than unskilled cleaners'

MICHAEL MORRIS (252)
Weekend Argus
Political Correspondent

LAWYERS, launching their careers as prosecutors, are earning nearly R10 000 a year less than unskilled cleaners and if this situation is not resolved, justice will suffer, outraged Western Cape Attorney-General Frank Kahn has warned

"The government should be cautioned not to neglect prosecutors just because they do not resort to theatrical strikes, like the police They are professionals and should be remunerated as such," said Mr Kahn

In a tough statement to coincide with the tabling of his annual report in parliament this week, Mr Kahn said "If the government is serious about tackling crime and law and order, then this should become a high priority ARG 13/5/95

"It is a poor reflection on the government if the intelligentsia in the public service cannot even afford a home

Citing a recent tobacco company pay offer to unskilled cleaners amounting to about R41 000 a year, Mr Kahn pointed out that "first level" prosecutors straight from university could expect to earn about R33 000, almost R10 000 less

"It is no use addressing the salaries of the police if the salaries of the professionals who process their work are left unaddressed," he said

"We are frustrated by the shortage of skilled resources, yet salaries are not being revised"

Courts a laughing stock for criminals

Angry A-G Kahn hits out at uncertainty over death sentence

ARG 13/5/95

■ Western Cape Attorney-General Frank Kahn has made a stinging attack on the Constitutional Court for dragging its feet on the death-sentence issue, saying courts have become the laughing stock of criminals

MICHAEL MORRIS
Weekend Argus Political Correspondent

WESTERN Cape Attorney-General Frank Kahn has lashed out at the Constitutional Court for taking its time in resolving uncertainty over the death sentence, warning that "criminals are laughing at the courts"

In hard-hitting comments yesterday — coinciding with the tabling of his annual report in parliament — Mr Kahn said "We would have expected the Constitutional Court to move at a faster tempo, especially in view of the fact that delays are being caused in our court rolls while we await legal direction from them You cannot put the whole legal system on hold

"Criminals are laughing at the courts This erodes the deterrent value of sentences, it erodes the public's confidence in the courts and it's causing delays which are clogging the legal system"

Mr Kahn — who points out in his report that serious crime has assumed "alarming proportions" and is becoming more organised and sophisticated — added "We are disappointed and would like to have a swifter response from the court."

Mr Kahn's comments — which come at a time of growing public anger at the absence of certainty about capital punishment — follow this week's sentencing to death five times of Stellenbosch axe-killer Sydney Andile Mkhosana for murdering the Orffer family and their domestic worker

Mkhosana, 23, of Bloekombos, Kraaifontein, hacked to death his employer, cabinet-maker Pieter Orffer, 32, Mr Orffer's school teacher wife Lida, 30, their children Jean, 6, and Eulalia, 4, and their domestic worker Sannetjie Jacobs, 30, in July last year

Sentencing Mkhosana, Mr Justice Williamson said the massacre was "truly one of the foulest and most barbarous serial murders this court has ever seen"

However, Mkhosana's punishment is effectively suspended until the Constitutional Court decides if the death sentence is valid in terms of the new constitution

This has been one of the key matters before the court.

But, Mr Kahn asked "Do you mean to tell me that 11 learned people cannot tell us where we stand on the death penalty in three months?

"The public, the people on Death Row and prosecutors deserve to know where they stand on this

He said prosecutors, already under pressure as a result of increasing crime, "are becoming frustrated by the lack of certainty which should have been forthcoming from the court The absence of certainty just adds to their woes"

Mr Kahn wondered if the Constitutional Court "is turning into another sacred cow unaccountable to the public or to legal opinion"

"They must learn to be accountable to public opinion," he said.

■ See page 3

Less legal jargon in new constitution

(252)

ARG 13/5/95

CLIVE SAWYER
Political Correspondent

SOUTH Africa could be spared from tortured legalese in its next constitution if last-minute editing plans go ahead.

A panel of linguistic experts should revise the yet-to-be-drafted constitution, it was recommended this week.

The proposal, by academic Johan van der Westhuizen — a member of the constitutional assembly (CA) panel of experts — was supported by the constitutional committee

Professor Van der Westhuizen admitted the constitution would "never be so precise you could put the whole constitution on a T-shirt"

There would always be the need for education about the constitution, he said.

African National Congress negotiator Willie Hofmeyr, who has spearheaded a campaign for plain language in law, welcomed the proposal.

The sooner linguistic advice was incorporated in the constitution-writing process the better, he said.

Constitutional committee chairman Cyril Ramaphosa said the proposal would be followed up by the constitutional assembly management committee

The proposal was made during debate yesterday on guidelines, drafted by the CA panel of experts, on which topics should be covered by the constitution.

The panel said the constitution should contain only those principles and institutions which would ensure that a constitutional state was provided for.

These principles should ensure the constitutional state worked properly and that the values underpinning it were enforced.

"Properly equipped institutions which will allow effective and democratic government must be in place.

"Flexible responses must be possible."

The panel said control of the exercise of powers, including checks and balances, should be provided for.

History had to be taken into account

Stability, effective government, legitimacy and socio-economic transformation had to be primary goals.

The panel said a constitution had a unique status and was not an ordinary statute.

It had to endure and provide a continuing framework of government for the entire nation.

It was the supreme law of the land.

It had to be a yardstick for determining the lawfulness of future government action

It had to be justiciable and would be invoked by citizens claiming their rights.

The process of drafting the constitution was not open-ended

Binding principles already agreed to included the constitutional principles and concept of a constitutional state

Kahn: Bid to ease case load of sex offence court not working

ARG 13/5/95 (252) (278)

Political Staff

SPECIAL arrangements to ease the workload of the sexual offences court in Wynberg may defeat the purpose of the court, Cape attorney-general Frank Kahn has warned

In his annual report to parliament, Mr Kahn said there were a large number of cases outstanding on the court's roll.

At present, the total was 193 It was expected these would be disposed of in six months

An attempt had been made to counter this problem by making an alternative regional court available two days a week to try sexual offences

But the trials were not conducted by the court's prosecutors, and witnesses did not enjoy the benefit of a special waiting room, the smaller courtroom, and the privacy of the floor where the sexual offences court was accommodated

"The result of this is that the purpose of the court is largely defeated"

Mr Kahn said the co-operation between the staff of the court in Wynberg and the police, especially the child protecion unit, was excellent

A good relationship had been established between the staff of the court and social workers, especially those from Red Cross Hospital, Safeline and Shawco

"The prosecutors regularly lead the evidence of the social workers — especially before sentence — and a mutual understanding of each other's profession has been established between them"

Mr Kahn paid tribute to people who had helped ensure the courtrooms were not cold, impersonal and distressing for the victim

● Mr Kahn's report, prepared before this week's controversy about the release of children from custody, said a programme had been started in October last year to ensure juveniles were not detained in police cells or prisons

Juvenile offenders were assessed at the earliest opportunity to determine whether they could be released into the custody of their parents

A court sat every week night at 9 pm to handle all cases that arose after normal court hours

"The introduction of this project has placed prosecutors under considerable pressure not only because of the after-hours court sessions, but also due to the fact that guidelines and procedures have to be evolved"

There had been reasonable success, but problems remained

"The sad fact is that during the year under review, in Cape Town alone, 537 juveniles failed to appear in court after they had been warned to do so and 184 parents also failed to attend"

The only alternative was to find an acceptable place of detention, but little space was available

Human rights

(252)

COUNTRIES which wanted to retain membership of the International Labour Organisation would have to prove their commitment to human and workers' rights, Department of Labour attache Auret van Heerden said on Friday. 14/5/95

Mr van Heerden was previewing the ILO conference scheduled for June 6 to 23 in Geneva.

MK 'truth' vow threatens ANC

(252) ST 14/5/95

By NORMAN WEST: Political Reporter

COLOURED former MK soldiers in the Western Cape have threatened to expose human rights abuses in ANC camps in a move that could open new divisions in the ANC in the region.

The men say they are determined to speak up in an attempt to help the families of Cape MK members find out what happened to their sons, who disappeared without trace.

They spoke out soon after the House of Assembly's select Committee on Justice approved draft legislation this week for a Truth and Reconciliation Commission to investigate past human rights abuses.

Earlier this week the ANC, NP and DP voted in favour of the Promotion of National Unity and Reconciliation Bill, to be debated in parliament on Wednesday.

The threat to lift the veil of secrecy on incidents at MK camps coincides with increasing tensions between nationalists and Africanists in the Western Cape ANC.

Earlier this year, senior coloured activists in the Western Cape voiced their dissatisfaction because of a perception that the region's leadership positions were dominated by Africans.

In February, the Western Cape ANC Youth League split along racial lines when 10 of its 18 interim branches, accusing the league of ostracising coloured people, walked out of an annual meeting.

These divisions have created a headache for the ANC leadership as it gears up for November's crucial local government elections.

The move by former coloured MK members is threatening to cause further ructions within the ANC at a time when it is important that the movement should present a unified front to voters

It also has the potential to anger possible coloured voters whose support is vital if the ANC hopes to reverse the National Party's 1994 election victory in the Western Cape

The former ANC soldiers said there was a perception that coloured MK members from the Western Cape were treated with less compassion than their black counterparts.

They said they had discussed the ANC's lack of concern for the bereaved families of MK men who "disappeared" in exile with several ANC parliamentarians. These MPs, they claimed, admitted the issue was causing tension in the ANC youth wing, particularly among the coloured faction in the Western Cape

A former MK member now living on the Cape Flats said. "It is a historical fact that leadership positions in the ANC were always open to blacks only It was only at the 1985 Kabwe conference, following demands by mutinous MK troops, that this was reversed Even then it was not a unanimous decision"

Another said "Sidelining coloureds, particularly those from the Western Cape, and a total disregard for their opinions and wellbeing were common practices among the ANC in exile.

Among the examples the former MK members intend to raise before the Truth Commission is that of former Livingstone High School pupil Patrick Marks who was branded an "enemy agent" and taken to the infamous Quatro Camp in Angola.

He was detained in December 1978 and died in 1983 but his family was notified of his death only in 1993. The cause of his death was given as as an "epileptic fit"

They have also cited the case of Patrick Abrahams, a former UCT student and talented artist who designed the current ANC logo. He spent 16 years in exile and "defected from the movement after a bitter dispute with ANC military leaders".

Mr Abrahams was "reported to have died in a car crash en route from Zimbabwe in 1991"

The former MK members are bitter because several top-ranking ANC leaders who had been in exile and implicated in human rights abuses were sitting in parliament "growing fat and rich while we are starving and living on alms".

They are demanding that Deputy Minister of Intelligence Services Joe Nhlanhla's alleged involvement in human rights abuses be "thoroughly investigated" Mr Nhlanhla was previously head of the ANC intelligence department.

Advocate R S Douglas, who investigated human rights abuses in 16 ANC camps, named Mr Nhlanhla as one of the top ANC members who, according to evidence, had knowledge of the activities of the ANC's security wing, Mbokodo, "the grinding rock"

Mbokodo was said to have been responsible for most of the acts of torture in ANC camps.

An ANC-appointed commission investigated the abuse of human rights in detention barracks and reported details of the execution, deaths and disappearance of at least 32 ANC members in exile.

Claiming that an anti-Soviet stance was treated as "treason" the former MK men cited as an example the fate of John Abrahams of Noordgesig, Johannesburg, who left SA in 1969 He was labelled a "CIA agent" because he condemned the Soviet invasion of Afghanistan and the ANC's alliance with Zimbabwe's Marxist party, Zapu

"He was taken to Quatro and was never heard of again Today he has been vindicated while his accusers are sitting in our democratic parliament We want all these cases and numerous others reopened," said one of the returned exiles

"There are many former top ANC exiles who hold high political office today who should be in a position to give first-hand account of executions, torture and deaths in detention of comrades who are unaccounted for"

Another man said "We have been neglected and forgotten I was used in combat against Unita, facing danger and death while escorting convoys over war territory

"The ANC must address these issues to dispel the perception that coloured people were used as cannon-fodder and voting cattle"

Bliss when Paul 'speaks'

By ZENDA NEL

PAUL MARSHALL, a visiting Canadian expert on communication, cannot speak.

Instead, severely disabled Mr Marshall will be communicating with Cape Town audiences by means of Bliss — a symbolic language created specially for people whose disability prevents them speaking.

He is part of a team led by Dr Annalu Waller, from Scotland, who is on a four-week trip to South Africa to teach severely disabled people to communicate by means of Blissymbolics techniques.

One of Dr Waller's South African success stories is 13-year-old Shelly McDonald, of Plumstead, who has to get around in a wheelchair

Shelly, who goes to Kalk Bay Primary School, has a severe hearing impediment and cannot speak.

Dr Waller, who first introduced Blissymbolics to South Africa in 1987, explains that when teachers tried to get Shelly to read it was impossible to find out whether she was learning anything

The problem was solved with Bliss and the

Truth proposal might bring right wing on board

(252)

Star 15/5/95

BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — Last-ditch attempts are being made to secure right-wing participation in the truth commission, legislation for which is being debated by Parliament this week

The National Assembly is due to debate the Bill on National Unity and Reconciliation on Wednesday.

The Bill will be opposed by the Freedom Front and the Pan Africanist Congress unless the Government agrees to extend the cut-off date for amnesty from prosecution for politically related offences from December 5 1993 to May 10 1994.

An extension would free right-wing pre-election bombers and Apla's Heidelberg Tavern killers

The key to securing the right wing's involvement is a Government proposal for a new multiparty committee that will consider certain cases before they come before the truth commission

The committee could make it easier for the Freedom Front to come on board a process that will inevitably rely heavily on the co-operation of the FF's constituency of serving and former security force personnel

President Nelson Mandela first floated the idea of the committee in an interview last week when he said the committee would "prepare the evidence to be submitted to the truth commission to ensure that the proceedings in the truth commission have been properly structured so that there should be no idea that this is a witch-hunt"

FF Senator General Tienie Groenewald would only say at the weekend that discussions with the ANC were continuing

Ironically, the multiparty committee proposal could have the effect of helping the ANC, and indeed the NP, to draw emphasis from certain cases and even have them withdrawn

The Cabinet might decide this week to extend the cut-off date, but only in exchange for a fundamental commitment to peaceful change from the right wing

Justice staff 'also need a pay rise'

(252)

ARG 16/5/95

WESTERN Cape Attorney-General Frank Kahn has criticised the government for granting the police salary increases while ignoring the Justice Department's professional staff who process the work of the police.

If they were not properly paid, the country would face increasing lawlessness.

Mr Kahn also accused the Constitutional Court of dragging its feet on the death penalty issue.

He said four months of deliberation was enough time to come to a decision.

He said the Constitutional Court should be sensitive to the agony of those on death row and make its decision known as soon as possible — Sapa.

Go-slow disrupts court proceedings

CAPE TOWN — Industrial action disrupted Western Cape prisons and court hearings yesterday.

About 250 Pollsmoor Prison warders embarked on a go-slow early yesterday and threatened to take "more serious action" if a meeting scheduled for later in the day between themselves and presidential adviser Ahmed Kathrada, did not "positively address" their problems.

The warders are all members of the Police and Prisons Civil Rights Union.

Union spokesman Eddie Johnson said at Pollsmoor that members were frustrated because agreements between themselves and management were not being implemented by the Correctional Services Department.

"We are now demanding that an independent forum be established which must advise and monitor the department and oversee the transformation process.

"Although there was an agreement that there would be no promotions until the transformation had been completed, most of the white officers have either been promoted or given merit awards."

Johnson said the union's actions would in no way lead to the lowering of security at Pollsmoor, and prisoners would get their food and medicines as usual. — Sapa.

BD 16/5/95

NEWS New abortion legislation should be pro-choice

Parties' stances on death penalty

Sowetan 16/5/95 (252)

By Vuyo Bavuma

■ ANC STAND Capital punishment is state's licence to commit murder:

THE ANC, PAC and African Christian Democratic Party have reiterated their opposition to the death penalty, while the DP, NP and Freedom Front feel the issue should be determined by the Constitutional Court.

On the legality of abortion and euthanasia, all parties except the ACDP felt the matter should be decided either by the courts or a commission of experts from various fields The parties made submissions to the theme committee on fundamental rights yesterday.

In its submission, the ANC said it regarded the right to life as the most important pillar upon which all other rights were dependent

Capital punishment undermined the enjoyment of life by human beings because it provided the state with immoral and indefensible licence to commit premeditated and cold-blooded murder in the name of the entire nation under the pretext of protecting society

In the past, South Africa was a classic example of a disproportionate and discriminatory use of the death penalty

Between June 1982 and June 1983, 81 black people were convicted of murdering whites, and 38 were hanged No whites convicted of murdering black people during that time were hanged but 55 of the 2 208 blacks convicted of murdering blacks were hanged

The PAC argued that the matter could not be left in the hands of courts

On abortion, the committee said the legislation should allow a pro-choice attitude, open a national debate and educate the public on all aspects around it

The DP said it believed the constitutional right to life was fundamental and prevented the arbitrary termination of life, except in circumstances that should be determined by the Constitutional Court The FF and NP expressed similar views

Constitutional Court debates jurisdictions

CT 17/6/95 (252)

JOHANNESBURG: A full bench of the Constitutional Court yesterday reserved judgment on whether provincial or local Supreme Court divisions had jurisdiction to rule on the constitutionality of laws passed in South Africa and the former homelands before the adoption of the new constitution

The question was referred to them by the Ciskei provincial division of the Supreme Court

It arose out of a judgment by the Ciskei Supreme Court last year in the case of Zanomzi Peter Zantsi versus the Ciskei Minister of Defence, its Council of State and the council's chairman

The Supreme Court had declared certain provisions of the Ciskei Defence Act to be unlawful because they were in conflict with the Bill of Fundamental Human Rights in the former Ciskei constitution

While no reference was made to the SA constitution in that application, the court felt the Constitutional Court should rule on the jurisdiction of provincial and local Supreme Court divisions regarding the review of pre-constitution laws

Most of yesterday's proceedings were taken up by lively, but technical debate on the wording and interpretation of the law governing the exclusive jurisdiction of the Constitutional Court and that of provisional and local Supreme Court divisions

Counsel for the Ciskei defence ministry, Mr Dawid de Villiers, QC, argued that laws passed by the former SA parliament had been applied in the former homelands and so constituted acts of Parliament

Power

He contended that only the Constitutional Court had the power to declare such acts unlawful or unconstitutional

Mr Wim Trengove, SC, presenting argument in support of the Ciskei Supreme Court's finding, argued that the Supreme Court had an "inherent, common-law" jurisdiction to review the constitutionality of acts of Parliament

The new constitution did not state that only the Constitutional Court had the power to review of acts of Parliament, he said. — Sapa

KEY STAFF BEING LOST TO PRIVATE SECTOR

Inadequate resources hinder justice system, Omar warns

CT 17/5/95 (252)

SOUTH AFRICA cannot succeed without an efficient justice system — which was threatened by inadequate funding, Justice Minister Mr Dullah Omar warned yesterday.

The work of the Department of Justice was being seriously hampered by inadequate resources, Justice Minister Mr Dullah Omar said yesterday.

Introducing debate on his budget vote, he said the department was unable to allocate funds for new capital projects and was losing qualified and experienced personnel to the private sector because of poor salaries

New court buildings could not be provided and areas which were discriminated against under the apartheid system had therefore remained disadvantaged.

The department had had four strikes this year, all as a result of payment, allowance or salary grievances

"The question of salaries . has proved a discouragement to many people we would like to attract to the civil service "

The justice department was "losing professionals because they are not treated as professionals", and their loss placed a greater burden on the remaining staff

Magistrates faced "humiliation" because of their poor salaries However, most remained loyal to the cause of justice and at their posts, often working overtime

The question of salaries had to be addressed urgently if the twin goals of a more representative department and better administration of justice were to be met

"Resources are scarce and there are many demands on the public purse, but there must be an appreciation that a well-oiled justice system is essential if the new constitutional order is to succeed "

Discipline

There were also productivity and discipline problems in a number of regions, but they were being addressed

Mr Omar said the fight against crime was a major priority for his department, which was working closely with the department of safety and security

Initiatives included the establishment of an inter-departmental co-ordinating group, conferences and seminars, proposed new bail legislation and attempts to win the trust and co-operation of communities

The dream of a new social order was being undermined by escalating crime and violence, including serious economic offences, drug trafficking and corruption, Mr Omar said

Reports by the various attorneys-general had warned that they were being "undermined" in their struggle against crime by inadequate resources and salaries, shabby treatment, heavy workloads, inadequate personnel and the loss of dedicated people to the private sector — Sapa

Improvement of access to justice a priority — Omar

Adrian Hadland BD 17/5/95 (252)

CAPE TOWN — Access to justice in SA was hopelessly inadequate and its improvement would be a prime objective for 1995/96, Justice Minister Dullah Omar said in Parliament yesterday.

During his budget debate, Omar said without the equal protection of the law, "the greater will be the tendency for people to take the law into their own hands".

A number of programmes had been implemented or were planned to boost the access of citizens to justice, Omar said. These included a budgetary allocation of R184m for legal aid, which constituted an increase of 170% over 1994/95, the provision of legal training, the effective management of courts and court rolls and the establishment of special courts.

Better witness protection, the appropriate recognition of paralegals, advice offices and aid clinics, the adoption of alternative dispute resolution mechanisms, adequate provision for community and traditional courts and the proposed simplification of the language used in courts and legislation were all geared to boosting access to SA's legal system.

Despite teething problems, a pilot project to appoint lay assessors in magistrates' courts had succeeded well.

The civil jurisdiction of magistrates' courts was also increased to R100 000, allowing more litigants to use less expensive magistrates' court procedures.

Various measures to fight crime, including the drawing up of a national plan of action, new bail legislation and the greater involvement of communities, were being implemented, he said.

There was commitment to co-operate closely with the Safety and Security Department to combat crime.

Omar said the work of the Justice Department was being seriously hampered by inadequate resources.

The department lacked funds for new capital projects, and was losing qualified and experienced personnel to the private sector because of poor salaries.

New court buildings could not be provided to ensure equal access to justice. Areas which were discriminated against under the apartheid system had therefore remained disadvantaged.

The lack of resources also led to other problems, such as unavailability of witnesses due to a shortage of police transport, and buildings and offices were "in a terrible state".

There were also productivity and discipline problems in a number of regions.

The fight against crime had to go hand-in-hand with the implementation and realisation of a new "justice vision". The department's approach was to concentrate simultaneously on both aspects, Omar told Parliament.

ANC leaders' temporary immunities extended

(252)

POLITICAL CORRESPONDENT

Cape Town — The Government [illegible] a year the temporar immunities from prosecution granted by the previous government to formerly exiled ANC members who now hold senior public [illegible]

[illegible] Mbeki is the most high ranking of the ANC members who were granted temporary immunity from prosecution by then state president F W de Klerk.

Others include Defence Minister Joe Modise, Deputy Defence Minister Ronnie Kasrils, Posts, Telecommunications and Broadcasting Minister Dr [illegible] Jordan, and the director of communications in the office of the president, Joel Netshitenzhe.

The immunities, which are [illegible] tomorrow, were granted at the tail end of the negotiations era to allow [illegible] members to take part [illegible] without the fear of arrest [illegible]

Star 17/5/95

The Promotion of National Unity and Reconciliation Bill [illegible] truth commission to inquire into human rights abuses committed during past political conflicts would [illegible] the immunities for a year, during [illegible] time those granted immunity, would have to apply for permanent immunity from prosecution.

But because the Bill is [illegible] by the National Assembly [illegible] today and will become law only once both the Senate and the president have [illegible] the temporary immunities have to be extended by proclamation in the Government Gazette.

The [illegible] the go ahead to the Minister [illegible] to extend the immunities [illegible] until May 17 1996.

Amnesty cut-off: Mandela leaves way for change

(252) 18/5/95 ARG

CLIVE SAWYER
Political Correspondent

PRESIDENT Mandela has left the way open for a change in the cut-off date for amnesty

The national assembly yesterday approved the Promotion of National Unity and Reconciliation Bill, which sets the cut-off date as December 5 1993, the date stipulated in the constitution

The Inkatha Freedom Party abstained from voting and the bill was opposed by the Freedom Front, which warned that the goal of reconciliation would be destroyed and violence could ensue

Rightwing groups have demanded the date be changed to May 10 last year, the date of the presidential inauguration

Mr Mandela, who has been criticised for poor attendance at parliament, yesterday made a surprise appearance during the debate

He followed Justice Minister Dullah Omar, who introduced the bill

Mr Omar said the African National Congress had resisted calls to change the cut-off date because there had to be certainty that perpetrators of violence would have to take responsibility for their deeds

The fact that the country was plagued by politically motivated killings and violence ruled out a change in the date

Mr Mandela said he had great sympathy for the demand to move the cut-off date to May 10, but levels of violence were too high

"Those who want this date extended have a responsibility to help all of us bring the level of violence down"

When this had happened, all parties in the national assembly should have no problem in extending the date in the interests of national reconciliation

Danie Schutte (NP) said the Truth and Reconciliation Commission could play a meaningful role in promoting a balanced picture of the past and completing the process of indemnity

The party supported calls for the cut-off date to be moved to May 10

"If that can lead to an inclusive settlement (it) is the least sacrifice that can be made."

For the effective combating of crime and lawlessness, it was essential to end the era of indemnities, releases and amnesties, Mr Schutte said

Dene Smuts (DP) said the December 1993 attack on the Heidelberg Tavern was at the centre of the question of the cut-off date

Shifting the cut-off date would create a "a slideway on which you lose your moral footing"

Speaking in a television interview last night, national assembly justice commitee chairman Johnny de Lange said it was hoped the commissioners would be appointed by July

Mandela's amnesty challenge

TRUTH BILL APPROVED AFTER MARATHON DEBATE

CT 18/5/95 (252)

PRESIDENT Nelson Mandela said the amnesty cut-off date might be extended — if those wanting amnesty tried to help reduce violence. **ANTHONY JOHNSON** reports.

PRESIDENT Nelson Mandela opened the door for the extension of the amnesty cut-off date yesterday during a dramatic intervention in the Truth Commission debate in Parliament.

The National Truth and Reconciliation Bill was approved by the National Assembly after a five-hour debate, despite the opposition of the Freedom Front

The legislation, which provides for a commission to probe past human rights abuses, still has to go before the Senate before being signed by Mr Mandela

Mr Mandela said he had no doubt the National Assembly would eventually amend the constitution to allow for the pardoning of those responsible for gross violations of human rights in the six months preceding his May 10 inauguration — providing those wanting amnesty genuinely tried to reduce levels of violence

The carrot dangled by the President was designed to appease the Freedom Front, the Inkatha Freedom Party and the PAC, whose supporters were involved in a spate of pre-election violence

But when MPs voted on the bill the FF opposed it, noting there been no right-wing terror or sabotage in the past 12 months

Unfair

The FF said it was unfair to punish them because the ANC believed the IFP were responsible for violence in kwaZulu/Natal

The IFP abstained but other parties, despite broad non-ANC objections to the December 5, 1993 cut-off date, backed the legislation, which should pave the way for the installation of the long-awaited Truth Commission in the next two months

Introducing the legislation, Justice Minister Mr Dullah Omar said the cut-off date could be reconsidered once peace had been sufficiently restored to areas affected by high levels of political violence

The government had up to now resisted proposals for extending amnesty from December 5, 1993 to May 10, 1994 because changing the date could send the wrong signal to perpetrators or potential perpetrators of violence

But in his surprise entry into the debate immediately after Mr Omar, Mr Mandela made an impassioned plea for reconciliation and nation-building from all parties

Co-operate

He told MPs in a 30-minute off-the-cuff address that those who wanted the cut-off date extended should actively co-operate in efforts to reduce levels of violence

In a reference to FF leader General Constand Viljoen, he said those who had sacrificed part of their political constituency to become part of the democratic Parliament should be given something to take back to their supporters

Mr Mandela said it was important for national reconciliation that majority parties did not abuse their position of power by stampeding their views on minority parties

But he emphasised that it would be poor timing to extend the amnesty cut-off date when innocent people continued to be slaughtered by hit-squads in certain areas

Justice Committee chairman Mr Johnny de Lange said the "very consideration" of changing the cut-off date would be very strongly opposed by the ANC caucus

But top Tuynhuys sources said last night that talks were continuing in a bid to forge a compromise on one of the most controversial and complex pieces of legislation ever to come before Parliament

ANC softens stance on amnesty date

Adrian Hadland (252)

CAPE TOWN — The ANC's refusal to consider changing the December 5 1993 amnesty cut-off date softened yesterday after an appeal by President Nelson Mandela

Addressing Parliament during a debate on the Promotion of National Unity and Reconciliation Bill, which was passed by the National Assembly yesterday, Mandela said he had "great sympathy" for those arguing that the date should be changed to May 10 last year

The ANC's parliamentary caucus stated last month it opposed the change but left a final decision to Mandela's discretion

The Inkatha Freedom Party and PAC abstained from voting on the Bill yesterday while the Freedom Front voted against it, mainly on grounds that the December date would exclude supporters of all three parties from the amnesty process.

Mandela urged his party to be as inclusive as possible in framing legislation and on important political decisions "The majority party must have the understanding and humility not to abuse its position but to ensure confidence in minority parties that their views will be fully incorporated" But he added the caveat that extending the amnesty date could be done only once the level of violence had been brought down.

Justice Minister Dullah Omar confirmed that any proposal to change the date would be considered only "when peace has been sufficiently restored in affected areas" BD 18/5/95

Justice committee chairman Johnny de Lange said the Bill's passage, which paved the way for establishing SA's truth commission, was a demonstration of how democracy and tolerance had taken root and how the nation had "come of age"

"For the first time in the history of our country . . . government has acknowledged the terrible things that have been done

Continued on Page 2

ANC softens amnesty stance (252)

Continued from Page 1

BD 18/5/95

The Bill says to the people that these things will never again be allowed to happen."

General Services Minister Chris Fismer described the Bill, which was subject to more than 300 amendments, as "one of the most difficult, sensitive and controversial pieces of legislation" to be dealt with by this Parliament

Water Affairs Minister Kader Asmal said, "This Bill represents a bold, realistic way of dealing with a terrible past — a past that would, otherwise, haunt us It is our best chance to escape the hell of our past"

It also marked "the final liberation of the Afrikaner from his apartheid past", said ANC MP Jannie Momberg

Freedom Front justice spokesman Corne Mulder said if the cut-off date was not altered, "there will not be understanding but a need for vengeance, there will not be reparation, but retaliation"

The Bill will now be passed to the Senate for concurrence before being enacted by Mandela The truth commission is expected to be up and running by August

Legal sector slams Gauteng decision

BD 18/5/95 (252)

SUSAN RUSSELL

A DECISION by the Gauteng legislature permitting members to comment on the competency of individual judges and discuss cases pending before the courts inside the council chamber was probably a violation of the interim constitution, according to members of the legal profession.

A strongly worded editorial in the latest issue of the official General Bar Council of SA journal, Consultus, described the legislature's decision as "alarming".

The editorial said the administration of justice was too important to be interfered with at a political level

It said the courts would probably find a blatant breach of the subjudice rule by any legislature to be a violation of section 96 (3) of the constitution which stated that no person or organ of state could interfere with judicial officers in the performance of their duties.

Speaker in the legislature Trevor Fowler said in an interview that a new set of rules to replace the blanket subjudice rules inherited from Parliament were implemented last December.

Fowler dismissed contentions that the new rules would prejudice judicial independence or the right to a fair trial

He said a member of the legislature was now allowed to refer to a pending judicial decision providing an individual's right to a fair trial was not prejudiced. This did not mean a council member could discuss the merits of a case or reflect on the honour of a judge.

The new rules were intended to allow comment not just on individual trials but those relating to legislation and other constitutional matters which were clearly in the public domain.

Fowler said that there was also no reason why members of the legislature should not be allowed to comment on decisions handed down by judges that were clearly unjust.

He said older judges who had grown up entirely under the apartheid system had to get used to some interaction with the public and ensure that the judiciary kept up with the development of the society

He said the onus was on the speaker to ensure debate did not endanger the right to a fair trial and he was confident this would not happen.

The Consultus editorial said, however, that the maintenance of the subjudice rule was aimed at the preservation of the due administration of justice.

"Without a respected justice system, all freedoms including freedom of speech become vulnerable"

Consultus said that separate judiciaries and legislatures were traditionally maintained in civilised countries and this was also a feature of the interim constitution.

This could be harmed by a discussion of a judge's personal capabilities by legislatures, the editorial said.

It said section 104 (4) of the constitution already provided for effective machinery to deal with a judge who was allegedly unfit to occupy his or her post

The Gauteng legislation, Consultus said, had apparently lost sight of the fact that it was not the judges as individuals who were at issue, but rather the maintenance of an impartial and effective legal system.

"If a judge would have to give judgment in a case in which an important political organisation had a significant political interest, he or she might be influenced by the knowledge that his or her competency could be discussed by members of the legislature after the judgment"

According to the editorial no judge would object if only the merits of his or her judgment were discussed, but "the picture would change dramatically" if personal attacks could be made.

It would also be unthinkable, Consultus said, for personal attacks on judges by legislatures to go unanswered

This could result in "ugly and undesirable confrontations between legislatures and the judiciary," it said.

Amnesty carrot for FF

President hints that support for Truth Bill could be rewarded

Star 18/5/95

(252)

CONSTAND Viljoen a remarkable leader and a key figure in our nation-building – Mandela

■ BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — President Mandela has dangled a carrot in front of the Freedom Front to soften its objections to the Truth Bill before it was passed by the National Assembly to loud cheers yesterday with the FF in adamant opposition

Mandela said the Front's support for the campaign to end violence could be rewarded by extending the cut-off date for amnesty

Mandela's largely conciliatory speech preceded the passing of what is officially known as the Promotion of National Unity and Reconciliation Bill It establishes a Truth Commission to inquire into human rights violations committed by all sides in the course of past political conflicts

But the Bill must first get the Senate's approval and Mandela's signature before becoming law

In a speech directed as much at the ANC benches as at opposition parties, Mandela refused to extend the cut-off date but left the door open, saying the date's extension from December 5 1993 to March 10 1994 was "a question of timing"

Speaking in the National Assembly moments after Justice Minister Dullah Omar had given notice of the Government's intention to stand firm on the cut-off date, Mandela urged the MPs from all sides to

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Amnesty carrot offered to FF

◀ From Page 1 (252)

resist the temptation to score political points during the debate

Mandela and Omar's refusal to agree to extending the cut-off date — a move that will refuse amnesty to the right-wing bombers who killed more than 30 people shortly before last April's election — was strongly opposed by the FF The other parties supported the Bill and the IFP abstained

The FF's Corne Mulder warned of "disunity and conflict" and said there would be retaliation instead of reparation and victimisation instead of *ubuntu*

Star 18/5/95

In the face of strong ANC backbench opposition to an extension, Mandela said he was "concerned about the fears and concerns of the minorities in this country" There was a temptation for the majority party to use the minority parties as "rubberstamps"

"I am concerned that they feel the cut-off date does not accommodate their own problems. This is a genuine concern which should be supported by all the parties Our task is to remove the concerns of all national groups in the country," Mandela said.

Without naming FF leader General Constand Viljoen, Mandela paid tribute to him, saying he was "a remarkable leader" who had become one of the "key figures in nation-building"

"I have sympathy for his concern, but we must appreciate the environment in which to discuss the question of extending the cut-off date. The level of violence is (still) unacceptably high"

Transport Minister Mac Maharaj described the Bill as the most important measure, after the Reconstruction and Development Programme, to be passed by Parliament since its inception a year ago

"When the Commission has done its task, at last we shall have wiped off the shame done to South Africa."

The Truth Bill is approved

Sowetan 18/5/95 (252)

■ RAISING HOPES Cut-off date could be changed if violence stopped:

PARLIAMENT YESTERDAY APPROVED the Truth Bill after a division in which the Freedom Front opposed it following a debate lasting nearly five hours

The legislation, which provides for a commission to probe past human rights abuses, still has to go before the Senate before going to President Nelson Mandela to be signed into law

Speaking in the debate on the Promotion of National Unity and Reconciliation Bill, Mandela said those who wanted the amnesty cut-off date extended to May 10 should cooperate in efforts to reduce violence

He had no doubt that once this happened, the National Assembly would accept that extending the date beyond December 5 1993 would be in the interests of national reconciliation

Deaf to their pleas

Mandela said he had sympathy for those asking for a later date than that laid down in the Constitution and it would be a mistake to be deaf to their pleas

"Changing the cut-off date sends the wrong signal, namely You can commit crime at some time or other and you will be forgiven We cannot afford such a situation," he said

"We want to be very frank about this The problem is that our country is still plagued by political violence and killings in certain areas

"This rules out any possibility of a change in the cut-off date The proposal made can be considered when peace has been sufficiently restored in affected areas But for the present, the cut-off date remains "

Great sympathy

Mandela said he had great sympathy towards those who wanted the cut-off date extended from December 5 1993 to May 10 1994

Those who wanted the amnesty date extended would first have to help bring down the violence — *Sapa*

Rightwingers slam failure to extend amnesty cut-off date

(252) Star 19/5/95

■ BY MONDLI MAKHANYA
POLITICAL REPORTER

Right-wing parties yesterday condemned Parliament's failure to extend the amnesty deadline for political crimes

The parties contend the date should be extended to May 10 1994 from December 5 1993 in order to include rightwingers in jail for their involvement in the pre-election bombing spree

The Freedom Front also came in for harsh criticism for its failure to get the deadline extended

Boerestaat Party leader Robert van Tonder said the FF should have known that it would not make any impact in an ANC-dominated Parliament

CP leader Dr Ferdi Hartzenberg said the amnesty date had to be extended to ensure equal treatment for all Failure to do so would be discriminatory

Afrikaner Volksfront secretary-general Dr Harry Mocke slammed President Mandela for linking the extension of the amnesty cut-off date to a decline in violence levels, saying the violence of today had nothing to do with the pre-election violence

The AWB took a more conciliatory line, saying it welcomed Mandela's statement that the amnesty cut-off date might be extended

justice

Star 19/5/95 (252)

Brain drain in SA

Law officers say a pay disparity of 46% is decimating experienced staff

PROSECUTORS and State advocates are leaving for far more lucrative positions in the private sector

BY BRENDAN TEMPLETON and SUSAN MILLER

Low salaries and poor working conditions have led to staff shortages and created a crisis in the criminal justice system, according to attorneys-general, magistrates and prosecutors countrywide

They have expressed grave concern at the Government's apparent inability to staunch the flow of personnel from the justice system

The Star has been told the Witwatersrand is one of the worst-hit areas, with a senior source saying "little doubt" existed that the cause was the failure of salary scales to compete with the money available in private practice

Attorneys-general say state advocates' salaries are lagging 46% behind those of lawyers in private practice with comparable experience

Justice Minister Dullah Omar has already approached the Cabinet in a plea for more funds

From his office, Sue de Villiers pointed out that the Department had been allocated less than 1% of the Budget for this year. This would be reduced further by funding needed for the Truth Commission and the Human Rights Commission

This has resulted in a "juniorisation" of prosecution services, particularly in regional magistrates' courts

State Prosecutors' Association chairman Japie Barkhuizen said inexperienced prosecutors with less than five years' experience were handling cases about murder, serious fraud and syndicate crimes where they often came up against well-paid senior counsel and highly trained attorneys.

He asked. "What chance do they have of winning their cases and adequately representing the plaintiff in these conditions?"

At the Germiston Magistrate's Court, six vacancies out of his staff complement of 24 had existed for more than a year.

High staff turnovers meant they had to continuously retrain new recruits who stayed only for a few years before moving on

Magistrates' grievances over working conditions and pay are also at crisis level, and have caused low morale and outbursts of rebellion.

Magistrates in the Western Cape and KwaZulu-Natal earlier this year threatened to strike if their plight was not addressed

Magistrates' Association president Jan Venter said yesterday his members were expecting action to be taken shortly to alleviate their unhappy situation

"There is a realisation by the Minister and others that the frustration levels among magistrates, state advocates and even attorneys all over the country are high

"The salary issue, which has been going on for six months now, must be addressed"

Clarity soon on lawyers' contingency fee system?

WM 19-25/5/95 (252)

Indigent people may soon gain wider access to legal representation, reports **Justin Pearce**

CONTINGENCY fees — where lawyers are only paid if they win the case — could soon be officially recognised

This will enable the poor to invoke the power of the law without the financial risk of losing a case

Although contingency fees have been a widespread practice for many years, the lack of official recognition has opened the way for unscrupulous operators to shoulder in on cases which are properly the work of attorneys

The Association of Law Societies (ALS) has approached the Law Commission to consider the possibility of making the contingency fee system legal. ALS is a body that unites the provincially-based law societies, which are professional associations representing attorneys

Human rights lawyers have welcomed the move by ALS, saying it will make the law accessible even to indigent people

ALS has argued that with many claimants unable to afford the services of an attorney, the field is open for unprofessional operators such as debt collectors to perform some of the functions of attorneys — without the code of ethics that governs the legal profession. The introduction of contingency fees will open the services of lawyers to people who at present are forced to make use of unprofessional alternatives

It is not the first time that law societies have moved to make contingency fees a possibility In the early 1990s, the Natal and Transvaal Law Societies changed their rules to allow contingency fees However, when the Cape Law Society tried to do the same, the matter was brought before the Chief Justice, who expressed the opinion that the practice was contrary to common law Since then, the law societies have ceased to endorse the practice of contingency fees

They would welcome the introduction of contingency fees, since the system would regularise a state of affairs which exists anyway

However, Roger Cleaver of the ALS believes that contingency fees might receive fresh consideration in the light of the changes in legal thinking that came with the adoption of a Bill of Rights The new Constitution emphasises principles of justice and access to the law, a development which has seen the function of the Justice Department shift away from laying down the law, towards ensuring that abstract concepts of justice become a reality

Cleaver emphasised that the ALS did not envisage the system practised in the United States, which tends to fill the courts with shot-in-the-dark lawsuits, by offering an attorney a percentage of the damages awarded in the case The ALS is instead considering a system similar to the one in place in Scotland, which permits an attorney to charge a premium on the normal fee, provided that the court grants to the complainants damages which cover the increased fee

Individual applicants would be permitted to make use of contingency fees, but not companies seeking a law suit

Krish Govender of the National Association of Democratic Lawyers (Nadel) and Ahmed Motala of Lawyers for Human Rights both said they would welcome the introduction of contingency fees, since the system would regularise a state of affairs which exists anyway

Motala said contingency fees were common practice in cases such as car accident claims, and that the law societies have simply "turned a blind eye" to the practice

Govender pointed to the many cases brought against the police and other organs of the state during the apartheid era, which would never have happened if the attorneys had not agreed to write off fees if the suit were unsuccessful

Chikane tipped as favourite for Truth Czar

(252) WM 19-25/5/95

Frank Chikane, a behind-the-scenes slogger rather than a front-row forward, is the favourite to head the truth commission, reports **Gaye Davis**

Leader of the pack: Frank Chikane, victim of a 1989 assassination attempt
PHOTOGRAPH AFP

LIBERATION theologian Frank Chikane, former general secretary of the South African Council of Churches (SACC), is the front-runner to head up South Africa's truth commission

The Promotion of National Unity and Reconciliation Bill, passed by the National Assembly (the Freedom Front opposing, the IFP abstaining) after a marathon five-hour debate on Wednesday, provides for a commission of 11 to 17 members, to be assisted by three committees to deal with amnesty, hear human rights violations and recommend reparations and rehabilitation

In the debate, Minister of Justice Dullah Omar said it was important the commissioners "be people the nation as a whole can trust" The Bill provides for the president to appoint people who are "impartial, respected and have no high political profile"

President Mandela will consult with Cabinet on the appointments Both he and Omar said during the debate that parties outside the Government of National Unity — not represented in cabinet — would be able to submit names of people for consideration

In the view of many MPs, a black church leader would be an ideal choice and Chikane's is the name most often mentioned However, observers have cautioned that his appointment could run into interference from the National Party, on the grounds that the activist priest is himself a high-profile victim

Chikane's education was routinely interrupted by detentions, and he was also defrocked as a pastor in the Apostolic Faith Mission (though later reinstated) for his political activities. He was a prominent United Democratic Front figure during the Eighties

Most significantly, in May 1989 he was the victim of an assassination attempt. It emerged hit squads had tried to murder Chikane by soaking some of his clothing with an organophosphate poison designed to kill him as it was absorbed by his skin

But Chikane, who is presently studying at Harvard University in the United States, is nevertheless a strong candidate as he has a proven track record as an able administrator. A behind-the-scenes slogger rather than a flamboyant front-row political forward, it was he who helped the SACC throw off its image as "the ANC at prayer", drawing more conservative churches back into its fold

Other theologians' names mentioned include those of Cape Town's Anglican Archbishop Desmond Tutu, who has indicated he intends retiring. However, long-standing obligations — and his close identification with the ANC — may preclude him

A compromise choice could emerge in Bishop Stanley Magoba, head of the Methodist Church in South Africa

Other names mentioned include Alex Boraine, former director of the Institute for Democracy in South Africa (Idasa) and now head of the Justice in Transition Project Boraine co-edited *Dealing with the Past — Truth and Reconciliation in South Africa*, a book relating how Latin American and Eastern European countries dealt with their legacy of human rights abuses

In view of the Bill's emphasis on the truth commission being used as an even-handed instrument of reconciliation, it is certain Afrikaans-speakers will also be appointed Names mentioned include those of Wimpie de Klerk, brother of deputy president FW and former editor of *Die Transvaler* and Stellenbosch philosopher Professor Willie Esterhuyse

Bill set to give rights to powerless fathers

(252) WM 19-25/5/95

Anouk Mommer

FATHERS of children born out of wedlock will soon have a fair chance to gain access rights.

The Minister of Justice has referred a number of important recommendations of the Law Commission to Parliament in the form of a draft Bill

Fathers currently have no rights over children born out of wedlock — only an obligation to pay maintenance until the child is self-supporting

A father can only gain access rights, custody or guardianship if the mother is incapable of taking care of the child and her parents are unwilling or unable to take on the task

In December 1990, the Law Commission received a petition from The Unmarried Fathers' Fight Action (Tuff) to reform the law The organisation said fathers' legal position was both unreasonable and unfair The commission decided to investigate the law and completed its final report early this year.

The commission's view is that fathers should have the right to apply to court for access rights and the court should grant these rights or even custody or guardianship if it is in the child's best interests.

The court should investigate, among other things, the relationship between the mother and the natural father, the relationship between the father and the child, and the attitude of the child with regard to the granting of access rights to the natural father

Tuff spokesman David van Onselen says the recommendation is not ideal as Tuff was campaigning for automatic access rights for fathers. "There's no reason not to get automatic access rights, but there is a stigma attached to it, so we won't get it."

Helen Starke, director of the National Council for Child and Family Welfare, is in favour of the Bill "It's not only the rights of the father that are involved. Children need to know who their natural father is — they never ask to be born out of wedlock Generally, it is in the best interest of the child if the father has access rights "

Starke says paternal grandparents will also benefit. "They are often very concerned about the child If the father has rights, the grandparents have them too. When a father can see his children at weekends he will probably take them to his parents regularly and the child will get a feeling of belonging to a family."

If the Bill is passed, it will also radically alter the adoption process. It requires that the father of a child born out of wedlock must, if possible, be informed if the mother puts the child up for adoption. He will be given the opportunity to apply for the adoption himself The court will decide whether to grant the father's application in accordance with the best interests of the child.

Starke is very pleased with this recommendation. "Right now, a father has no more rights than the man next door The father must be able to state his case."

But other social workers are concerned Said one: "If the father has a say in adoption it can cause problems for welfare If he says no and they don't get consensus, what do you do then?

Besides that, in many cases the mother is not sure who the natural father is So you will have to do tests to see who the real father of the child is It makes the adoption process much more complicated."

Finally, the Law Commission recommends the implementation of family courts — rather than the Supreme Court — to deal with matters of this nature to make the proceedings less expensive

Four white men and truth

(252) WM 19-25/5/95

■ From PAGE 9

'keep things as cool as possible," he says of the Justice Committee where, as the ranking ANC member after chairman Johnny de Lange, he has been responsible for bringing out the ANC heavy artillery "But there were times when having to plead and negotiate for a Truth Commission with the perpetrators of crimes against humanity did get one down"

Hofmeyr, like his primary adversary Danie Schutte, is an Afrikaner. He went "straight out of school to the army, full of naive enthusiasm But the army radicalised me more than anything I was in the Transvaal and it was the first place I experienced hardcore racism Things are much more gentle here in the Cape"

In the 1970s he was banned, in the 1980s he was a United Democratic Front leader. Now he is one of the ANC's egghead lawyers, a steely determination masked by his affable, nerdlike demeanour He no longer sees himself as a victim in need of healing "I was plunged into that work when I had to make arrangements for the first Groote Schuur meeting There I was, sitting face to face with policemen I had had a particularly bad relationship with, and having to come to agreement."

But, he acknowledges, his own experiences have given him a very sharp sense of how "the experiences of victims need to be validated With all these negotiations and the transition, victims have been left by the wayside, and that's just not on"

Did Hofmeyr and his ANC colleagues sell justice down the river by acceding to so many of the NP's demands? "How ever much justice might require it," he said, "the one compromise is that we're not going to have Nuremburg-type trials in South Africa. This might be against what international human rights and norms require from us, but the ANC accepted that very early on I certainly did A negotiations process means having to work with and live with and build together with people who treated us very badly in the past"

experience, and a profile of four white men involved in the truth process

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history around the world

Pinochet's continued hold on power and by stipulations that it could only report on people who had been murdered and could not reveal details about the living

Now that Pinochet and his allies are losing their power base in Chile, the government of President Eduardo Frei is intensifying the work of the commission and testimony from torture victims is actively being sought A body of literary work, including Ariel Dorfman s play, *Death and the Maiden*, and Luz Arce's book, *Hell*, are symptoms of the creative effect that can come with collective catharsis

But most other countries in Latin America, says Andrew Graham-Yooll of the Buenos Aires *Herald*, do not have active truth commissions "In the capitals of Latin America, people with untold stories live in their own private hells and are still waiting for a chance to let in some light."

Hayner says that where truth commissions have been set up, the most contentious issue they face is whether to name individuals found to be responsible for individual crimes — especially when these people still occupy high political or military posts a dilemma that is particularly acute in South Africa, where right-wing groups argue the country could be ripped open rather than old wounds being healed by its commission

"The whole truth, some argue required naming individuals shown to be responsible for serious abuses But others insist this violates a person's due process rights a truth commission, after all, is not a court of law "

The terms of reference of most truth commissions do not explicitly address this controversy, leaving this up to the discretion of the commissioners But, Hayner notes, an inquiry in El Salvador received extensive accolades for naming high-level military, political and judicial figures as the perpetrators of human rights abuses — and suggests this is the direction in which most truth probes are likely to move

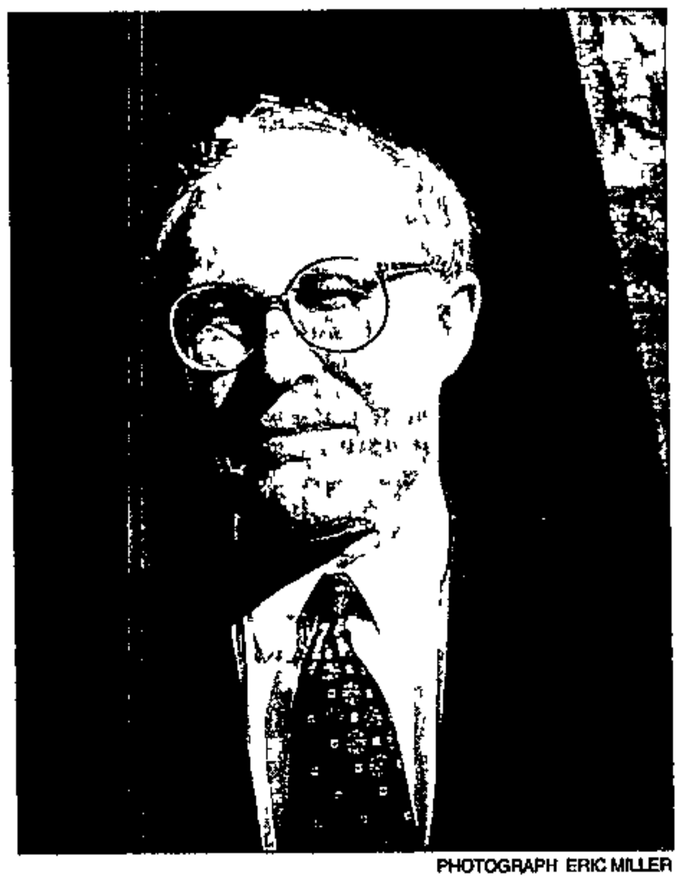
"Indeed, human rights advocates and others were riled when an agreement was recently reached for a truth commission in Guatemala that explicitly prohibits the commssion from naming names "

The newspaper notes with concern that some countries have deliberately not chosen to confront the horrors of the past. "In Mozambique and Cambodia, for example there seems to be no popular desire to institute a truth commission at this time, despite the horrendous abuses suffered "

Hofmeyr and Alex Boraine in  **THE MARK GEVISSER PROFILE**

men and truth

PHOTOGRAPH SALLY SHORKEND



PHOTOGRAPH ERIC MILLER

PHOTOGRAPH ERIC MILLER

The truth of the matter Father Michael Lapsley (above, left), Danie Schutte (above, right), Willie Hofmeyr (right, top) and Alex Boraine (right, bottom)

PHOTOGRAPH HENNER FRANKENFELD

and tell me I was one, I'd like to know on what grounds "

If anyone is personally responsible for the the hundreds of hours of deliberation in the Justice Committee it is Danie Schutte He is perhaps the most belligerent of the NP backbenchers, and has made a name for himself, this first year as one of the party's fiercest opponents of the ANC He has been identified as one of those positioning himself to take up the reins of the tough "new right" of the Party

His more uncharitable opponents accuse him of using the Truth and Reconciliation debate cynically, to relaunch his political career (he was Minister of Home Affairs in the De Klerk government) Says one source close to the NP "He was trying to show the NP caucus that he could get more concessions out of the ANC than the softies in cabinet. The battle over the Truth Commission has been one long and extended media opportunity for him No wonder he didn't want it to end "

Schutte feels victorious his doggedness has ensured that the commission will no longer be a "witch hunt in the service of vengeance, but rather an instrument for reconciliation" Also, very importantly, it will be "even handed in its approach to both sides"

He says he has come to believe that "a Truth and Reconciliation Commission is the only way forward, because it is a way of getting the past out of the way"

Granted, Schutte is a second-language English speaker But listen carefully "It is essential that this country turns to the future and turns its back on the past."

Alex Boraine

IN the mid-1980s, while he was still a Member of Parliament, Alex Boraine went to visit Dullah Omar in jail It was their first meeting, and the radical lawyer did not mince his words. "He asked me " recalls Boraine, "who I thought I was, coming to see him in jail and then going back to my white parliament to stand up and make speeches while he was banned from speaking?"

Nine years later, on the day after Omar took office as Minister of Justice, he phoned Boraine and asked him to come in and talk about the establishment of a Truth and Reconciliation Commission.

Reconciliation in motion Boraine was one of the Act's primary drafters He will probably be appointed to the Commission and, if he weren t white, he would be a shoo-in for its chairmanship — a position that is more likely to go to a high-level black cleric (the names of Desmond Tutu and Frank Chikane are much bandied about)

Briefly and powerfully, he scorched white South African consciousness in 1986 when he, together with Van Zyl Slabbert, walked out of parliament. It was, to some, an intense betrayal, to others an intense acknowledgment of prior complicity It figures that he would make "Truth and Reconciliation" his life s work. he epitomises white guilt.

The Truth Commission, he says "will give a shared memory to the people of South Africa It will give ordinary people a record of what they stood for and what they were punished for "

The face of the state is one of hostility — the hostility of a police station, a hospital, a morgue when you are looking for your lost son "It may sound romantically idealistic, but if a group of people appointed by the President of South Africa offer you a cup of tea and ask you to tell your story, you're now going to be seeing a face of the state that is sympathetic, reassuring, healing "

Thank heavens for the self-concious romanticism of liberals

Willie Hofmeyr

IN 1989 Willie Hofmeyr went on hunger strike for 28 days The previous year, he had been locked up in solitary confinement for six months He is the chuckling master of wry understatement. "We tried to

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MAIL & GUARDIAN
May 19 to 25 1995

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The Truth and Reconciliation Commission: The international experience, and a profile of four white n

Filling in the blank pages of history around the

South Africa can draw upon a wealth of international experience of truth commissions, writes **Eddie Koch**

SOUTH AFRICA is not the only country to scour its past in a cathartic endeavour to uncover details about human rights abuses There have been at least 15 truth commissions in 13 countries over the last 20 years, and a number of countries are setting up new ones, according to the latest edition of *The World Paper*

Countries that have emerged from authoritarian rule face powerful pressures to fill the blank pages of history "If not addressed directly, this silence past can fester into resentment and that can threaten a new democracy, and can reinforce a system of impunity for the perpetrators," says human rights researcher Priscilla Hayner

"If combined with needed political, military or judicial reforms, a truth commission report can perhaps help keep the past from being repeated" This is the primary reason why many governments around the world — including Guatemala, Sri Lanka, Malawi, Haiti and South Africa — are considering or are in the process of setting up new truth commissions

The first to receive major international attention was set up in Argentina and reported in 1984 on abuses committed by the military during that country's "dirty war" against internal political opponents between 1977 and 1983

There have been less publicised "truth commissions" in Uruguay, Bolivia, the Philippines, Germany, Chad Zimbabwe, Ethiopia and Uganda (which has had two human rights inquiries) Rwanda has also just instituted a formal probe into genocide committed there

Vaclav Havel, the poet and hero of Czechoslovakia's velvet revolution, became famous for insisting the problems of his new government were not about choosing between socialism and capitalism, or poverty and wealth, but "about truth, how to purge a society of past lies and rebuild people's faith in the autonomous integral and dignified human"

Says Hayner "Such commissions are often referred to as having a 'cathartic' effect on society as fulfilling the important step of formally acknowledging a long-silenced past. But not all truth commissions have been such successes Some have been significantly limited from a full and fair accounting of the past — limited by mandate, by political constraints, restricted access to information or a basic lack of resources — and have reported only a narrow slice of the 'truth'"

Hayner notes a commission of inquiry set up in Uganda by Idi Amin under international pressure in 1974 was simply banished from the country after it issued a 1 000-page report about hundreds of disappearances under three previous periods of Amin's rule

In the Philippines, a truth commission was created in 1986 by new president Corazon Aquino without any real budget or staff The commission ultimately resigned over continued abuses by the new government as Aqino's initial commitment to human rights waned in the face of continued armed rebellions.

Despite Havel s eloquent appeal, most countries in Eastern Europe have chosen not to reopen their history books "Ex-communists have regained power through fair elections in Poland, Hungary and Bulgaria," says Silviu Brucan in the same edition of The World Paper.

"The transition to a market economy throughout Eastern Europe has proved much more difficult and painful than we thought and, for the majority of the population, their living conditions are harder than before Hence, people are now concerned about the present and the future, rather than the past."

Chile set up a Commission of Truth and Conciliation in the early 1990s. Its brief was heavily circumscribed by General Augusto Pinochet's continued hold on power and by stipulations that it could only report on people who had been murdered and could not reveal details about the living.

Now that Pinochet and his allies are losing their power base in Chile, the government of President Eduardo Frei is intensifying the work of the commission and testimony from torture victims is actively being sought A body of literary work including Ariel Dorfman s pl *Death and the Maiden*, and L Arce s book *Hell*, are symptoms the creative effect that can come w collective catharsis

But most other countries in La America, says Andrew Graham-Y of the Buenos Aires *Herald*, do have active truth commissions the capitals of Latin America, peo with untold stories live in their o private hells and are still waiting

Michael Lapsley, Danie Schutte, Willie Hofmeyr and Alex Boraine in T

Four white men and tr

PHOTOGRAPH SALLY SHORKEND

The truth of the matter: Father Michael Lapsley (above, left), Danie Sc top) and Alex Boraine (right, bottom)

WHY, I asked Minister of Justice Dullah Omar, did he think that, of all the issues before our first Government of National Unity, the one that nearly brought the whole damn house tumbling down was his Truth and Reconciliation Bill?

"All of us involved in this bill," he replied with those sad, Basset eyes so perfectly suited to truth and reconciliation, "are forced to look at ourselves, to see whether we, personally, are living up to the standards we hope to set in the legislation. It is a painful process"

Paraphrase "It's not just about politics, it's about Freud and Christ, about repressed memory, confession and redemption It s about needing to deal or not being able to deal, with the past. Those legendary 300 hours the Select Committee on Justice sat were not simply about horse trading — they were an intense course of psychoanalysis

Once the Truth Commission is up and running, Omar hopes it will trigger "a time of national soul searching" It's going to be a tough time, particularly for white men White people, and specifically white men, have perhaps a far more complex and ambivalent relationship — and thus, perhaps, more of an attraction or repulsion — to the memory of this country's history Here, then, are four white men, intimately involved in the process, talking about truth.

Father Michael Lapsley

EXACTLY two months after Nelson Mandela was released, Father Michael Lapsley, a New Zealand-born Anglican priest with the African National Congress in Harare received a letter, on ANC stationery, telling him to expect books from South Africa. A few days later, two parcels arrived The first contained a religious book, the second a bomb which blinded him in one eye, blew one of his hands off, and left the other severely mangled

In Australia, as part of pre-operative counselling before his second hand was amputated, he was seen by a psychologist. She turned out to be a white South African "Suddenly," recalls Lapsley, "there was this fascinating role-reversal, now she was the client and I the father-confessor She experienced some sense of collective responsibility, a sense in which she saw herself as an indirect party to the bombing"

Lapsley now works as the chaplain for the deliberately uneuphemistically named Trauma Centre for the Victims of Violence and Torture He is appalled at the lack of contrition among those who were in power when he lost his hands Unlike that psychologist, they, "the perpetrators, have the audacity to tell the victims, 'it is your job to forgive and forget, while at the same time refusing to acknowledge that they have been party to evil"

"Just by existing" he says, waving about the metal pincers that have replaced his hands, "I am a problem to the forgive-and-forget crowd. Priest, white, no hands If I'm dead there's not a problem, you can deny it all bury the evidence But I'm living, I'm a big problem"

And he intends to remain one He is already unhappy that we have only a Truth and Reconciliation Commission rather than a "Truth, Justice and Reconciliation Commission No trials mean no justice. Personally, I would say it would be better if we had trials and then amnesty You d have the truth, and then you d say, well justice is that you are sentenced for 10 or 20 years, but in the interests of reconciliation we ll give you amnesty"

His is the language of confession, absolution and redemption "of bringing good out of evil, life out of death" He is irritated with "cheap reconciliation" In the New Testament, he says, "the Greek word for forgiveness is the same as that for untying a knot" Both involve hard work, particularly if you have no hands

Danie Schutte

WHEN asks Danie Schutte exasperatedly, "are we going to be done with all this recrimination? For how long are we going to hear that we did this and that and the other?" It has poisoned even his own family He has two kids at university and two in high school "I've been confronted by three of my kids with the accusation, 'Why was apartheid there? I m waiting for the fourth one to come with the same recrimination"

How does the National Party's Justice Committee leader answer his own children? Exactly as he does his political opponents "I was not the architect of this system. I got it. Basically, we are the ones who dismantled it, who moved away from it." No guilt, no responsibility

He has been in parliament, on and off, since 1977, when he was elected MP for Pietermaritzburg North Has he ever had a personal moment of reconciliation? He is hard-pressed to think of one "I have never been a racist. If anyone can argue with me and tell me I was one, I d like to know on what grounds"

If anyone is personally responsible for the the hundreds of hours of deliberation in the Justice Committee, it is Danie Schutte He is perhaps the most belligerent of the NP backbenchers, and has made a name for himself, this first year, as one of the party's fiercest opponents of the ANC He has been identified as one of those positioning himself to take up the reins of the tough "new right" of the Party

His more uncharitable opponents accuse him of using the Truth and Reconciliation debate cynically, to relaunch his political career (he was Minister of Home Affairs in the De Klerk government) Says one source close to the NP "He was trying to show the NP caucus that he could get more concessions out of the ANC than the softies in cabinet. The battle over the Truth Commission has been one long and extended media opportunity for him. No wonder he didn t want it to end"

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Briefly and powerfully

Inkatha no to commission

(252) CP 21/5/95

By SEKOLA SELLO and Sapa

INKATHA and the African National Congress took diametrically opposed views on the proposed truth commission again this week

Speaking in parliament during the debate on the Promotion of National Unity and Reconciliation Bill, the ANC seemed to soften its attitude on the question of a cut-off date for amnesty while Inkatha rejected the truth commission outright.

Inkatha's Madala Mzizi said while his party supported the notion of reconciliation, it was unable to give its support to the Bill

Speaking in Parliament this week, Mzizi said government resources should be used to promote reconciliation – but not in the form of the proposed truth commission.

Justice Minister Dullah Omar said the amnesty cut-off date could be reconsidered once peace had been sufficiently restored to areas affected by high levels of political violence.

Introducing the Bill, Omar said the government had resisted proposals to a change the date from December 5 1993 to May 10 1994, because there had to be certainty about reducing violence.

President Nelson Mandela said those who wanted the amnesty cut-off date extended should co-operate in efforts to reduce the levels of violence.

He had no doubt that once this happened, the National Assembly would accept that extending the date would be in the interests of reconciliation

He said he had sympathy for those asking for a later date than that laid down in the Constitution and it would be a mistake to ignore their pleas.

However, in the present climate of violence this had to be considered very carefully.

The National Party gave its qualified support to the Bill General Services Minister Chris Fismer said the way in which the commission carried out its work would determine whether the country became reconciled to its past or not.

He said the Bill could either shatter the fragile peace and reconciliation process – placing South Africa permanently in a mode of hatred and accusation – or firmly cement the process.

Fismer said the NP's support of the Bill was dependent on a number of factors: The balanced drafting of legislation, the wise appointment of the committee, the credible and unbiased conduct of affairs and the reconciliatory nature of the reports.

The Dutch Reformed Church has also entered the fray. On Friday the church expressed concern that the Truth Commission might have a negative effect on South Africans.

The church called on the commission to ensure its work would not be conducted from a single ideological viewpoint and that it should guard against "revenge attacks".

Amnesty call for heads

ANC

(252) ARG 22/5/95

JUSTICE Minister Dullah Omar, architect of the Truth Commission on human rights violations under apartheid, today called for automatic amnesty for leaders of the struggle against white rule.

"I find it unacceptable that those who played the greatest role in bringing democracy to South Africa should have to apply for indemnity ... I think it is a disgrace," he said

Mr Omar told foreign correspondents in Cape Town that no one should be exempt from summons to testify before the Truth Commission, which will document human rights crimes by both sides in the war over apartheid

But, he said, people who had played a leading role in the struggle against apartheid should not have to apply to the Truth Commission's amnesty committee for exemption from prosecution for their actions in the 30-year guerrilla war

Several South African cabinet ministers have only temporary immunity from prosecution in terms of an interim law that allowed them to return from exile in 1990 and begin the talks that led South Africa to democracy last April

They include people who were closely involved in the ANC's guerrilla campaign

Mr Omar said Deputy President Thabo Mbeki and Public Service Minister Zola Skweyiya were among the people he believed ought to be exempt from formal application for amnesty

"They brought our country to democracy Those who made the greatest contribution to our democracy should not have to apply for amnesty," Mr Omar said

Asked who should decide whether a contribution was significant enough to warrant exemption from the amnesty process, he said "It's a political decision"

Mr Omar said the two-year Truth Commission, which is expected to begin work within three months, would help to "heal the wounds of history"

The 11 to 17-member commission will be empowered to investigate politically motivated human rights violations under apartheid, to award compensation to victims and to indemnify perpetrators against prosecution

Mr Omar said the European Union, Denmark, Ireland and the Netherlands had all offered forms of help with the cost and management of the process

"The amnesty issue, in particular, needs to be resolved as quickly as possible so that the country can get on with its business," he said

● Mr Omar said today that he would be disappointed if the government returned to capital punishment, but he would not necessarily resign if this happened

Mr Omar acknowledged at a breakfast with foreign correspondents that there was majority support in the country for a return to hanging

"If capital punishment is reimposed the new South Africa will be no different from the old

"I would find it very sad if our new society found it necessary to return to the death penalty I cannot say categorically whether or not I would serve (in the government)," he said — Reuter

Omar explains comments

ARG 23/5/95 (252)

Political Staff and Reuter

ALTHOUGH Minister of Justice Dullah Omar says it is unacceptable that leaders of the struggle against white rule should have to apply for amnesty, he has rejected reports that he called for automatic indemnity for them.

"I find it unacceptable that those who played the greatest role in bringing South Africa to democracy should have to apply for indemnity. I think it is a disgrace," he told foreign correspondents yesterday.

Mr Omar said no-one should be exempt from a summons to testify before the Truth and Reconciliation Commission.

But he said people who had played a leading role in the struggle against apartheid should not have to apply to the commission's amnesty committee for exemption from prosecution.

After his comments caused a political storm, Mr Omar said he had not called for an automatic amnesty for anti-apartheid leaders.

"He did not call for automatic indemnity," a statement from his office said.

"He expressed regret that a provision of this kind was not included in the bill"

Several cabinet ministers have only temporary immunity from prosecution in terms of an interim law that allowed them to return from exile in 1990 for talks.

Mr Omar named Deputy-President Thabo Mbeki and Public Service Minister Zola Skweyiya as among those he believed ought to be exempt from formal application for amnesty

"They are the people who brought our country to democracy. Those who made the greatest contribution to our democracy should not have to apply for amnesty," he said

Asked who should decide whether a contribution was significant enough to warrant exemption from the amnesty process, he said "It's a political decision"

The National Party and Democratic Party last night described Mr Omar's ideas on the issue as outrageous and alarming, and said he was trying to undermine the commission.

Omar denies pushing automatic amnesty for liberation leaders

CT 23/5/95 (252)

JUSTICE MINISTER Mr Dullah Omar denied last night he had called for automatic indemnity for leaders of the liberation struggle

A political storm erupted last night after it was reported earlier yesterday that Mr Omar had said he felt leaders of the anti-apartheid struggle should get automatic indemnity

Mr Omar said he had responded to a reporter's question as to whether he was unhappy with any part of the final version of the Truth Bill

A spokesman for his office said last night Mr Omar had said "he found it unacceptable and disgraceful that those who played the greatest role in bringing democracy to South Africa should have to apply for indemnity"

"He did not call for automatic indemnity He simply expressed regret that a provision of this kind was not included in the bill"

But the National Party and Democratic Party last night described Mr Omar's thoughts on automatic amnesty as "outrageous" and "alarming"

They accused the ANC of trying to undermine the soon-to-be established Truth Commission through political favouritism

DP leader Mr Tony Leon said Mr Omar's idea of creating a super-category of persons to whom the amnesty legislation passed only last week did not apply was "deeply repugnant"

NP justice spokesperson Mr Danie Schutte said Mr Omar's call was outrageous in view of the Truth Commission Bill, which was clearly based on equal treatment for all, "whatever their political inclination might have been" — Sapa, Political Correspondent

Police arrest a taxi driver at the height of taxi protest action in central Johannesburg yesterday.
Picture: NICKY DE BLOIS

Omar provokes storm over amnesty remark

(252) BD 23/5/95

Adrian Hadland

CAPE TOWN — Justice Minister Dullah Omar moved to quieten a political storm yesterday after a remark suggesting leaders of the liberation struggle should not be forced to appear before the truth commission

Fielding questions from members of the Foreign Correspondents' Association yesterday, Omar was asked if there was anything concerning the truth commission process with which he was unhappy.

According to spokesman Sue de Villiers, Omar said he thought it disgraceful that figures such as Deputy President Thabo Mbeki and Public Service Minister Zola Skweyiya should have to apply for indemnity.

Other political parties reacted angrily after reports indicated Omar had called for an automatic indemnity process.

"Omar's call for automatic indemnity for certain ANC leaders is outrageous," said the NP. "If leaders of the ANC are to be given preferential treatment, then many members of the security forces and police should be given the same preferential treatment because many of them in the past 10 years fought to preserve the reform initiative which eventually led to the present dispensation."

DP leader Tony Leon said the idea of creating a "super category" of person to whom truth commission legislation, passed only last week, should not apply was "deeply repugnant".

Last night Omar apologised for the confusion and said he regretted the misunderstanding. He reiterated his disappointment with the truth commission concerning the lack of an automatic indemnity procedure.

Mbeki is one of several Cabinet Ministers who have only temporary immunity.

De Villiers said the Promotion of National Unity and Reconciliation Bill had already been passed by the National Assembly and was currently with the Senate for concurrence.

A new indemnity process was "not something that can just be called for", she said. The PAC had called for a similar process. However, Omar had not urged government to implement such a process. He was just disappointed one had not been included in the legislation.

Omar causes row on 'unequal' amnesty

(252) Star 23/5/95

■ BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — Justice Minister Dullah Omar triggered a new row yesterday over the proposed truth commission by calling for what political opponents said would be preferential treatment for his ANC colleagues

Omar told a Foreign Correspondents' Association breakfast that leading ANC figures in Government should not have to apply to the truth commission for amnesty but should be granted it by a "political" process

However, in a later statement the Minister said he had been incorrectly reported He said he was "simply expressing regret that a provision of this kind was not included in the Bill", and that those who had fought against apartheid would have to apply for amnesty alongside those who had defended apartheid

Responding to a reporter's question about what he personally would have liked to see included in the truth commission Bill, Omar said he found it "unacceptable that those who played the greatest role in bringing democracy to South Africa should have to apply for indemnity I think it is a disgrace"

He mentioned Deputy President Thabo Mbeki and Public Service and Administration Minister Zola Skweyiya as two people who should not have to approach the amnesty committee for temporary indemnity

"They are the people who brought our country to democracy Those who made the greatest contribution to our democracy should not have to apply for amnesty," he said

NP justice spokesman Danie Schutte said in response the statements were "outrageous in view of the truth commission Bill which had been agreed to in the last few days and which is clearly based on equal treatment for all, whatever their political inclination might have been"

"The truth commission can only be an instrument of reconciliation, which it is intended to be, if all sides of the fray are treated equally"

DP leader Tony Leon noted Omar's comments with "alarm and concern", and said the idea of creating a "super category" was "deeply repugnant"

"We very much doubt whether Minister Omar's remarks have any legal validity, but they are disturbing because of the suggestion that certain persons should be placed above the law and beyond its reach."

ANC support for special indemnity

(262) CT 24/5/95

JUSTICE MINISTER Mr Dullah Omar's denial on Monday that he intended creating a special category of indemnities for ANC leaders was yesterday swept aside by the ANC, which said it fully supported the proposal

Mr Omar said he found it unacceptable that members of the ANC should have to apply for indemnity before the Truth Commission alongside those who defended apartheid He said later he was "simply expressing regret" that the bill on the Truth Commission would treat the defenders and the opponents of apartheid in the same way.

However, the ANC said in a statement yesterday that it "throws its full weight" behind Mr Omar's statement — Political Staff

Magistrate's Courts have 'big problems'

BD 24/5/95

Adrian Hadland

252

CAPE TOWN — Serious problems existed at Magistrate's Courts around the country, Justice Minister Dullah Omar told Parliament yesterday

Addressing the Senate in his budget debate, Omar said many courts, particularly those in rural areas and former TBVC states, were suffering from a critical lack of resources, legal texts, accommodation and basic infrastructure.

"Many towns in which courts are situated have no running water, no electricity or functional sewerage systems," Omar said.

In some of SA's 531 Magistrate's Courts personnel were obliged to take turns sharing "the only available table". Others lacked recording equipment, while libraries were sometimes non-existent.

The creation of one central library linking all Magistrate's Courts into a legal network would be of great assistance

The network could also be used for communication purposes, the exchange of information, filing catalogues and rapid access to data for the purposes of daily procedures such as bail hearings.

"The prerequisites are an electricity point and a telephone line into which we would be able to link the necessary computer."

Omar refused to be drawn on his comments earlier this week regarding the awarding of automatic indemnity for leaders of the liberation struggle

The ANC, meanwhile, said that it threw its full weight behind the creation of a special category of people previously awarded temporary indemnity

The indemnification of this category would not exempt leaders such as Deputy President Thabo Mbeki and Public Service Minister Zola Skweyiya from testifying before the truth commission, it said

The Promotion of National Unity and Reconciliation Bill is currently with the Senate, where any additional clauses or amendments will have to be tabled.

ANC supports special indemnities

(252) ARG 24/5/95

Cape Town — Justice Minister Dullah Omar's denial that he intended to create a special category of indemnities for ANC leaders was yesterday swept aside by the ANC, which said it supported the "intention to indemnify a special category of people previously under temporary immunity".

"We unequivocally reject the opportunistic attempts by the NP and the DP to equate the role played by this special category with the role of certain elements within the security forces"

The category should include the late Joe Slovo and Oliver Tambo, as well as Deputy President Thabo Mbeki, Natal ANC leader Jacob Zuma and Defence Minister Joe Modise

"On the contrary, the 3 500 members of the security forces who had applied for indemnity had committed crimes in the course of the maintenance of a system condemned as a crime against humanity." — Political Correspondent

Council sets out where money goes

Star 24/5/95

■ BY PAULA FRAY

About R328-million will be spent on bulk infrastructure and services in areas within Gauteng's Eastern Services Council next financial year, it was announced yesterday.

In announcing the R327,9-million 1995/96 budget effective from July 1, council co-chairmen Leon Ferreira and Mpho Mofokeng said levies on business enterprises, including local authorities, in the region would not be increased.

According to council spokesman Wanda Henning they have not been increased since 1992.

The regional council, however, has pledged to "address the most urgent needs in the region with the limited funds at its disposal" even though its boundaries were enlarged to include a huge rural area with the January proclamation of Gauteng's internal boundaries.

The recent demarcation proposals of Gauteng MEC for Housing and Local Government Dan Mofokeng would further increase the size of the area under the council's jurisdiction, she said.

Under the new budget, about R99-million will be spent on construction projects of which more than R56-million is budgeted for the treatment of waste water.

Businessman's idea cuts the crime rate

■ BY CHARMEELA BHAGOWAT
CITY REPORTER

While entire communities appear paralysed by rising crime, a Linksfield resident has shown that one person can make a difference

Joe Metrikin — a 55-year-old businessman and father of three — set off a chain of events which led to a 30% drop in crime in Johannesburg's northern suburbs in one week.

It all began with a letter to President Mandela.

Metrikin was soon contacted by Safety and Security Minister Sydney Mufamadi and SAPS commissioner George Fivaz.

Before long, acting deputy regional commissioner Brigadier Jac de Vries met Metrikin, who suggested using army and police helicopters and specially designed SWAT trucks with well-trained SWAT teams to combat crime in a demarcated area.

Crime buster . . . Joe Metrikin's idea worked.

The police and the army were receptive to the ideas and after hours of planning, May 10 was set as the date to begin the exercise which was dubbed "Operation Safety".

The Star BEATING CRIME

In one week crime in the northern suburbs dropped by 30%.

"It is much easier if you say this is what must be done, instead of saying someone else must do something," Metrikin said yesterday.

He said too many people knew what had to be done, but expected someone else to do it.

ANC supports special indemnities

(252) ARG 24/5/95

Cape Town — Justice Minister Dullah Omar's denial that he intended to create a special category of indemnities for ANC leaders was yesterday swept aside by the ANC, which said it supported the "intention to indemnify a special category of people previously under temporary immunity"

"We unequivocally reject the opportunistic attempts by the NP and the DP to equate the role played by this special category with the role of certain elements within the security forces."

The category should include the late Joe Slovo and Oliver Tambo, as well as Deputy President Thabo Mbeki, Natal ANC leader Jacob Zuma and Defence Minister Joe Modise.

"On the contrary, the 3 500 members of the security forces who had applied for indemnity had committed crimes in the course of the maintenance of a system condemned as a crime against humanity." — Political Correspondent.

More people seeking state legal assistance

(252) Sowetan 24/5/95

By Ismail Lagardien
Political Correspondent

THE number of people granted legal aid in criminal cases increased [illegible] during the four years before last year's election

This indication of how more and more needy people are turning to the state for legal assistance may be the result of many factors, including heightened awareness of the availability of help [illegible] according to the Legal Aid Board

In its annual report presented to Parliament last [illegible] the Legal Aid Board said 54 percent of all its claims in the past 23 years were made in the four years prior to March 29 1994

During the 23 years before March 29 last year, the Legal Aid Board granted legal assistance to [illegible] applicants, 239 809 (54 percent) were granted in the four years preceding the elections

Criminal cases

"The increase [illegible] in criminal cases can be attributed to a variety of factors Probably [illegible] import [illegible] the district and region [illegible] accused they can possibly obtain legal representation through the Legal Aid Board" the report says

Essentially, however, the board renders assistance to "indigent" or poor people [illegible] to the board is a single person with a maximum [illegible] of R500 or in the case of a married couple, R1 000

An additional R150 is made available to both categories for each [illegible] This [illegible] R500 or less can apply for legal assistance from the board Also, a married person with one child, and who earns R650 or less also qualifies The board does, however, have discretionary powers in the granting of assistance In terms of paragraph 2 6 of the Legal Aid Guide, assistance may be granted if the appli-

[illegible]

[illegible] percent of all [illegible] during the last year of the previous government [illegible]

[illegible]

indigents reflect in [illegible]

[illegible]

Population group

[illegible] rose from less than [illegible] 23 percent and white [illegible]

NEWS Traffic offenders can be given a hearing ● No decision on mass funeral

(252) Sowetan 24/5/95

ANC backs Omar in indemnity argument

THE ANC yesterday threw its weight behind Justice Minister Mr Dullah Omar's support for indemnification of a special category of people previously granted temporary immunity from prosecution

"We unequivocally reject the opportunistic attempts by the NP and DP to equate the role played by these with the role of certain elements within the security forces," a statement said

Several Cabinet ministers have temporary immunity from prosecution in terms of an interim law that allowed them to return from exile in 1990 and start negotiations with the former government

Among them are Deputy President Thabo Mbeki, Kwazulu-Natal ANC leader Mr Jacob Zuma, Deputy Home Affairs Minister Mr Penuel Maduna, Eastern Transvaal premier Mr Mathews Phosa and Defence Minister Joe Modise.

The ANC said these people had played a major role in the creation of a climate for peace, democracy and justice in South Africa.

Contrary to this, the 3 500 security force members who had applied for indemnity "had committed crimes in the course of the maintenance of a system condemned as a crime against humanity", the ANC said.

The ANC said it understood the special indemnification category did not exempt leaders from testifying before the Truth Commission about the ANC's struggle against apartheid.

Controversy over amnesty for crimes committed under apartheid flared again on Monday when Omar was reported as saying he found it unacceptable and disgraceful that those who played the greatest role in bringing about democracy should have to apply for indemnity.

This was widely interpreted by the media and opposition parties as a call for automatic indemnity. Mr Omar was sharply criticised.

However, in a statement on Monday night, Omar said he had responded to a question from a journalist as to whether he was unhappy over any part of the final version of the Truth Bill — *Sapa*

Nats oppose automatic indemnity

(252) ARG 25/5/95

Political Correspondent

NATIONAL Party leader F W de Klerk says his party will never agree to automatic indemnity for those who fought against apartheid.

"I strongly dispute the assertion there was the nobility of the struggle on the one side, while, on the other, the government had dirty hands and defended apartheid."

He was commenting at a Press briefing yesterday, on Minister of Justice Dullah Omar's reported regret that there was no automatic indemnity for anti-apartheid fighters.

Mr De Klerk said he could not recall there had even been a proposal for automatic indemnity.

The bill providing for a Truth and Reconciliation Commission, passed by the national assembly last week, was a vast improvement on the original version, he said

The first version had had different tests for granting indemnity according to whether the applicant had fought for or against the system.

"We cannot accept double standards," he said.

He said automatic indemnity had not been discussed at government level

If not dealt with sensibly, it would have an impact on the good co-operation within the government of national unity, said Mr De Klerk.

BD 26/5/95

'Amnesty is not a licence'

CAPE TOWN — Any move to extend the amnesty cut-off date now might be seen as a licence for hit squads to continue their activities, President Nelson Mandela said yesterday. (252)

He told a news conference at Tuynhuys that he was "very keen" to meet the request for an extension to include a number of people who would otherwise remain in prison.

However, he was worried that the level of violence, especially in KwaZulu/Natal, was unacceptably high.

He was also concerned that there was a perception that hit squads could carry on their dirty work freely because they believed a new date would cover their present activities.

"I think we should squash that," he said.

"Any movement now which extends the cutoff date can give credence to this perception."

Although he had been prepared to act on hit squads, doing so with the security forces inherited from the "old regime" was not something that could be done overnight. — Sapa.

Mdlalose's boycott decision slammed

Farouk Chothia

BD 26/5/95

DURBAN — ANC and NP KwaZulu/Natal cabinet members criticised premier Frank Mdlalose for his unilateral decision to boycott the inter-governmental forum, and warned that key decisions would be taken without the province's input.

ANC roads and transport minister Sibusiso Ndebele said the ANC was "shocked" and "deeply disturbed" that Mdlalose had taken the decision without consulting the provincial cabinet.

"In 1960, Verwoerd took SA out of the Commonwealth against the wishes of the majority of whites. Here, Inkatha is taking us out of the forum against the wishes of the majority in the province."

Mdlalose made the announcement on Tuesday, after a cabinet meeting.

Inkatha housing and local government minister Peter Miller said Mdlalose had not contacted him either and he was uncertain whether he was now barred from attending forum meetings where "important" issues related to his portfolio would be discussed.

Inkatha sources said Mdlalose acted on orders from Inkatha leader Mangosuthu Buthelezi, and the decision could be a bargaining chip as talks with the ANC got under way to break the deadlock over international mediation. Some observers speculated that the decision indicated that Inkatha was not optimistic that talks with the ANC would break the deadlock over international mediation.

NP agriculture minister George Bartlett said he planned to attend a forum meeting convened by Water Affairs and Forestry Minister Kader Asmal in Cape Town today, and he would object strongly if Mdlalose ordered him not to do so.

"The issue (for discussion) is rural development. It is too urgent an issue to be messed around with like this," said Bartlett. "If we are not there, other provinces will go ahead and we will remain behind."

Ndebele said the ANC would ask national ministers to allow the three ANC provincial ministers to continue sitting in forum meetings, but to take account of the fact that views expressed were not those of the entire government.

Mdlalose said on Tuesday the decision to suspend participation in the inter-governmental forum had been taken because of central government's failure to assign powers to KwaZulu/Natal, and because of the ANC's failure to honour the agreement on international mediation.

Meyer said Mdlalose was making an error of judgment on the issue of assigning powers to provinces.

Molefe downplays Malebane-Metsing's resignation

Kevin O'Grady BD 26/5/95

NORTHWEST premier Popo Molefe, returning yesterday from a trip abroad, played down the resignation from the ANC of his former agriculture minister and provincial MP Rocky Malebane-Metsing from the ANC.

Soon after arriving at Johannesburg International Airport, Molefe said it was "proper for the ANC to act decisively" in suspending Malebane-Metsing from the party for allegedly undermining him.

Malebane-Metsing resigned and announced he would form a new political party soon after his suspension by the ANC.

However, it was "unfortunate that he has resigned as he should know that the prestige of the ANC is such that people seeking to make a meaningful contribution would do so best as part of (it)", Molefe said.

It was Malebane-Metsing's democratic right to form another political party to contest the local government election against the ANC, but he hoped he would put provincial interests first, Molefe said.

Molefe also gave details of a twinning agreement made between Northwest and the Canadian province of Manitoba during his trip.

The agreement, to be ratified when Manitoba premier Gary Filemon visited Northwest later this year, stemmed from mutual interests in mining, agriculture, tourism, rural development and fiscal relations, Molefe said.

Courts will get more muscle in crackdown on crime

ST 28/5/95 (252)

By RAY HARTLEY and CARMEL RICKARD

SOUTH AFRICA'S creaking judicial system is to be dramatically overhauled in an effort to curb rampant crime.

In an interview with the Sunday Times this week, Justice Minister Dullah Omar said he was planning to "jack up" the court prosecution system to ensure heavier sentences were passed on criminals and tougher bail conditions applied. The country's 531 magistrates' offices would also be overhauled to make them more representative and to improve efficiency, he said

Meanwhile, fed up with what a senior lawyer called the "utterly unsatisfactory state of the court system in South Africa", the Johannesburg Bar has proposed a radical new scheme to promote arbitration and mediation and avoid civil cases

Mr Omar said measures he intended introducing were aimed at restoring the credibility of the justice system

"What we need to do is to ensure that we empower our courts to deal effectively with crime, and, in addition, that we have a systematic programme of bringing blacks into the system," he said.

Mr Omar said the measures would be accompanied by the allocation of additional funds to boost the salaries of court officials who were deserting the justice system for better paid jobs in the private sector.

He said he had asked Deputy Presidents Thabo Mbeki and F W de Klerk for more money to increase the salaries of overworked prosecutors and state attorneys.

"In the private sector, if you work as hard as state prosecutors, you earn twice or three times the money," said Mr Omar

On the subject of bail, he said "In those cases where the safety of the community becomes the paramount consideration, the courts should have the right to refuse bail"

Meanwhile, in a confidential letter to members, Johannebsurg Bar chairman Michael Kuper has described the state of the city's courts as "disgraceful"

He said civil litigants were not well treated and there was "rank unpleasantness" involved in appearing in the Johannesburg magistrate's and Supreme courts

In these "squalid surroundings" litigants suffered the "tyranny" of fixed hours, slow progress and the "vagaries of the judicial temperament", he wrote

Mr Kuper suggested that the Bar investigate a scheme which would offer the business community the equivalent of a small claims court system tailored to their needs — an alternative service run in pleasant surroundings.

This would be speedy, flexible and efficient, with well-qualified arbitrators available to sit long hours or even over weekends

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⇨ From Page 1

when necessary.

Asked for comment, Mr Kuper said it was unfortunate that the confidential plan "still at a very tentative stage, before proper consultations had been held" was being reported in the media

The purpose of the scheme was to resolve the obvious and serious problems "in a spirit of co-operation with the allied professions in the best interests of the communities which we all serve"

General Council of the Bar chairman Malcolm Wallis, SC, who is based in Durban, said the proposals canvassed by Mr Kuper with the Johannesburg advocates stemmed from the "utterly unsatisfactory state of the court system"

"The busiest division in the country — the Johannesburg Supreme Court — is a mess It is disgusting to litigate there It is appalling that a system of justice which is supposed to serve the people cannot even provide water, a place to sit or a toilet that works

"The system is under extreme stress and only continues because of the strenuous efforts of dedicated judges, magistrates and practitioners"

Mr Wallis said the situation would worsen because magistrates could now hear civil claims of up to R100 000, instead of the previous limit of R20 000. "Claims will be forced out of the Supreme Court, with their appalling conditions, into the absolutely intolerable conditions of the magistrate's court.

"In addition to the problems of the physical surroundings, many magistrates are quite unqualified and incapable of hearing cases involving R100 000 — which is a very substantial amount of money."

In response to all these problems — as well as the delays, inflexible hours and expense involved in litigation — most major contracts now contain an arbitration clause in which the parties agree that disputes will be settled by arbitration or mediation rather than through the courts

Mr Wallis said the Bar in the rest of the country would be watching the Johannesburg "experiment" with interest and that, if the scheme worked, it might be extended to other parts of the country

Several judges have indicated their support for the Johannesburg Bar Council scheme One said it would help take pressure off the Supreme Court,

He said many judges were appointed before the development of new fields of expertise such as the industrial court, and that it was not easy to preside in such matters.

'Super A-G': Lawyers differ

30/5/95 ARG 30/5/95 (252)

☐ *Top advocates urge national directorate*

CLIVE SAWYER
Political Correspondent

LAW societies differ sharply on whether there should be a powerful "super Attorney-General" with cabinet rank

This emerged in evidence to a constitutional assembly theme committee yesterday

A group of top advocates from the Witwatersrand Attorney-General's office has offered a compromise proposal of a national directorate of public prosecutions

This body would consist of a national director of public prosecutions, who would manage the directorate, while Attorneys-General for each province would institute prosecutions

Disclosures earlier this year that the justice ministry was considering proposals for a national Attorney-General of cabinet rank, along United States lines, sparked a row about centralisation of power and politicisation of the office

In evidence to the theme committee yesterday, the Association of Law Societies said the model for the Attorney-General's office adopted in 1992 had proved adequate

The Attorney-General should be independent of political or executive control, while being accountable to the ministry of justice and parliament

This was provided for in the 1992 Attorney-General Act

The society said each province should have its own Attorney-General

On the other side of the fence was the National Association of Democratic Lawyers (Nadel), which said the 1992 act failed to provide properly for accountability of Attorneys-General

Association spokeswoman Michelle Norton said the lack of proper accountability was particularly worrying in the new South Africa

"Incumbent Attorneys-General are all appointees of the previous National Party government who systematically applied the laws of the apartheid state

"It is of concern that attorneys-general of this background are to exercise their considerable powers in a new democratic legal order without proper accountability"

Nadel said the principle of Attorneys-General being accountable to parliament alone was unacceptable

This stopped the executive from developing policy on prosecutions, undermining the notion that criminal law and the prosecution of crime was a function of the executive

There should be a national Attorney-General, who would formulate prosecutorial policy and who would control provincial Attorneys-General

The national Attorney-General should be appointed by the president, and would recommend who should be appointed as provincial Attorneys-General to the president

The lawyers who proposed a compromise — Andre de Vries, Jan Henning, Herman de Beer and Philip Stander — are all staffers of the Witwatersrand Attorney-General's office

They emphasised that their submission was in their personal capacities

They said there should be a national Attorney-General, who set policy in consultation with the president, and co-ordinated provincial Attorneys-General to ensure uniform observance of the constitution

The office should be independent and outside the political arena

Horizontal rights seen as a threat to industry

CT(BR) 30/5/95 (252)

By Bruce Cameron

Political Editor

The Constitutional Assembly appears set to include "horizontal rights" in a bill of rights, which will enable citizens not only to protect themselves through the Constitutional Court from excesses or abuses of the state but also from other citizens and businesses

This is causing serious concern in business and industry, with the South African Chamber of Business sounding a warning that excessively broad horizontal rights in the constitution "will open a pandora's box of potential litigation and disruption"

Sacob legal adviser Ken Warren told Business Report at the weekend that a bill of rights, widened to include horizontal rights, would have serious implications It would, among other things open the way for class actions, where a single court action can result in crippling settlements

It could also have implications for industries like the insurance industry, which bases its entire approach on discrimination

In constitutional parlance, vertical rights govern relations between the state and its citizens Horizontal rights give citizens broader protection, not only from the state but also from other citizens and legal entities, including businesses

Sacob's call follows a similar warning from the Chamber of Mines, given recently to a Constitutional Assembly committee

The chairman of the Constitutional Assembly Cyril Ramaphosa said that both vertical and horizontal rights should be protected by a bill of rights An opinion survey conducted for the Constitutional Assembly had shown that 80 percent of South Africans supported horizontal rights against eight percent who were content with being able to challenge only the state

Ramaphosa said the main thrust of a bill of rights should be to achieve equality, and that horizontal rights are very important in getting rid of both sex and race discrimination in ordinary life

"Whether it is government to citizen, citizen to citizen or group to group, it is essential to remove anything that militates against this noble cause," Ramaphosa said

Among other things, horizontal rights were required to prevent private areas of discrimination, where private apartheid fiefdoms could be created, be it hospitals, schools, clubs or associations

Ramaphosa agreed that not all rights in a bill of rights should be absolute

"Rights have limitations They will have to be carefully drafted The clauses of a bill of rights must be aimed at countering unfair, unreasonable discrimination Limitations must be reasonable, sound and understandable, and based on democratic values Discrimination cannot be based on race or sex"

Warren said the Constitutional Assembly should be careful in creating unfettered rights, but certain rights should be granted, such as the right to fair employment practices "I don't think business would quarrel with that one," he said

Warren said the prime function of a constitution was to regulate the relationship between the citizen and the state "The constitution contains the mechanics of government and the measures to prevent excesses and abuses of power by the state in regard to the citizen"

Warren said there was a spillover of these vertical rights to horizontal rights But horizontal rights between citizen and citizen should primarily be regulated by common law and statutory law

"When the state considers it necessary to regulate relations between citizens this should be done by legislation For example, citizens are protected from business by consumer protection legislation, standards of safety, laws of contract and many other laws"

Horizontal rights could also endanger entrenched rights in the constitution A hypothetical example was the right to clean air "If a person representing the post nasal drip society had horizontal rights, he or she could go to the constitutional court to stop a major road works project on account of the dust sent into the atmosphere"

NEWS IN BRIEF

Homeland laws to go

BD 30/5/95

DRAFT legislation to repeal homeland laws dealing with aliens control, births, deaths, marriage registration, public holidays and publications control was tabled in Parliament yesterday.

Home Affairs Minister Mangosuthu Buthelezi said in a memorandum on the Home Affairs Laws Rationalisation Bill that many homeland laws were still in force in the former bantustans, "causing great confusion".

(252)

NEWS

Judicial commission puts candidates through their paces

Star 30/5/95

Would-be judges grilled

(25?)

BY MICHAEL SPARKS

The Judge President of the Transvaal yesterday questioned the temperament of one of six candidates short-listed to serve as a judge in his division of the Supreme Court

Mr Justice C Eloff, one of 19 who sat on the Judicial Service Commission in Midrand asked Kathleen Satchwell, an attorney, whether she had the right kind of temperament to be a judge and also questioned her extensively about her conduct in a case in 1986

JudgeEloff repeatedly asked whether she had made a misleading affidavit to the court in that case, after stating that she had not been able to confer with her client before making a submission to the Attorney-General

He asked her whether she had then waited more than a week to submit documents to the Attorney-General's office when he had specifically requested her to act as quickly as possible

Satchwell denied she had acted incorrectly, although she stated that she had accepted the judgment, which had been that she had acted improperly and was made to personally pay the costs of the case

Judge Eloff questioned her extensively about detailed points of the law and her experience in matters other than human rights and divorce matters which she has concentrated on in her practice

Satchwell is one of two attorneys among the six candidates. The other four are advocates, all of whom have served as acting judges

One candidate, Des Duke, was questioned about statements attributed to him — that he was in the "jewellery trade" — after he had acted as a judge in the Eastern Cape in a number of trials involving necklacing

When questioned by Mr Justice George Bizos, Duke conceded the comment would probably have been offensive to the families of the victims

Other candidates for the four posts who appeared before the commission were Mahomed Navsa, Bernard Ngoepe, Barend van der Merwe and Basil Wunsh.

They were asked questions about issues including what training was necessary for a judge, how trials could be speeded up, how the official languages could be integrated into the judicial system, their attitude to affirmative action and their involvement in community activities

Shaping the Bench . . . Judicial Service Commission members Mr Justice Arthur Chaskalson, Chief Justice Michael Corbett and Justice Minister Dullah Omar. PICTURE ETIENNE ROTHBART

Sapa

'Links needed to fight crime'

Diplomatic Correspondent and Sapa

SOUTH Africa is looking into stepping up its international co-operation in the investigation of criminal matters, said the S A Law Commission in a working paper (252)

The paper deals with:

- Obtaining evidence from and providing evidence to foreign states
- The confiscation and transfer of the proceeds of crime between states
- The enforcement of certain foreign penalties in South Africa
- The review of the law relating to extradition ARG 31/5/95

The paper's provisional recommendations are that

- The procedure for obtaining evidence from or the provision of evidence to foreign states should be simplified
- Provision ought to be made in South African law for the confiscation and transfer of the proceeds of crime
- The Extradition Act should be reviewed in order to bring it more into line with international developments.
- A central office under the control of the department of justice should be established to take responsibility for the channeling and handling of all requests relating to mutual co-operation and extradition

Copies of the paper can be obtained from the commission's secretary at Private Bag X668, Pretoria, 0001

- Zambia yesterday urged extradition treaties between southern African countries to help fight drug syndicates and crime cartels

Speaking at an international drug conference in Zambia's capital Lusaka, local drug enforcement commission spokesman Mukutulu Sinyani said extradition treaties and pooled efforts were needed to fight drug trafficking in southern Africa

Traffickers could be effectively pursued only if all countries in the region had extradition treaties So far only Zambia and Britain had signed such a treaty and exchanged information on drug dealers, he added

Black lawyers hindered

(252) CT 31/5/95

SPECIAL CORRESPONDENT

JOHANNESBURG Black nominees to the bench could not become judges if they were expected to have the same experience levels as their white counterparts, the Judicial Service Commission heard yesterday

Bench candidate advocate Ms Lucy Mailula told the commission she had never handled big commercial cases because these had historically been the domain of white advocates.

Responding to a question, she said using commercial experience as a criterion would close the door to the bench to most black candidates. The commission should rather question candidates' ability to interpret the law, she added

One of the most experienced black advocates on the Rand, Ms Mailula said she was confident she would be able to handle most cases if given a chance to confer with other judges and to check the facts

The commission was interviewing three candidates to the one vacant seat in the Cape provincial division of the Supreme Court Advocates Mr Siraj Desai and Mr Willem Louw SC were the other nominees

Mr Desai, who has 19 years' experience as an advocate, said training of judges could never replace experience acquired during practice in the Supreme Court

But training would be necessary because of the lack of experienced people who could transform the bench to make it representative of South African society, he added

Mr Louw said he accepted the need for the bench to become more representative

MP's BILL MAKES HISTORY

Backing for tougher bail, life sentences

(252)

CT 31/5/95

Call for juvenile justice change

A PRIVATE Member's bill has won support. **ANTHONY JOHNSON** reports.

CHARLES JACKSON

HISTORY was made in Parliament yesterday when a Private Member's bill providing for tighter bail conditions and fixed life sentences was accepted by a parliamentary committee

The draft legislation received unanimous backing

The acceptance of the Criminal Procedures Amendment Bill, sponsored by Democratic Party spokesman on justice Mr Douglas Gibson, was described as "historic" by the National Party chairman of the committee, Mr Piet Matthee

The bill proposes that the right to bail be restricted in serious crimes

In certain other cases, the onus of proof would shift to the accused to demonstrate that it would be contrary to the interests of justice to release him on bail

A second aspect of the bill aims to provide the courts with new sentencing options, in which a life sentence without release on parole would become possible

Mr Gibson tabled a letter from Justice Minister Mr Dullah Omar in which Mr Omar said he was sympathetic to the bill's general objectives

Training course for new judges mooted

Susan Russell (252) BD 31/5/95

THE Judicial Services Commission indicated yesterday that it would investigate the feasibility of a training programme for new judges, particularly black appointees, who had not had the opportunity to gain experience in specialised areas of law such as commercial litigation

During public interviews of candidates for five vacancies on the Supreme Court bench, commission member David Gordon said the commission would debate whether there should be some form of training

The commission, chaired by Chief Justice M Corbett, interviewed nine candidates for four vacancies in the Transvaal Provincial Division and one vacancy in the Cape Provincial Division during public hearings in Gauteng this week.

Justice Minister Dullah Omar said on Monday that his ministry was looking into

Continued on Page 2

Judges

(252) BD 31/5/95

Continued from Page 1

the feasibility of a training programme to help transform the almost all white, male bench to a more representative body

Candidates were asked whether lack of experience in specialised areas of the law would not pose an obstacle to their appointment. Three of the four black candidates, including Pretoria senior advocate Bernard Ngoepe, who had served as an acting judge, conceded that they had not had the opportunity to gain the experience in areas of commercial law that their white counterparts had.

The curricula vitae of three of the white candidates, senior advocates Des Duke, Willem Louw and Barend van den Heever — all of whom had served as acting judges — underscored the point repeatedly raised during interviews. while white counsel were able to develop lucrative commercial practices after their initial years at the bar, black lawyers were unable to find commercial work which would give them that experience.

Johannesburg advocate Lucy Mailula, who was interviewed for the Cape Supreme Court vacancy yesterday, said that if commercial litigation experience was one of the criteria for appointment to the judiciary, no black person would ever get a place on the bench. "None of us have commercial experience. It is a market that is closed to us." However, she believed it was a person's ability to interpret the law that was important. She said she would be prepared to undergo training.

Asked what contribution she could make if appointed, Mailula said she shared the cultural background of the majority of people in SA, who were perceived to have little confidence in the judicial system. "I would be able to bring that confidence to the people. People would start seeing the judiciary as a wholly representative body which could be trusted."

Cape Town advocate Siraj Desai, who had spent 15 years at the bar and whose practice included commercial work, told the commission he believed he had sufficient experience to serve on the bench. "I also believe I could play a role in transforming the judicial system to become more representative," he said.

Louw, the final candidate interviewed, was asked what his view would be if a black candidate with equal experience was chosen above him in the interests of a more representative bench. Louw said he saw the need for affirmative action in principle and an appointment should perhaps go to someone who had been disadvantaged

The commission indicated that it would have a final decision on the successful candidates by tomorrow.

Parties to seek equal immunity from truth

BD 31/5/95 (252)

Adrian Hadland

CAPE TOWN — The ANC served notice yesterday that it would be seeking a form of automatic immunity from prosecution for its leadership through an amendment to the draft truth commission legislation

The concept was first mooted last month by Justice Minister Dullah Omar, who said he was unhappy it had not been incorporated into the Promotion of National Unity and Reconciliation Bill

Senate justice committee chairman Mohseen Moosa said the ANC would propose an amendment "along the lines" of Omar's comments Several other parties, including the Freedom Front and the Inkatha Freedom Party, said they too would be proposing amendments to the Bill

The Bill, accepted by the National Assembly's justice committee earlier last month, has been passed on to the Senate committee for concurrence

Moosa said that as framed the Bill was biased in favour of former SADF members and other state agents Soldiers who had committed crimes under orders would be protected from liability by laws such as the Defence and Internal Security Acts But "liberation army soldiers", who at the time were acting illegally according to SA law, could be held liable

There was thus more of an onus on liberation soldiers to apply for amnesty through the truth commission process This meant senior ANC leaders, even if they had no serious violations of human rights to account for, would nonetheless be forced to disclose to the commission lesser acts, including undergoing military training and

Continued on Page 2

Immunity

Continued from Page 1

crossing the border illegally.

While these leaders would be prepared to give evidence to the truth commission if requested, it would be unfair to tie them up in lengthy commission processes which government officials such as Deputy President FW de Klerk would not have to endure, Moosa said.

The amendment would aim at legalising non-serious acts carried out by liberation soldiers rather than criminalising once-legal acts carried out by security forces

This would not create a super-category of leaders who would be above the truth commission, nor would it prevent liberation struggle leaders from answering to serious crimes such as murder and rape, he said. The amendment would seek only that soldiers and officers from all sides — including the right wing — would be treated on an equal legal basis.

Senior advocates like idea of one AG

Star 31/5/95 (252)

■ BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — Four senior Witwatersrand-based State advocates have come out in support of Justice Minister Dullah Omar's plan to appoint a national Attorney-General.

Their support contradicts the views held by attorneys-general, including their own boss, outgoing Witwatersrand Attorney-General Klaus von Lieres, and the organised legal fraternity

The four advocates — Deputy Attorneys-General Andre de Vries and Jan Henning and senior State advocates Herman de Beer and Philip Stander — told Theme Committee Five of the Constitutional Assembly that they were appearing in their personal capacities

They argued that the independence of attorneys-general has always been qualified and that they are subject to the Constitution

The Constitution's guarantee of equality before the law did not leave room "for contradictory approaches by the respective attorneys-general insofar as policy is concerned"

"If the terminology National Attorney-General is used, it evokes visions of a super prosecutor who will be able to interfere with the manner in which attorneys-general exercise their discretion in individual matters.

"To obviate these fears, it is suggested that the title National Attorney-General be avoided and that the office bearer rather be termed the Director of Public Prosecutions In addition, the office should not be seated in the political arena," the four said

Permanent circuit courts to handle civil litigation considered

Quiet revolution in bid to restructure legal system

Star 31/5/95

(252)

COMMISSION of inquiry to determine basis for allocation of Supreme Court seats in new SA

■ BY BRENDAN TEMPLETON

A quiet revolution is occurring in an office in Church Street, Pretoria, where changes which could significantly restructure South Africa's legal fraternity are being considered.

The office is the home to the commission of inquiry headed by Mr Justice Gustav Hoexter who has been asked to beat the drum in a lawyers' battle of musical chairs.

South Africa's interim constitution created new provincial boundaries, new provinces and abolished others, precipitating a scramble for Supreme Court seats and threatening the established legal order.

Under the old system, each province and "independent state" had its own Supreme Court seat and local divisions That is no longer so and Mr Justice Hoexter will have to recommend where the seats should go.

He said in an exclusive interview with The Star that the options open to him include giving each province a Supreme Court seat or introducing permanent circuit courts which handle civil litigation.

He also will investigate ways for the Supreme Court to become more accessible and affordable for people

Lawyers in Pretoria and the Eastern Cape will be most concerned about the judge's recommendations because their areas have been profoundly affected by the redrawn provincial boundaries.

If the new provinces are each given a Supreme Court seat, lawyers who had become useed to dealing in Pretoria with civil litigation from the former Transvaal face the prospect of most of their business moving elsewhere.

A similar problem exists in the Eastern Cape where Umtata and Bisho are competing with Grahamstown for the Supreme Court seat Port Elizabeth and East London also have grounds for claiming the prize and competition is expected to be stiff.

It is to be expected that provincial premiers would want their own Supreme Court seats and not to be allocated a mere circuit court.

Hoexter believes any centre which can support a viable seat for the Supreme Court needs to meet three vital requirements:

■ A significant number of attorneys, settled in the area, who are experienced in Supreme Court litigation.

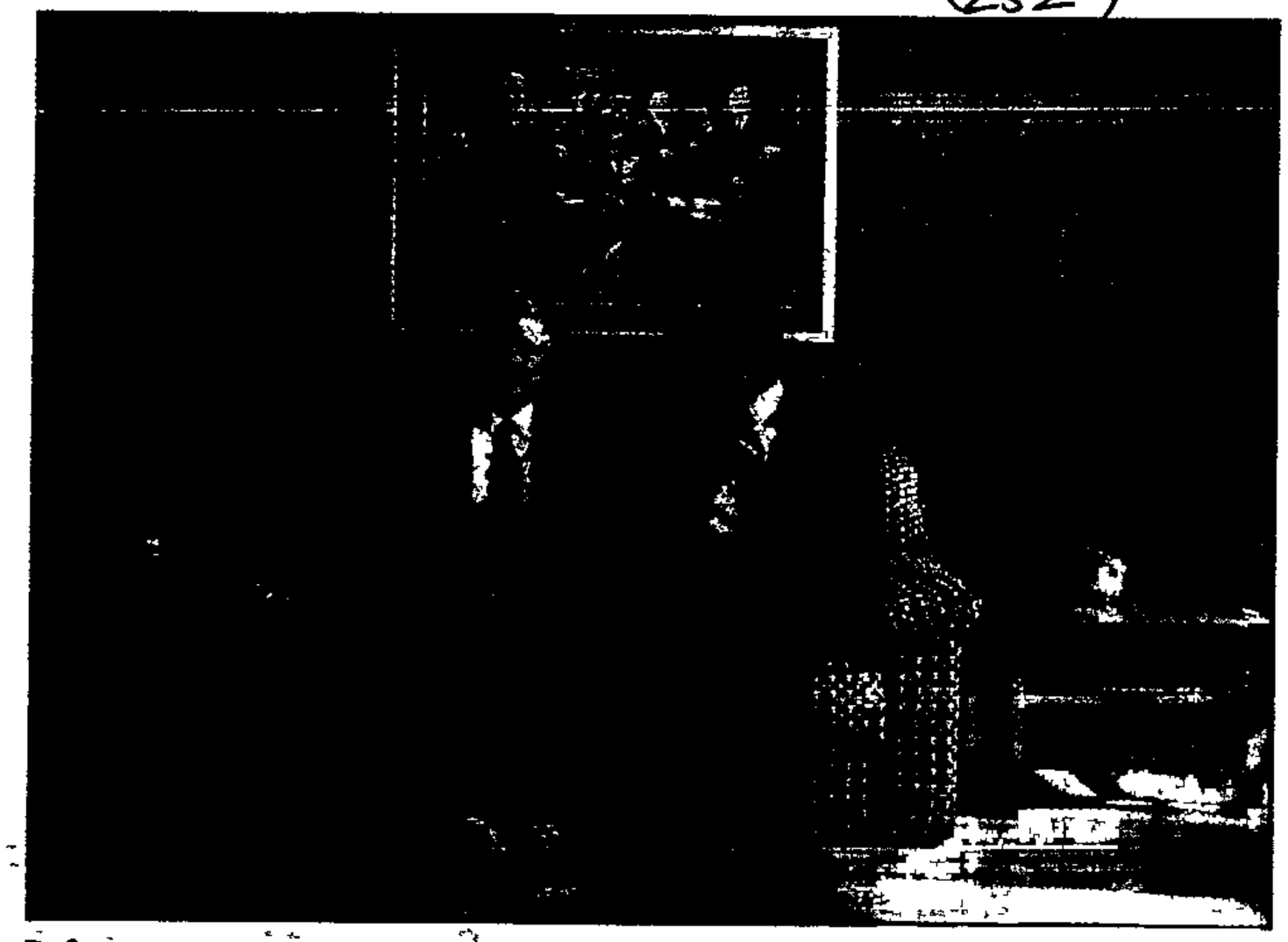
■ A similar number of settled advocates who have proven track records in the Supreme Court.

■ Judges willing to move to or already living in the area.

The commission has already asked interested parties to submit recommendations to its office. Public hearings are also to be held.

■ Other members of the commission are former Mr Justice R N Leon, who headed the recent commission of inquiry into mine safety; Fikile Bam, an attorney and member of the SABC board, and S Desai, an advocate from the Western Cape Bar

Interested parties should call the commission at (012) 341-5544/9535 or fax at (012) 341-7172 Its address is PO Box 55367, Arcadia 0007



Referees ... Mr Justice Gustav Hoexter (left) and attorney Fikile Bam are part of the commission chaired by the judge which is investigating changes to Supreme Court structures. PICTURE JODI BIEBER

'Experience unfair test for Bench'

■ BY BRENDAN TEMPLETON

Black nominees to the Bench could not become judges if they were expected to have the same experience levels as their white counterparts, the Judicial Service Commission heard yesterday

Bench candidate advocate Lucy Mailula told the commission she had never handled big commercial cases because these had historically been the domain of white advocates.

She said using commercial experience as a criterion would close the door to the Bench to most black candidates The commission should rather question candidates' ability to interpret the law, she added.

One of the most experienced black advocates on the Rand, Mailula said she was confident she would be able to handle most cases if given a chance

The commission was interviewing three candidates for the one vacant seat in the Cape provincial division of the Supreme Court after questioning four nominees to the Transvaal provincial division on Monday Advocates Siraj Desai and Willem Louw (SC) were the other Cape nominees.

Desai, who has 19 years' experience as an advocate, said training of judges could never replace the value of experience acquired during practice in the Supreme Court.

But training would be necessary because of the lack of experienced people who could transform the Bench to make it representative of South African society, he added.

Star 31/5/95 (252)

ANC rethink on Truth Commission

■ BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — The ANC is planning a major revision to the Truth Commission legislation after discovering "loopholes" in the legislation passed through the National Assembly two weeks ago.

Among the amendments being considered is a mechanism to convert some temporary immunities into amnesties without the affected persons having to apply for them.

Such immunities are now being enjoyed by senior Government figures, among them Deputy President Thabo Mbeki and some ANC Cabinet Ministers

Another amendment is the introduction of a legal presumption that would allow guerillas attached to the non-statutory forces to claim that they were acting within the law by violently opposing the government of the day

As the Bill now stands, all actions committed by members of the non-statutory forces are considered illegal and their perpetrators will have to apply for amnesty

The proposal to grant automatic indemnity to a category of about 120 senior ANC leaders was first floated by Justice Minister Dullah Omar.

Omar caused a political outcry last week when he suggested that the ANC's senior leaders now under temporary immunity should not have to apply for amnesty.

Yesterday, the Promotion of National Unity and Reconciliation Bill was tabled at the Senate's select committee on justice where the amendments will be introduced before the Bill is passed through the Senate

ANC, PAC quit pressure group

Sowetan Correspondent

(252)

ATTEMPTS to set up an all-inclusive amnesty pressure group for Death Row prisoners suffered a major blow when the ANC and PAC withdrew because of the inclusion of Chris Hani's killers

The Pan Africanist Congress and African National Congress yesterday withdrew from a steering committee made up of prisoners from across the political spectrum, for fear of sending the wrong impression to society

The committee, comprising members of the Conservative Party, Afrikaner Weerstandsbewiging, Inkatha Freedom Party and the Support Police Action Group, met at Pretoria Central Prison yesterday

Condemned rightwingers

PAC secretary for foreign affairs Mr Mogole Mphahlele said the organisation withdrew from the proceedings because of, among others, the participation of condemned rightwingers Januz Walus and Clive Derby-Lewis

Walus and Derby-Lewis were sentenced to death for the murder of SA Communist Party leader Chris Hani in 1993

Sowetan 31/5/95

Mphahlele said the PAC refused to be party to a structure that involved people like AWB leader Mr Eugene Terre'Blanche and CP leader Dr Ferdi Hartzenberg, both of whom had represented their organisations at the meeting yesterday

He charged that Derby-Lewis and Walus were not political prisoners but Neo-Nazi criminals.

Different categories

In withdrawing their participation from the committee, a statement by Hartzenberg said, the PAC and ANC had indicated that their prisoners' crimes fell into different categories

They said their participation in the prisoners' committee could possibly contradict their efforts

Bridging black law gap

(252) Sowetan 31/5/95

A law professor maintains that as a result of changes black lawyers are no longer participating fully strtategic areas. Features Writer **Tyrone August** reports on the issue:

IN THE PAST the life-and-death struggle against apartheid demanded the single-minded attention of the black community, including that of the lawyers in its ranks

Many concentrated on human rights

"Black people suffered brutally at the hands of the apartheid state machinery," says Wits University law Professor Shadrack Gutto

"Because of that, lawyers tended to go to the defence of the political and civil rights of their community"

Now that there is a new constitution, Gutto believes, there is room for black lawyers to shift to other areas of expertise

"They are not participating fully in areas that are strategic, such as commercial law (which deals, for instance, with investments and trade law)," he says

"Those are basically monopolised by big white firms The major controllers of the economy at the moment still remain largely white and they tend to use white law firms

"Because of that, there is a relationship between the control of economic power and the type of work that lawyers from different racial groups do."

Needs to be addressed

Gutto, a Kenyan exile who is the acting deputy director of the Centre for Applied Legal Studies at Wits, stresses that this needs to be addressed

"In the process of trying to empower black business in the areas of finance, investment and trade, black lawyers must begin to take commercial law work seriously," he says

"This must be seen as linked to the empowerment of black people and therefore they ought to acquire skills necessary to participate in the major economic activities of the country"

Gutto adds that even those black lawyers who did want to practise commercial law during the days of apartheid were not encouraged to do so

"Black lawyers were marginalised in the past," he says

"They could not get access to major commercial work And that is really where the money is

"The few black lawyers basically became a kind of public defender, dealing mainly with petty criminal defence matters

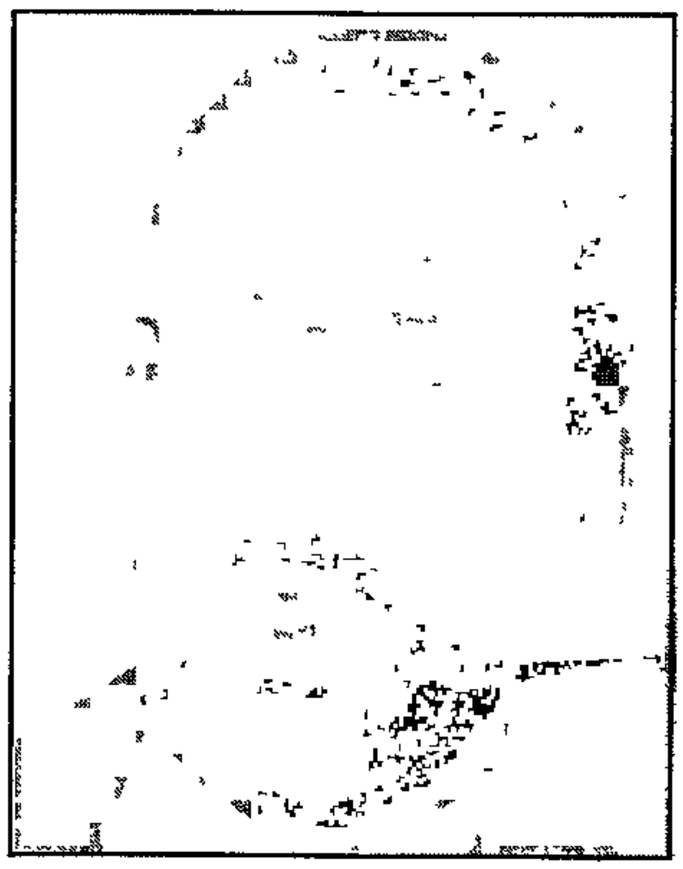
"It is important to provide protection for communities that are disempowered, but it does remove black lawyers from participating in the core of the power centres in society

"So they dealt more with the consequences of apartheid rather than with the centres of economic power"

Going on to empower blacks

Gutto stresses "I'm not saying they should move away from human rights, but that should go together with the process going on to empower black business"

He sees this as a major challenge "It will be very difficult to break through and begin to represent banking, mining and insurance firms, and trade and commercial houses"



Professor Shadrack Gutto ... black lawyers must also specialise in commercial law to empower black business.

Gutto says the Ministry of Justice recognises this problem

Together with Cals and other law centres, it is looking at the continuing education and retraining of black lawyers

Speeding up process

"We need to bridge that gap," says Gutto, and believes this process can be speeded up if there is real cooperation between the Ministry and black lawyers

He also identifies a role for universities, especially those with mainly black students "Traditionally black universities must be empowered," he says

"We need resources put into those universities to attract high-quality intellectuals in (commercial) fields, so that these subjects are taught in institutions that produce mainly black lawyers"

Gutto suggests law students be encouraged to pursue their studies in these areas

"They must approach their studies in a holistic manner and not only take courses not only in traditional areas," he says

"They must be able to deal with civil matters *and* commercial subjects (which deal with taxation, investments and economic laws)"

Gutto sees a role too for law associations like the Black Lawyers' Association and the National Association of Democratic Lawyers in encouraging this new orientation

"There are black lawyers who need to acquire additional skills," he says "They need to be empowered in this direction"

In his own academic work, Gutto also tries to broaden his range of expertise His stints at universities in Kenya, Zimbabwe and Sweden were invaluable in this process

His interests include international law, international institutions, property law, land law, human rights law, environmental law, jurisprudence and gender issues

Narrow type if speciliasation

"I've tried to broaden my intellectual understanding of law in society rather than have a very narrow type of specialisation," says Gutto

He also sees an active role for lawyers in society "I believe an intellectual has to be involved in the day-to-day problems of society

"One cannot shy away from them, otherwise intellectualism becomes sterile And that's not my approach"

In line with his views, he joined the BLA "I joined because we are at a historical moment of transformation

"The challenges are mainly how to create equality in society through the empowerment of those who were previously marginalised

"To say we have a constitution that provides for equality and empowerment does not automatically translate into the realisation of those goals

"I see my role in the BLA as contributing towards the intellectual clarification of the issues involved in the transformation process"

Central concern

This is why, Gutto stresses, human rights need to remain a central concern of black lawyers "Human rights does not end with formal apartheid It is a wider undertaking

"The transformation requires that black lawyers continue to be committed to human rights and further training in that field is definitely needed

"But a balance is required so you don't have a cadre of black lawyers running around defending petty criminal and political cases only They must also be engaged in empowering black people"

More blacks as judges

(252) Sowetan 31/5/95

IF commercial legal experience was a criterion for selecting Supreme Court judges, no black advocates would qualify, advocate Ms Lucy Mailula told the Judicial Services Commission yesterday

Commercial law was "a market closed" to blacks, she said, adding that the ability to interpret the law was more important when considering new appointments

On Monday another advocate, Mr Mohammed Navsa, told the commission he would not have had commercial legal experience had it not been for his mentors

Second day of interviews

The commission yesterday held a second day of interviews at Midrand, Gauteng, to select four judges for the Transvaal Division and one for the Cape Division

The candidates are advocates Ms Mailula, Mr Navsa, SC, Mr Des Duke, SC, Mr Bernard Ngoepe, SC, Mr Willem Louw, SC, Mr Barend van der Heever and Mr Siraj Desai as well as attorneys Ms Kathy Satchwell and Mr Basil Wunsh

Representative of society

A key question asked on both days was how to make Supreme Court benches more representative of society

Mailula said appointing blacks and women would engender public trust in the judiciary

Desai said the past should be undone He suggested extending the jurisdiction of certain courts and making them more accessible

Formerly an active member of the African National Congress in the Western Cape, Desai said he supported an independent judiciary and had not taken part in politics since April last year

Affriemative action

Louw, when asked by advocate Mr David Gordon how he would feel if the commission decided to appoint an equally qualified black or woman instead of himself, replied that affirmative action was necessary

Louw, however, did not know how it should be applied

"In principle I cannot see a problem," he said

Minister of Justice Mr Dullah Omar on Monday said his ministry was considering judicial training programmes to help change the composition of the Supreme Court

The commission is expected to name the new judges on Thursday — *Sapa*

(252)

De Kock 'joked about slain lawyer'

ARG 10/3/95

The Argus Correspondent

PRETORIA. — Former Vlakplaas commander Eugene de Kock joked about the assassination of Bheki Malangeni, a young lawyer who was killed when he switched on a walkman which arrived in the post, the Pretoria Supreme Court has heard

Giving evidence for the prosecution, Kobus "Chappies" Klopper, thought to be "Q", the informant who told Judge Richard Goldstone of police involvement in third force activities, said Colonel De Kock quipped that the killing of Mr Mlangeni would cause walkman sales to plummet

The walkman had reportedly been addressed to Dirk Coetzee, one of the Colonel De Kock's predecessors at Vlakplaas. Mr Coetzee was then living in Zambia after disclosing details of his role in the assassination of anti-apartheid activists

Mr Mlangeni had been identified on the parcel as the sender and it had been sent to him after Mr Coetzee failed to collect it

Colonel De Kock is standing trial on 121 charges, including murder, theft, kidnapping and fraud involving the killings of ANC members and several of his police colleagues

He described Colonel De Kock's attitude towards Mr Coetzee, who joined the ANC after fleeing South Africa, as one of "absolute hatred"

Mr Klopper was asked by prosecutor Anton Ackermann, SC, about the killing of three men Brian Ngqulunga, Japie Maponya and Johannes Sambo

His replies, in brief, were

There was concern at Vlakplaas that Mr Ngqulunga might "turn" Colonel De Kock told him Mr Ngqulunga had been "taken out"

Colonel De Kock referred to Maponya as "Maponya-Le Roux", alluding to an alleged order by General Johan Le Roux that Maponya be killed.

Mr Klopper said he had been a member of a team which had been ordered by Colonel De Kock and General Krappies Engelbrecht to collect Mr Sambo's body after he was killed by police interrogators They had put the body on top of explosives and repeatedly blown it up

PUBLIC SECTOR - GOVT. - JUSTICE

1995

JUNE - JULY

Judiciary struggles with the changing times

(252) 1/6/93 BD 1/6/93 (252)

SUSAN RUSSELL

THE Judicial Service Commission, whose job it is to select new judges for the Supreme Court bench, sat in public for the first time for this purpose this week, since reversing its initial decision to interview candidates behind closed doors This follows its deliberations on Constitutional Court appointments last year

Drawn from the various branches of the legal profession and the Senate, the 17-member commission was established last year in the wake of calls to make judicial appointments more transparent and open — in contrast to advancing what critics have described as the clubby, old boy network of the past But it is clear from ths week's hearings that the network is still very much in evidence.

Historically, judges have been appointed by the Justice Minister from a small pool of almost exclusively white, male senior counsel at the Bar Sidelined from the commercial legal work that groomed their white, male counterparts for a judicial post, black advocates and women were until recently excluded by their lack of seniority and specialised legal experience

New Justice Minister Dullah Omar wasted no time in publicly committing himself to transforming the judicial system into a more representative one that had the confidence of the country as a whole, and has forced even the more conservative sectors of the legal profession to accept that a departure from the old closed shop was inevitable, even if not desirable

Historical marginalisation of black lawyers has meant that at present the pool of prospective candidates deemed suitable for appointment is still mainly white and male

Attorneys may now be appointed, and senior status at the Bar is no longer a prerequisite But an editorial in the attorneys' journal De Rebus earlier this year voiced strong criticism of what it called the apparent attitude of some commission members that practising attorneys were not suitable judge material

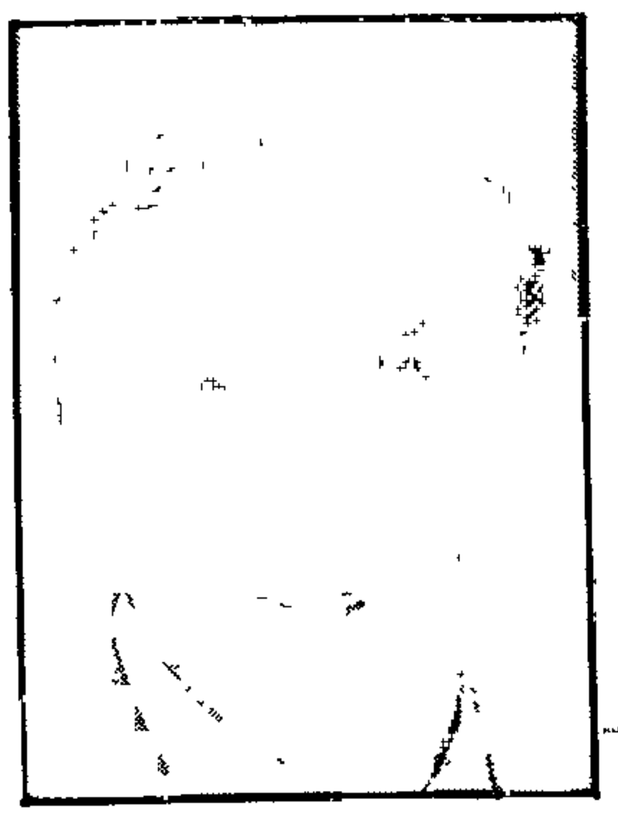
To what extent this is an accurate reflection of the attitude of some commission members is difficult to gauge But what did emerge from this week's public hearings is the impression that the judiciary, as represented on the commission, is struggling with the demand to accelerate meaningfully the transformation process

There is obviously a very real and legitimate concern that affirmative action, in terms of gender and race, should not be accompanied by a drop in standards

Incompetent judges would serve nobody's interests

From the questions put to the nine candidates interviewed for four places in the Transvaal Provincial division and one vacancy in the Cape, particularly from Chief Justice M Corbett and Transvaal Judge President CF Eloff, it was clear the existing judiciary is thinking long and hard about how best to cope with the inevitable changes it faces

Candidates, specifically those attorneys and less senior black advocates among them, were asked their views on the desirability of giving prospective judges acting appointments before they were considered for a permanent post They were also asked for their views on the establishment of some form of judicial training programme which would help new appointees, who had not had the opportunity to gain experience in various specialised areas of law, bridge the gap



□ OMAR

Both suggestions have obvious merit and most of the candidates indicated they supported the idea of either or both In the recent past most senior counsel approached to serve on the bench have first been appointed on an acting basis. But this begs the question why such programmes and processes designed to make the judiciary more racially representative were not initiated before now

Making acting appointments a prerequisite for a full appointment also raise a critical question about the role of the commission· acting judges are appointed by the judge presidents, so the judge presidents would effectively be able to vet all candidates coming before the commission

The grilling one candidate, human rights attorney Kathleen Satchwell, received from Judge President CF Eloff also raised questions about the practical chances of an acting appointment if the judge president of a Supreme Court division for one or other reason did not want that person on his bench

Judge Eloff began the interview by questioning Satchwell's professional integrity in her handling of an application she brought against the Witwatersrand attorney-general in December 1986 on behalf of a detainee who had been in custody for two years. The presiding judge in that case had found her conduct "so unreasonable" that he ordered her personally to pay the costs of the application.

Defending herself, Satchwell said she had acted in what she saw as the best interests of her client at the time and had never breached any professional ethic

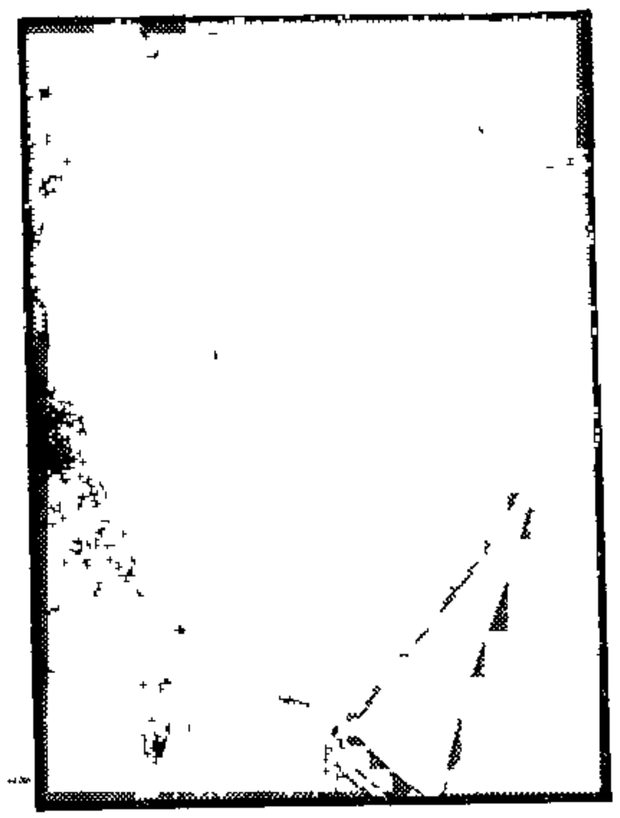
Thereafter Eloff interrogated her closely about her professional experience in areas of legal practice outside human rights work He also twice asked her whether she believed she had the temperament to be a judge

While Satchwell may or may not be sufficiently experienced for a judicial post, it was patently obvious from the outset of the interview that the Judge President was opposed to her appointment.

Further to that, a disturbing story doing the rounds in the legal profession is that, mindful of the pressure to have a woman on the bench very soon, five women at the Johannesburg Bar were approached and urged to apply for silk immediately with a view to being given acting appointments The pressure to appoint one of this week's two women candidates — as a step towards greater representivity — would then be reduced

This plan, the story goes, failed when there were delays in the awarding of silks

This allegation could not be confirmed But if there is any truth in it the implications for a supposedly transparent process are disturbing.



□ CORBETT

The nine candidates interviewed this week were questioned at length also about their degree of experience in commercial legal matters All but one of the four black candidates, two of whom have already served acting appointments, said they had little or no commercial litigation experience and that this was an area from which black lawyers had historically been excluded

It was pointed out by one candidate that if commercial litigation experience was a criteria for appointment, no black candidate would ever be appointed, at least for the forseeable future

The three white, male senior counsel interviewed as candidates by the commission this week had followed the path of most of their peers into lucrative commercial law practices All of them have also served acting appointments

While obviously a judge must be equipped to handle a case involving any area of the law, there are other qualities and attitudes a good judge will have to bring to the job if our legal system is to foster the respect and credibility it has lacked with large sections of the population

This was emphasised during the interview of Johannesburg advocate Des Duke SC when he made a comment seen by a number of commission members to be in poor taste Talking about a period spent as an acting judge in the Eastern Cape, he quipped that people spoke of him as being in the "jewellery trade" because of the number of so-called necklacing cases he heard

Duke said the term arose in the Eastern Cape where at that stage eight out of 10 capital cases involved so-called necklace murders He conceded that the term would be offensive to the relatives of victims who had died in this way, but it underscored the wide gulf perceived by many between those traditionally considered suitable for judicial office and the people whose lives have sometimes quite literally depended on them

New class of indemnity proposed

1/6/95

(252) Star 31/5/95

■ BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — Justice Minister Dullah Omar has been asked to consider a proposal to create a new category of indemnities ahead of the passage of Truth Commission legislation

If accepted, the proposal could provide the Government with a way to settle the legal status of senior elected officials who now enjoy "temporary immunity" status and who will otherwise have to approach the Truth Commission for amnesty or face possible prosecution

This group includes 118 senior officials, including Deputy President Thabo Mbeki, ANC Cabinet Ministers and IFP Correctional Services Minister Dr Sipho Mzimela who were given temporary immunity in 1990 to allow them to take part in negotiations.

Omar has said he found it "disgraceful" that people who opposed apartheid were being treated in the same way as those who fought for its retention.

Unequal

However, the ANC has given notice in the Senate select committee on justice that it would introduce amendments along the lines suggested by Omar

Committee chairman Mosheen Moosa said yesterday there was no intention to unduly delay the passage of the Truth Bill legislation However, the Senate could not go ahead with a Bill that had prescribed unequal treatment for agents of the state and opponents of apartheid.

Opposition party members from the National Party and the Freedom Front warned that reopening the discussion on the Bill would upset the careful compromise crafted in more than 300 hours of haggling in the portfolio committee on justice

Yesterday, when the Senate committee met for the second time to consider amendments to the Bill, Justice Department official and head of the Government's Indemnity Board, Piet Kleynhans, told the Senate committee that he had proposed to Omar that a new and final category of indemnities be established to help the Truth Commission deal with an expected glut of cases.

There were 2 000 indemnity cases outstanding, he said

NEW CATEGORY WILL EXPEDITE PROCESS

Bid to amend Truth Bill

CT 1/6/95 (252)

OPPOSITION parties warn that moves to amend the Truth Bill to create new categories of amnesty will upset a hard-fought compromise achieved, our **POLITICAL STAFF** report

JUSTICE Minister Mr Dullah Omar has been asked to consider a proposal to create a new category of indemnities before the passage of Truth Commission legislation

If accepted, the proposal could provide the government with a way to settle the legal status of senior elected officials who now enjoy "temporary immunity" status and who will otherwise have to apply for amnesty

The category system was used extensively by the previous government to allow mostly ANC members to apply for indemnity within designated categories without having to disclose the exact nature of their alleged crimes

The temporary immunity group includes 118 senior officials, including Deputy President Thabo Mbeki, ANC cabinet ministers and IFP Correctional Services Minister Dr Sipho Mzimela, who were given temporary immunity to allow them to take part in negotiations

Mr Omar has already said he considered it "disgraceful" that people who had opposed apartheid were being treated in the same way as those who had fought for its retention

The ANC has given notice in the Senate Select Committee on Justice reviewing the bill that it would introduce amendments along lines suggested by Mr Omar

Committee chairman Mr Mohseen Moosa said there was no intention to delay the passage of the legislation unduly However, the Senate could not go ahead with a bill that prescribed unequal treatment for agents of the state and opponents of apartheid

Opposition party members from the National Party and the Freedom Front warned that reopening discussion on the bill would upset the careful compromise crafted in more than 300 hours of haggling

'Victimless crimes'

Yesterday, when the Senate committee met for the second time to consider possible amendments to the bill, Justice Department official and head of the government's Indemnity Board, Mr Piet Kleynhans, told the Senate committee that he had proposed to Mr Omar that a new and final category of indemnities be established to help the Truth Commission deal with an expected glut of cases.

There were still 2 000 indemnity cases outstanding, Mr Kleynhans said The creation of a new category of indemnities would help expedite these cases, which would otherwise have to be dealt with by the Truth Commission at the rate of about five a day The category would include only people who had allegedly committed so-called "victimless crimes"

Mr Kleynhans said the government could only create a new category of indemnities before the Truth Bill became law Thereafter, anybody wanting amnesty would have to appear before the commission and disclose his crimes

Mercy to cost R7 m

(252) CP 11/6/95

By ELIAS MALULEKE

KEEPING Pretoria's 453 death row prisoners – who have now been saved from the noose – in jail instead of executing them will cost taxpayers R45 each per day a total of R7 439 735 a year

On the other hand, there will be a saving of R26 000 per year in salaries for the two hangmen

These figures do not take into account the amount taxpayers will pay when judges start sitting to assess each of the 453 cases on merit and impose new sentences

The names of the 453 prisoners are to be made public in parliament by Correctional Services Minister Sipho Mzimela this week

They include the assassins of SACP general secretary Chris Hani – Polish immigrant Janus Walusz and rightwing activist Clive Derby-Lewis

According to Correctional Services media liason officer Captain Bert Slabbert, director of communications Brigadier Chris Olckers and communication officer Lieutenant Rudi Potgieter, it will take months before the prisoners are resentenced

Peter du Randt, spokesman for the minister of justice, Dullah Omar, said the costs of reassessing of the prisoners' sentences was not yet known

He said it was expected that each case would be reviewed by judges and new sentences imposed.

He believed the sentences would range between 10 years and life

■ Meanwhile, the widow of a murder victim who asked not to be named said while her husband's killers and other murderers would spend their time in jail being provided with meals and television, her children did not know where their next meal would come from

New mood at Supreme Court

(252) BD 2/6/95

Susan Russell

JOHANNESBURG attorney and tax expert Basil Wunsch is one of five new Supreme Court judges announced by the Judicial Service Commission yesterday

Another successful candidate is advocate Lucy Mailula — the most senior black woman at the Johannesburg bar and the first to be appointed to the Transvaal bench She is also the first black woman to be given a permanent appointment to any of the Supreme Court divisions

Wunsch, a senior partner at Johannesburg law firm Edward Nathan Friedland, is the first attorney appointed to the Transvaal Supreme Court. He was the first of the nine candidates to be interviewed by the commission in public since it reversed its decision earlier this year to hold proceedings behind closed doors

The two other vacancies in the Transvaal provincial division have been given to Johannesburg human rights lawyer Mahomed Navsa SC and Pretoria advocate Bernard Ngoepe SC Both men have recently served acting appointments.

Cape Town advocate Siraj Desai was chosen to fill the one existing vacancy in the Cape provincial division Known as a human rights lawyer and political activist, Desai also chaired the Woodstock branch of the ANC

Desai told the commission this week he had given up his political activities after last year's election He said he held strong views on the need for an independent and impartial judiciary

The commission, chaired by Chief Justice M Corbett, interviewed the nine candidates in the presence of Justice Minister Dullah Omar earlier this week

Post on Bench for Siraj Desai

ARG 2/6/95 (252)

Staff Reporter

PROMINENT Cape Town advocate, Siraj Desai, has been appointed a judge of the Cape Supreme Court.

Mr Desai was born in Salt River in 1951 and matriculated at Trafalgar High in the old District Six.

Because of the Separate Universities Act, he was unable to study at a Cape university and instead went to the University of Durban-Westville where he graduated with a BA LlB in 1976.

After serving articles and working as a professional assistant, Mr Desai was admitted to the Cape Bar in 1981.

He has appeared in many political and human rights cases during the last 14 years.

Mr Desai represented Allan Boesak when, as president of the United Democratic Front (UDF), he was charged with subversion in the mid-1980s.

He has also appeared for Umkhonto weSizwe members including Lizo Nqulwana in 1986.

He appeared for leaders of the armed forces in the Bophuthatswana coup bid in 1990 and with the present Minister of Justice, Dullah Omar, for African National Congress leaders in the Motsuenyane Commission of Inquiry into allegations of torture in ANC detention camps in Angola in 1992.

Last year Mr Desai appeared for Gcinikhaya Makoma in the St James Church massacre trial.

Mr Desai is married to Faieza and has three children, Tariq, 7, Azhar, 5, and Aniqah, 4.

In the Transvaal Provincial Division, advocates M L Mailula, W R Navsa, SC, B M Ngoepe, SC, and B Wunsh have also been appointed judges.

FRIDAY
JUNE 2, 1995

R40M FOR BUILDINGS

City will get more courts

CT 2/6/95

NEW state building plans were revealed yesterday. **BARRY STREEK** reports.

(252)

THE government will build three new Magistrates' Courts in Greater Cape Town at a cost of R40,17 million; the Minister of Public Works, Mr Jeff Radebe, said yesterday

The new court buildings will be built in Khayelitsha at a cost of R16,1m, at Langa (R6,97m) and at Blue Downs (R17,1m)

This was revealed in a memorandum tabled in Parliament by Mr Radebe setting out details of the building programme for the 1995/6 financial year for all projects over R200 000

Mr Radebe also said the first phase of a new police station and single quarters at Somerset West would be built at a cost of R1,3m The whole project would cost about R6,6m

Altogether R8,5m would be spent on re-building the Brandvlei Prison near Worcester So far, R1,8m had already been spent

Mr Radebe also said R240 000 would be spent on the restoration of Mostert's Million, a project that would eventually cost R565 000

Altogether R700 000 would be spent on a new restoration project at the Castle

The total restoration there would cost R5,4m

First black woman judge proposed

(252)

A black woman is one of five people recommended to fill vacancies for judges in the Cape and Transvaal provincial divisions of the Supreme Court.

The recommendations were made by the Judicial Service Commission, which met over two days in Johannesburg.

Advocate Lucy Mailula is the first woman to be nominated as a judge in the Transvaal provincial division. Star 2/6/95

Others recommended to the Bench are advocates Mahomed Navsa, SC, Bernard Ngoepe, SC, and attorney Basil Wunsh.

Advocate Siraj Desai has been recommended to fill a vacancy in the Cape provincial division.

President Mandela will make the final appointments. — Staff Reporter.

Black judges for Supreme Court

Sowetan 2/6/95 (252)

By Mzimasi Ngudle

FOUR blacks were appointed as judges of the Supreme Court of South Africa yesterday

They are advocates Lucy Mailula, Bernard Ngoepe and Mohammed Navsa, who were appointed to the Transvaal Supreme Court, and advocate Siraj Desai, who was appointed to the Cape Supreme Court

Mr Basil Wunsh, a white attorney, was also appointed as a judge of the Transvaal Supreme Court

The judges were appointed by President Nelson Mandela after recommendations from the Judicial Services Commission which interviewed a short list of candidates in Midrand early this week.

Meanwhile, the Admission of Legal Practitioners Act was passed in Parliament yesterday, abolishing English and Afrikaans as statutory requirements for admission to the law profession The Act also amended similar provisions in the former TBVC states

AMNESTY (252) FM 2/6/95

Drawing lines — again

The law governing amnesty for political crimes will soon come into effect — and will almost certainly precipitate further ructions within the Government of National Unity And though the Promotion of National Unity & Reconciliation Bill — passed by the National Assembly, with the Freedom Front voting against it — is intended to heal the wounds of the past, this admirable goal could be obscured by less high-minded use of several of its clauses

Firstly, a question mark hangs over the cut-off date for amnesty The interim constitution gives "before 6 December 1993" as this date, which would exclude the perpetrators of the Heidelberg Tavern massacre and the pre-election rightwing bombers from consideration (In the Assembly vote on the Bill, Inkatha and the PAC abstained)

However, the legislation has been framed to indicate the period of scrutiny as "from 1 March 1960 to the cut-off date contemplated in the constitution" This means that the deadline can be extended by an amendment to the constitution — a political prerogative, essentially, of President Nelson Mandela

The Freedom Front wants May 10 1994 (inauguration day) as the cut-off, which might just save the bombers, though it is equally concerned about the fate of Clive Derby-Lewis and Janus Walusz, Chris Hani's assassin, in April 1993 Both are on death row

Mandela said last week that while he was "very keen" to extend the amnesty date for some prisoners, he did not want the same rights granted to hit squads and criminals who were still active in the belief that their bloody deeds would eventually be covered by an amnesty extension

The Democratic Party's Dene Smuts pointed out in parliament that the truth and reconciliation law "substitutes amnesty for justice" The DP, nonetheless, voted for it, since it seeks to promote "understanding but not vengeance, reparation but not retaliation, *ubuntu* but not victimisation" Smuts is pleased that the law has accepted the so-called Norgaard Principles — which attempt to establish objective criteria for amnesty, along Namibian lines — as its statutory guidelines

However, Smuts said, "our opposition to yet another adjustment of the cut-off date (is that) you create a slideaway in which you lose your moral footing (The) past, once documented, is *not* a different country when disputes and battles continue"

It is the Truth & Reconciliation Commission that will do the documentation — within, it is envisaged, two years — by way of special investigations and the work of its three subordinate committees on human rights violations, amnesty and reparations. To counter criticism that such a huge exercise could degenerate into a witch-hunt, the commissioners (according to the law) "shall be South African citizens who are impartial and respected and who do not have a high political profile" This clause will be keenly watched when appointments are made.

The problem for Derby-Lewis and Walusz, should they apply for amnesty, lies in the requirement that their act "does not constitute a gross violation of human rights" It has also been made difficult for common criminals to apply for amnesty claiming political motivation But interpretation will be a slippery process

The *intention* is that a broad and comprehensive picture of apartheid-era violence and oppression — on both "sides" — should emerge But as the Freedom Front has argued, the cut-off date, as it stands, compromises whatever case might be summoned up for the Heidelberg killers and the bombers The ANC, it says, is being favoured

Justice Minister Dullah Omar's remark that liberation leaders should not have to apply for amnesty inflamed the debate Automatic amnesty should be granted to "those who made the greatest contribution to our democracy," he said last week

In the face of outrage, Omar explained that he found it invidious that men like Thabo Mbeki and Zola Skweyiya have had to have previous indemnities extended by the president In fact, this is a technical matter relating to the intention of previous laws enabling exiles to return to SA without fear of arrest The indemnity laws will be superseded by the National Unity & Reconciliation Act, and anyone seeking amnesty will have to do so on its terms

DP leader Tony Leon found Omar's comments "disturbing, because of the suggestion that certain persons should be placed above the law and beyond its reach The Minister can hardly expect ordinary rank and file soldiers, policemen and MK cadres to subject themselves to the amnesty procedure if their political superiors are to be exempted from the law

"On the contrary, it is often the political leadership on both sides of the struggle who bear greater responsibility for human rights abuses than functionaries who were executing orders and instructions on the ground"

As Justice Minister, Omar not only failed to take this point earlier, but again aroused suspicion that the Truth & Reconciliation Commission could become a one-sided tribunal ■

Black judge nominees bring a new perspective to the law

ST 4/6/95

(252)

By SUE BLAINE

FOUR black advocates, one a woman, and an attorney were nominated by the Judicial Service Commission this week for appointment to the Transvaal and Cape Supreme Court divisions

Among them is the advocate Lucy Mailula, who may soon be the first black woman judge in South Africa.

The five nominees were chosen from nine candidates grilled in public interviews in Midrand early this week by members of the commission including the Justice Minister, Dullah Omar and the Chief Justice, Michael Corbett

Miss Mailula, known as one of the most experienced black advocates in Johannesburg, told the commission the background she shared with most South Africans could help release the bench from the common perception that the only justice was white justice She said her background, education and experience would bring a wider perspective to the bench.

The second Transvaal nominee, the human rights advocate Mohammed Navsa SC, said his experiences as a youth of mixed heritage had brought him to the law

When he was 15, the government had tried to reclassify his Malay coloured father "Even in the darkest moments in our history people have looked to the law to establish their rights," he said

Mr Navsa, who has served as an acting judge, said he had put himself forward because he "wanted to make a difference to people's lives".

His obvious enthusiasm was contrasted by Johannesburg attorney and tax expert Basil Wunsh's replies in his interview

When asked why he had put himself forward his reply was simple "I was approached, and I thought it would be interesting at this stage in my career."

Like Miss Mailula, the final Transvaal nominee, Bernard Ngoepe SC, said his background would "go a long way" to inspiring confidence in the bench.

A veteran political activist and Cape advocate, Siraj Desai, was the only person recommended to the Cape bench.

Mr Desai used to be the ANC chairman for Woodstock, Cape Town His practice, begun in 1976, has spanned civil, criminal and human rights work

Other candidates interviewed were the attorney and former human rights activist Kathleen Satchwell, acting judge Des Duke SC, Willem Johannes Louw SC and acting judge Barend van den Heever SC

PAC pulls out of truth body

(252)

JOHANNESBURG: The Pan-Africanist Congress' national executive committee has decided to distance itself from the Truth Commission, it said yesterday.

CT 5/6/95

Political Staff, Sapa-Reuter

Rights bill 'could lay basis for equality'

CT 5/6/96 (252)

JOHANNESBURG: The Bill of Rights could lay a foundation for equality in SA, especially between workers and business, Cosatu general secretary Mr Sam Shilowa said at the weekend.

Mr Shilowa and other labour delegates from across the country made submissions on the draft constitution at the World Trade Centre in Kempton Park.

He said although the constitution was a watershed document, it would not erase apartheid's wrongs "Just because we now have Mr Mandela as President and a draft constitution, doesn't mean I had a right to an education when I was growing up or that a woman wasn't denied a position because of her gender"

Mr Shilowa said the draft constitution should include clauses on the right to strike, freedom of association, freedom of religion, the right to picket and the right to information

He said the right to strike should be unlimited, except where health or lives were at stake

Cosatu was against including a clause that would protect ownership of private property Mr Shilowa said this right had often embraced colonialism and racial discrimination — and could undermine basic human rights

Opposing Cosatu's view, Federation of South African Labour representative Mr James Abraham said the provision for protection of private property was critical for the smooth running of economies

Workplace

"The right to own private property is critical in a democratic modern economy Property includes rights of assets and if the economy is to function, we need this protection," Mr Abraham said.

National Council of Trade Unions general secretary Mr Cunningham Ngcukana said a safe and healthy workplace, as well as the right to health care, should be guaranteed in the constitution

"If health is left to profiteers, poor people, including workers, won't have access to health care," Mr Ngcukana said —Sapa

Parliament to decide if SA will be member of child law convention

(252) CT 5/6/95

THE cabinet has approved a Justice Department proposal to submit to Parliament the question of South Africa's accession to the Hague Convention on civil aspects of the International Child Abduction Act, Justice Minister Mr Dullah Omar said on Saturday.

The cabinet had also approved the simultaneous introduction of legislation required to implement the convention, he said.

This would make it part of South African law and extend the powers and functions of the family advocate as a central authority in terms of the convention

Mr Omar said the convention's main objective was to ensure that a child wrongfully removed or retained in a member state was returned or handed over as soon as possible, and that the access and custody rights under law of one member state were respected by other member states.

Passage of the proposed legislation through Parliament would make it possible for SA to accede to and implement the convention.

The draft followed a recommendation by the SA Law Commission, which had "investigated and consulted widely" —Sapa

Legal aid made more accessible

(252) Star 5/6/95

Cape Town — The Cabinet has approved an amendment to the Legal Aid Act requiring the State to give free legal assistance to detainees, sentenced prisoners and accused in criminal cases, Justice Minister Dullah Omar said at the weekend

In terms of existing legislation the Legal Aid Board may provide legal aid to only the indigent

Omar said in a statement the amendment required the State to provide assistance in matters, "where substantial injustice would result if the person concerned were unrepresented"

The draft amendment also authorises the former South African Legal Aid Board to give "constitutionally prescribed" legal aid in all parts of the country, including the former TBVC states

The draft of the amended legislation will be forwarded to Parliament for discussion The Bill will come into operation from March 10 1995

The Cabinet has also approved an amendment to the Investigation of Serious Crimes Act The amendment revises Section 6, which in terms of the constitution violated the right to privacy

The section, which provides for search and seizure, was amended following a recent order by the Cape Provincial Division of the Supreme Court

The amended draft Bill provides that premises may be entered and searched only with a warrant issued by a competent legal authority, and that information obtained in the form of answers to questions during the search is inadmissible as evidence in subsequent criminal proceedings

It also provides for the search of premises without a warrant where consent is given by the person in charge of the premises

Parliament was given until June 19 to correct the defect in Section 6 of the Act

The Cape Provincial Division Court ruled that instead of the Director of the Office for Serious Economic Offences authorising a search, prior authorisation should be obtained from a magistrate or judge

In addition, the court ruled that the use as evidence in subsequent criminal proceedings of any explanation given during the search would violate a person's right to a fair trial — Sapa

Victims' families 'to charge Mandela'

BD 6/6/95

David Greybe

CAPE TOWN — Families of the victims of the Shell House shootings would bring charges against President Nelson Mandela as an "accomplice to murder", the Inkatha Freedom Party said yesterday.

Inkatha MP and deputy Gauteng leader Themba Khoza said a second charge of "defeating the ends of justice" would also be brought against the ANC president.

He said the families had instructed their lawyers to proceed with the charges after Mandela's "confession" in the Senate last week that he had told guards to shoot to kill outside ANC headquarters during a Zulu march in Johannesburg on March 28 last year.

The families had also brought civil claims for damages of more than R10m against Mandela.

ANC guards killed at least eight Zulu marchers on the day, claiming they acted in self-defence after the marchers stormed the ANC headquarters. Inkatha claimed the death toll was 11, and denied that the building was attacked.

Khoza said the families' lawyers were investigating the possibility of "altering" the civil claims case to include the criminal charges, so as to expedite proceedings.

He said the accomplice to murder charge resulted from the fact that Mandela "planned with those who killed at Shell House".

The criminal charge of defeating the ends of justice was linked to Mandela's role in the denial of police access to the ANC head office after the incident.

Meanwhile, Mandela's office said yesterday it was unaware that a meeting had been scheduled between National Police Commissioner George Fivaz and Mandela to discuss the president's remarks in Parliament last Thursday.

Fivaz's spokesman Joseph Ngobeni confirmed reports that the police commissioner said he planned to meet Mandela.

Presidential spokesman Parks Mankahlana said: "As far as I know there is no meeting planned."

Another spokesman, Joel Netshitenzhe, referred queries to the ANC

ANC spokesman Ronnie Mamoepa, in turn, said it was Mandela's prerogative to speak out on any such meeting.

Mamoepa said the ANC hoped that the snap debate in Parliament tomorrow would "finally clear up any misunderstandings" on the issue.

Biehl murder judgment scheduled today

CAPE TOWN — The Supreme Court in Cape Town is to pass judgment today on Ntombeki Peni, 19, accused of murdering US exchange student Amy Biehl in Guguletu in 1993.

He has pleaded not guilty to murdering her by striking her head with a brick, although he admits having been among a group of people shouting "One settler, one bullet" shortly before she was killed.

In closing argument yesterday state advocate LR Nortier said Peni had repeatedly contradicted himself while two state witnesses, including a woman who said she had to look away in horror as Peni beat Biehl over the head, were outstanding.

Peni's advocate J Kuzwayo asked the court to acquit him because he was "a victim of circumstance who was in the wrong place at the wrong time".

Kuzwayo said the State had not proved its case beyond reasonable doubt. — Sapa.

'Apartheid' army officer arrested

Stephané Bothma

PRETORIA — A senior SA National Defence Force (SANDF) officer was arrested yesterday on 13 charges of murder, alternatively conspiracy to murder, by a special hit sqaud investigation unit, police commissioner George Fivaz said.

More arrests, believed to be connected to hit squad activities in [illegible] could be expected.

Brig John More, formerly a senior staff officer in Military Intelligence's directorate of special tasks, was arrested at his Pretoria home early yesterday morning. He is currently on secondment to Armscor as director of marketing for Denel.

The murders in which More is implicated took place in KwaMakhutha in KwaZulu/Natal in 1987, and further arrests could be expected, Fivaz said

More is the second high-ranking security force officer arrested in connection with the KwaMakhutha killings. Last week, former Durban security branch policeman Col Louis Botha appeared briefly in the Durban Regional Court in connection with 13 murders. He was released on R10 000 bail In January 1987, 13 members of the Ntuli family, including seven children, were massacred in KwaMakhutha near Amanzimtoti.

Following Botha's arrest, detectives of the investigating task unit probing hit squads, under the command of Col Frank Dutton, raided the Pretoria offices of Military Intelligence on Thursday night in search of a file believed to contain vital evidence of murder and conspiracy to murder. The file was not found.

Death penalty judgment to be delivered

Susan Russell

(252)

MORE than 300 death row prisoners, some of them there since the 1990 moratorium on capital punishment, will know their fate when the Constitutional Court hands down its long-awaited judgment today.

The constitutionality of the death penalty was the first case heard by the new court after its inauguration in February. BD 6/6/95

The 11 member court, headed by its president Judge Arthur Chaskalson, reserved judgment after hearing two and a half days of argument.

Argument in favour of scrapping capital punishment on the grounds that it was unconstitutional was led by counsel representing two murderers sentenced to death for the slaying of four people during an armed robbery.

The State, represented by Adv George Bizos SC, also argued for the scrapping of the death penalty on constitutional grounds.

Argument in favour of retaining capital punishment was submitted on behalf of the attorneys-general by Witwatersrand attorney-general Klaus von Lieres, who announced his retirement recently.

Central to the argument for scrapping capital punishment was the submission that the death penalty violated section nine of the constitution which guaranteed the right to life.

It was also argued that capital punishment was contrary to those sections which guaranteed the right to dignity and protection from cruel and inhuman treatment.

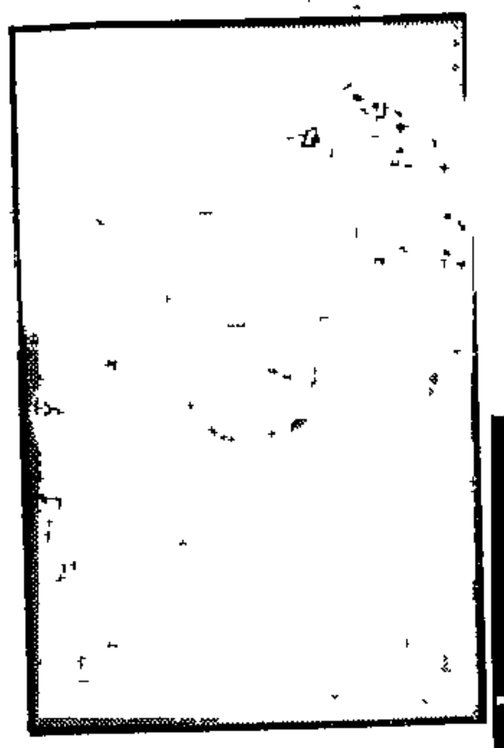
The court was asked to consider to what extent the limitation clause in section 33 of the constitution could accommodate the [illegible] of the death penalty.

Section 33 provided for the reasonable and justifiable limitation of a right as long as the limitation "does not negate the essential content" of that right.

There were 335 people on death row when the case was argued in February.

Death penalty abolished

Joy among prisoners after Constitutional Court ruling



Judge Chaskalson ... everyone has the right to life

ARG 6/6/95

(252)

The Argus Correspondent

JOHANNESBURG — The Constitutional Court abolished the death penalty today — sparking jubilation on Pretoria Central Prison's death row

Constitutional Court president Arthur Chaskalson took about five minutes to hand down the judgment, ending years of anxiety for many of the 443 prisoners on death row in jails around the country

Prisoners in Pretoria Cenral heard the news on the radio and, according to Chris Ockers, liaison officer for the department of correctional services, "it spread like wildfire"

He added "The mood at the prison was one of tremendous joy There was shouting and clapping and general jubiliation on death row this morning"

Judge Chaskalson said the death sentence, provided for in section 277 of the Criminal Procedure Act, was inconsistent with the constitution

The state and its organs were in future forbidden to execute any person

The decision was made unanimously by the court's 11 judges after lengthy deliberations and research undertaken since February

the right to life, and capital punishment is therefore unconstitutional"

All death row prisoners would remain in custody under the sentences imposed on them until set aside in law and substituted by lawful punishments, he said

This means death row prisoners must wait either for their sentences to be commuted to life imprisonment or for other sentences by executive order of the president or fight individually through the courts for a more lenient sentence

Prisoners on death row would soon be removed from their cells and transferred to other prisons but this was expected to take some time, said Brigadier Olckers

"At present these prisoners are not categorised in terms of what privileges they may enjoy in prison

"Depending on the new sentences handed down to them by the courts following the decision of the Constitutional Court, they will be categorised as either A, B, C or D prisoners, which will of course influence their privileges, particularly visiting rights"

The death penalty was suspended by the National Party government in 1992. South Africa executed 1 123 people between 1980 and 1989, one of the highest execution rates in the world

Solomon Ngobeni became the last per-

The Constitutional Court heard arguments for and against the death penalty in a case stemming from death sentences imposed on Themba Makwanyane and Movusu Mchunu for killing four people in a hijacking attempt in August, 1990

Among prisoners on death row are former Conservative Party politician Clive Derby-Lewis and Janus Waluz, who were sentenced for assassinating Communist Party general secretary Chris Hani at Easter in 1994, and Butana Almond Nofemela, the man who first disclosed the existence of hit squads operating from the Vlakplaas police farm outside Pretoria

Nofemela was to have been executed for murdering a farmer but was granted a stay of execution hours before he was due to go to the gallows after giving an affidavit to lawyers

Brigadier Olckers said the gallows would be dismantled in the near future

The court's decision was immediately welcomed by Lawyers for Human Rights (LHR), which has campaigned for the abolition of the death penalty since 1987

"I am extremely pleased with the decision The abolition has put us among democratic countries that have scrapped the death penalty," said LHR representative Ahmed Motala

He said the decision created more certainty in South African law and would [illegible] creative sen-

Decision gets mixed reception

(252)

ARG 6/6/95

MIXED reaction greeted the abolition of the death penalty today.

The ANC regarded it as "long overdue", said MP Willie Hofmeyr, co-chairman of the Constitutional Assembly theme committee on the legal system.

But he warned criminals the government would not be soft on crime following the decision.

The National Party expressed disappointment, saying the decision sent the wrong message to South Africa which had the highest rate of crime in the world.

Meanwhile the DP spokesman on safety and security, Douglas Gibson, urged parliament to amend legislation so that life sentences meant jail for life.

The courts now had only the option to impose life sentences, but those sentenced to life were often out within nine years.

"The community demands a more appropriate sentence than that."

IFP MP Abram Mzizi said in his personal view the abolition of capital punishment meant that rape and murder victims and their relatives were being "punished" doubly.

The IFP would respond fully later.

Capital Punishment Campaign organiser Simon Grindrod said: "This outcome represents a missed opportunity to combat the tidal wave of murder, currently threatening the foundations of our nation."

Attorney-General of the Cape Frank Kahn said: "I welcome the legal certainty which has been far too long in coming.

"Now that sentences of imprisonment become the only deterrent, it is imperative that government looks at the whole system of parole whereby sentences have been slashed out of all recognition to those imposed by the judiciary."

He called for a greater role for sentencing judges in the parole system.

National police commissioner George Fivaz said he did not believe the reintroduction of the death penalty would have been a deterrent to criminals.

"If the constitutional court is of the opinion that the death penalty is not in line with the constitution, we shall have to administer our police work in terms of that."

Solving crime meant getting rid of disrespect for life, property and people's rights. This meant creating a new culture.

AGs fight to keep system of multiple provincial offices

ARG 6/6/95 (252)

☐ *Single appointment 'open to manipulation'*

TYRONE SEALE
Political Staff

A HIGH-powered panel of attorneys-general have told parliamentarians that the creation of a national or "super" attorney-general would leave the country's prosecutorial agencies open to political interference and manipulation

Harsh exchanges marked yesterday's meeting of the constitutional assembly theme committee concerned with the appointment of attorneys-general and other judicial officials, as the attorneys-general of the Transvaal, Eastern Cape, Cape of Good Hope and Witwatersrand divisions of the Supreme Court gave evidence

Supporting the attorneys-general in opposition to the African National Congress-favoured idea of a national attorney-general who would coordinate prosecutions countrywide, were roving attorney-general and former Cape attorney-general Niel Rossouw, André Blignault of the Cape Bar Council and George Bizos of the Judicial Services Commission

Cape of Good Hope attorney-general Frank Kahn, SC, said in a country that was slowly becoming riddled with corruption, a "super" attorney-general would have the image of having been created "to protect super-friends"

Attorneys-general were already vulnerable to political interference in the form of indemnities, measures to keep people out of jail and the expunging of convictions

He cited as another difficulty the dilemma over the death penalty, saying the Minister of Justice had never consulted attorneys-general on the matter

ANC MP and theme committee chairman Johnny de Lange challenged the attorneys-general to show why there should be nine provincial prosecuting agencies that applied different rules in different parts of the country

Up to now it had been accepted that justice was a national, not a provincial competence.

Jan d'Oliveira, SC, of the Transvaal division of the Supreme Court told the committee all attorneys-general wanted to see the independence of the office of the attorney-general enshrined in the constitution

Klaus von Lieres und Wilkau SC, of the Witwatersrand division, said the interim constitution favoured a devolution of power and the concept of a single attorney-general was an anachronism

Centralising prosecutorial services would remove ordinary South Africans' access to a justice system which was already "based on the white South African concept, not the total African concept"

Consultation between the theme committee and the attorneys-general will continue

Death penalty verdict today

(252) CT 6/6/95

ANTHONY JOHNSON
POLITICAL CORRESPONDENT

TODAY is D-day for the death penalty

The Constitutional Court will deliver its judgment at 10am on whether the death penalty is to be retained or rescinded

The 11-member court, chaired by its president, Mr Justice Arthur Chaskalson, has been pondering its decision for more than three months now, after holding hearings at the beginning of the year on whether the death penalty violated the constitutional right to life.

No hangings have taken place since the National Party government placed a moratorium on the death penality in 1989 There are now more than 400 prisoners on death row.

A recent survey showed that four out of five white South Africans and almost half the blacks want the death penality. But there has been speculation that most judges on the court want it abolished.

The National Party favours the retention of the death penalty in certain circumstances but favours clemency for those now on Death Row

Justice Minister Mr Dullah Omar said recently he would be disappointed if the government returned to capital punishment but would not necessarily resign

He acknowledged at a meeting with foreign correspondents that there was majority support in the country for a return to hanging

But he said the new South Africa would be no different from the old if capital punishment were re-imposed

'Very sad'

"I would find it very sad if our new society found it necessary to return to the death penalty," he said

A spokeswoman for the Constitutional Court, Mrs M S Nienaber, told the Cape Times last night the court's ruling was contained in "a bulky document" that would be tabled this morning

She said the judgment was the second one handed down by the Constitutional Court but declined to be drawn on further details

Death penalty decision

(252) Sowetan 6/6/95

Once the court decision is known, the debate between abolitionists and retentionists will heat up

By Mzimasi Ngudle

THE country's 454 death row prisoners will know their fate today when the Constitutional Court decides whether the death penalty should be retained or abolished

In what is certainly going to intensify the debate between the retentionists and abolitionists, the Constitutional Court will announce its verdict, ending a five-year moratorium on the execution of people sentenced to death

The Appellate Division has halted the hearing of all appeals pending the decision of the Constitutional Court

The verdict comes almost four months after the court heard arguments challenging the constitutionality of the death penalty from the lawyers of Themba Matawanyane and Mvuso Mchunu.

Matawanyane and Mchunu were convicted on four counts of murder, one of attempted murder and one of robbery with aggravating circumstances

The two were sentenced to death for killing two bank officials and two policemen during a bank robbery near Coronation Hospital in 1990.

They are among 283 death row prisoners in Pretoria Central Prison who are anxiously awaiting the court's decision.

Their lawyers cited error, bias and personal whims as inherent vices which arbitrarily decides whether a person accused of murder escaped the noose

The lawyers were supported by the Government in their call for the death penalty to be declared unconstitutional because it violates, among other things, the right to life — a fundamental right entrenched in the constitution.

The Methodist and Anglican churches, South African Law Commission, Democratic Party, South African Bar Association, Lawyers for Human Rights, Centre for Applied Legal Studies and Society for the Abolition of the Death Penalty have all voiced their support for the abolition of the extreme penalty

Former Witwatersrand attorney-general Mr Klaus von Lieres argued for the state that high crime statistics necessitated the retention of the death penalty

Von Lieres also referred to a study released by the Human Sciences Research Council which found that 63 percent of South Africans were in favour of the death penalty.

The National Party is opposed to the wholesale scrapping of the death penalty

Judges are unanimous on ruling

Constitutional Court scraps death penalty

BD 7/6/95

(252)

Susan Russell

THE SA legal system entered a new era yesterday when the Constitutional Court struck down the death penalty as "cruel, inhuman and degrading punishment" which negated the other constitutionally entrenched rights to life and dignity

Court president Judge Arthur Chaskalson, with the other 10 bench members concurring, found that the death penalty was cruel, inhuman and degrading punishment within the meaning of section 11(2) of the constitution, which violated the right to life under section 9 and annihilated human dignity protected under section 10.

The court declared capital punishment invalid and forbade the execution by the state of anyone already under sentence of death It ordered that all people on death row be kept in custody until their sentences had been set aside and substituted by "appropriate and lawful punishments".

Yesterday's ruling was welcomed by human rights groups which said it brought SA into line with the international move away from capital punishment Lawyers for Human Rights (LHR) described the judgment as a crucial turning point in SA's legal and penal history. LHR and the Human Rights Committee said it was now up to the country and law enforcement agencies to address effectively the problem of crime.

Justice Minister Dullah Omar described the judgment as one of national importance and said all those on death row would be moved as soon as possible.

Adrian Hadland reports that the NP said it was disappointed by the court's decision. NP justice spokesman Danie Schutte said the wrong signal would be conveyed The decision sent out "a message that criminals will not be handled more severely but indeed more leniently" The NP would try to have the constitution amended to allow for the reinstatement of the death penalty, he said

Freedom Front spokesman Rosier de Ville said the death penalty was the only way of preventing SA from degenerating into total lawlessness and anarchy The front wanted a referendum on the issue

DP justice spokesman Douglas Gibson said the criminal courts should urgently be given sentencing options in addition to the ordinary life sentence He called on government to support a private member's Bill aimed at setting minimum life terms without the possibility of early release

Justice department legal advisers bemoaned the huge work load the court's decision would generate for them. The cases of each of the 450 people on "death row" until yesterday would need to be revisited, one said.

One adviser called for the 450 cases to be reassessed by the same courts which had imposed the death sentence.

President Nelson Mandela said the ruling by a body independent of the executive reflected a sober and humane consideration of the issue in line with contemporary civilised norms. He would study the judgment before commenting further

Both he and Omar moved swiftly to say the judgment would have no effect on efforts by government and the justice de-

Continued on Page 2

Death penalty

Continued from Page 1

(252)

partment to punish all crimes. Government would tackle crime with all the resources it could muster.

The constitutionality of the death penalty was the first case, brought on behalf of two convicted murderers, heard by the Constitutional Court immediately after its inauguration in February. Counsel for government, George Bizos SC, argued in favour of abolishing the death penalty on grounds that it violated the constitution. Witwatersrand attorney-general Klaus von Lieres SC argued for retaining it, saying it was necessary in extreme murder cases.

BD 7/6/95

Chaskalson rejected the attorney-general's contention that the death penalty was an acceptable and indispensable weapon in combating rising violent crime levels.

"Respect for life and dignity which are at the heart of section 11(2) are values of the highest order under our constitution," he said. "The carrying out of the death penalty would destroy these and all other rights that the convicted person has, and a clear and convincing case must be made out to justify such action."

The need for a strong deterrent to violent crime was not open to question, Chaskalson said. No information was provided by the attorney-general on rising crime, other than bare statistics which proved only that this was a violent society in which most crime went unpunished. "The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is presently lacking in our criminal justice system, and it is at this level and through addressing the causes of crime that the state must seek to combat lawlessness."

The court also rejected the death penalty as justifiable retribution. Chaskalson said this was not the only way of expressing moral outrage and the state did not need to engage in the calculated killing of murderers to express outrage at their conduct.

● See Page 8

ANC's 30 amendments will reshape truth Bill

(252)

BD 7/6/95

ADRIAN HADLAND in Cape Town

TRUTH commission legislation is in danger of getting bogged down in the Senate. The ANC announced yesterday it had about 30 new amendments to tack on to the Promotion of National Unity and Reconciliation Bill while other parties have also indicated their wish to shape further the most ambitious and complex Bill to be introduced by this government

Members of the National Assembly's justice committee were bristling with pride recently when the Bill was formally approved and despatched to the Senate for what is, perhaps euphemistically, called "concurrence".

The Bill, which sets out the objectives and frames of reference of SA's truth commission, took more than 130 hours of deliberations, was referred twice to a special Cabinet committee to iron out the more controversial issues and was subject to at least 300 amendments

"I am grateful," NP justice spokesman Danie Schutte told the Assembly, "that after many months of hard bargaining and after the rewriting of more than 90% of the Bill, it does deal with all sides on an equal footing. It can now be recommended as an instrument of reconciliation." The Bill's passage was proof that the government of national unity concept could be made to work, ANC MP Willie Hofmeyr told the House.

Few MPs doubted that such a comprehensive Bill would be quickly ushered through the Senate — some said in two weeks — before enactment and the appointment of commissioners.

Despite the backslapping, some prickly questions remain unresolved. The cut-off date for indemnity may have to be extended again, having been moved from October 1990 to December 1993. Justice Minister Dullah Omar has argued strongly against a further extension. It would send out an inappropriate signal, he said

Though President Mandela has indicated he has "sympathy" with those who want the date moved to May 10 1994 — including the IFP, PAC and Freedom Front — he has linked the extension to the cessation of violence.

This has not pleased the Freedom Front which has been at the head of the campaign to change the date. Its leader, Constand Viljoen, argues that the right wing has not committed any violent acts since just before the election. Retaining the December 1993 date would incite aggrieved rightwingers to further violence.

Even though a constitutional amendment is required to change the date, the Freedom Front indicated in the first meeting of the Senate justice committee last week that it would again be pressing for an extension. This can be bypassed easily enough by the comfortable NP/ANC majority in the committee and referred, once more, to the Constitutional Assembly.

Eyebrows were raised when Senate committee chairman Mohseen Moosa "served notice" that the ANC was preparing an additional 30 amendments to the Bill, one of which was described as "substantial" Without giving any further details, Moosa said the lesser amendments referred to issues such as improving witness protection and the remuneration of commissioners, while the substantial amendment referred to comments made earlier last month by Omar.

When asked, at a breakfast, what aspect of the process leading to the finalisation of the truth commission most disappointed him, Omar had mentioned his "disgust" that senior leaders of the ANC would have to go through the humiliating process of applying for indemnity for what were mostly minor crimes.

Fuelled by a report suggesting Omar had "called" for automatic indemnity for leaders of the liberation struggle, the idea quickly gained momentum Moosa said yesterday the ANC's national working committee was considering whether or not to go ahead with the proposal

The way the Bill is structured at present, there is more onus on liberation army soldiers to apply for indemnity. Failure to do so, given the illegality of their acts under SA law at that time, could result in the filing of civil and criminal suits

On the other hand, security force operatives who were acting within SA law and are covered by clauses in the Defence Act and Internal Security Act, among others, will not be subject to such recourse. This seems unfair to the ANC, particularly given the moral high ground — as evidenced by numerous UN resolutions condemning apartheid as a crime against humanity and condoning the armed struggle — occupied by those who fought against apartheid. "It's not the Bill itself, it is our past, where we come from, that means the playing field was not level," says De Lange

An amendment to the Bill is therefore not the only option. Alternatives being considered by the NWC and the ANC's justice study group include new legislation retrospectively legalising acts carried out by members of the liberation armies. A further option, suggested by the Justice Department's indemnity office, is to pass a law granting amnesty to certain categories of offenders. Provincial premiers have also been asked to send in their comments concerning the Bill

While the ANC mulls over these options, the Bill sits with the Senate justice committee awaiting consideration. The view that the Bill would zip through the second House appears to have been over optimistic This is further complicated by the difficulty the committee has had in securing a sufficient quorum The last committee meeting was postponed when only four Senators turned up. Only one of 10 ANC members was there

With more than 30 amendments likely to be tabled in the Senate, including the possibility of one or two substantial ones, the truth commission process looks certain to be delayed further

ANC's 30 amendments will reshape truth Bill

BD 7/6/95 (252)

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With more than 30 amendments likely to be tabled in the Senate, including the possibility of one or two substantial ones, the truth commission process looks certain to be delayed further.

Thieves steal rubbish

What now for the killers on Death Row?

(252)

ARG 7/6/95

Political Staff

ADVOCATE George Bizos has been appointed by the justice ministry to look into what to do with the 453 death row prisoners who have been reprieved as a result of yesterday's Constitutional Court ruling abolishing capital punishment.

The prisoners, who celebrated the ruling after hearing it on the radio, will remain on death row until a decision has been taken, a spokesman for the justice ministry said last night.

The spokesman said acting Justice Minister Zola Skweyiya, standing in for Justice Minister Dullah Omar who is abroad, would present a 10-page summary of the judgment to the cabinet today in a discussion on how to take the matter further.

In a separate statement yesterday, Mr Omar moved quickly to give the assurance that everything necessary would be done to ensure that alternative sentences for the prisoners would be "suitable and effective".

Death row prisoners spontaneously started clapping, singing and shouting after hearing of the decision on the radio, said Correctional Services spokesman Chris Olckers.

Brigadier Olckers said that depending on the new sentences handed down to the prisoners, they would be categorised as either A, B, C or D prisoners, which would influence their privileges.

President Mandela said yesterday the court's decision was "a sober and humane consideration of the issue" and was in line with contemporary civilised norms.

He said the decision would not have any bearing on the government's commitment to tackle crime with all its resources and determination.

In his ruling, which took five minutes to deliver, Constitutional Court president Arthur Chaskalson said "With effect from the date of this order, the state and all its organs are forbidden to execute any person already sentenced to death".

He said the government's responsibility was to improve the country's policing and justice systems, which allowed about 60 to 70 percent of violent criminals to escape unpunished.

"The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished.

"It is that which is presently lacking in our criminal justice system and it is at this level that the state must seek to combat lawlessness," Mr Chaskalson said.

The Constitutional Court made the ruling after hearing arguments for and against the death penalty in a case stemming from death sentences handed to Themba Makwanyane and Movusu Mchunu for killing four people in a hijacking attempt in August 1990.

● **Vision of the 42 steps still haunts — page 21.**

POLI

Mandela allays fears after death penalty decision

(252)

ARG 7/6/95

Political Staff

ACTING Justice Minister Zola Skweyiya will brief the cabinet today on the constitutional court ruling on the death penalty

Senior government figures, among them President Nelson Mandela and Justice Minister Dullah Omar, yesterday moved quickly to assure the public that the government remained committed to fighting crime

Mr Skweyiya will present to the cabinet a 10-page summary of the judgment and a discussion will be held on how to take the matter further

The court's ruling received a mixed reaction from parties in parliament yesterday

Mr Mandela said he welcomed it, the NP and the Freedom Front said they opposed it and the DP said "government has been caught with its pants down by the decision by not making provision for the situation where society demands proper punishment but the constitutional court holds that the death penalty is out"

A spokesman for Mr Omar, who is out of the country, said no decision had been taken on the fate of those sentenced to death — who number 454 — including those sentenced in the former TBVC states

The department has appointed advocate George Bizos to look into the conundrum of what to do with people whose only sentence was the death penalty

In terms of the court ruling, they will be kept in custody until a solution is found

One possibility may be to try them all again

DP justice spokesman Douglas Gibson said the criminal courts needed to be given sentencing options in addition to ordinary life sentences which could be as little as eight or nine years after remissions for good behaviour

A statement by the office of the president said Mr Mandela viewed the decision as being a "sober and humane consideration of the issue"

"The president also wishes to emphasise that the decision has no bearing on the commitment of the government to tackle the problem of crime, and particularly violent crime, with all the resources it can muster," the statement said

Mr Omar said in his statement that the government was considering all the implications and that appropriate steps would be taken

"The public is assured that the department of justice, in observing the judgment of the court, will continue to do everything necessary to ensure the effective punishment of all crimes in accordance with the law," Mr Omar said

No crime let-up, despite 'no hangings'

(252)

CT 7/6/95

STAFF REPORTERS

THE scrapping of the death penalty did not reflect on the government's determination to crack down on crime, President Nelson Mandela said yesterday

He said the decision of the Constitutional Court that hanging was incompatible with the right to life enshrined in the Bill of Rights was "a sober and humane consideration" of the issue and in line with contemporary civilised norms

However, Mr Mandela emphasised that "this decision has no bearing on the commitment of the government to tackle the problem of crime, and particularly violent crime, with all the resources and determination it can muster"

Advocate Mr George Bizos has been appointed by the Justice Ministry to investigate what to do with the 453 death row prisoners who have been reprieved as a result of yesterday's Constitutional Court ruling abolishing capital punishment

The prisoners, who celebrated the ruling after hearing it on the radio, will remain on death row until a decision on their future has been taken, a spokesman for the Justice Ministry said last night.

The spokesman said acting Justice Minister Mr Zola Skweyiya, standing in for Justice Minister Mr Dullah Omar who is abroad, will present a 10-page summary of the judgment to the cabinet today for discussion

WIDESPREAD PROTESTS AT ABUSE BY LAWYERS

Hundreds want legal system changed to protect clients

ANITA ALLEN writing for SPECTRUM, Argus Newspapers' investigative unit. The author is a senior writer on the Star in Johannesburg

CT 7/6/95 (252)

HUNDREDS of South Africans are calling for a renewal of the legal system because they say it fails to provide them with recourse against abuses by lawyers

Widespread public reaction has followed recent reports in newspapers and on radio dealing with the experiences of ordinary citizens at the hands of lawyers

Public dissatisfaction with South Africa's legal system was brought to light recently by radio and newspaper reports of the case of Ms Elmie Eksteen of Sandton in Gauteng

She has been embroiled in a four-year struggle to wind up the estates of her parents, Mike and Elsie, who, with one of their workers, Mr Andries Mothebu, were murdered on their farm in 1990 (See Page 4)

Since publication of an article about her experiences on April 29, more than 100 South Africans have contacted Argus newspapers citing similar experiences to Ms Eksteen's

Groups have been formed in the Cape, kwaZulu/Natal and Gauteng to campaign for fairer treatment from the legal profession

Piles of documentation, some dating back 20 years, have been forwarded to newspapers

They were unanimous in their condemnation of what they claim to be inadequate treatment by law societies throughout the country and of perceived unprofessional conduct among law professionals

"We the victims are calling for reforms," said Capetonian Mr Richard Benson, whose battle dates back 20 years and relates to the National Fund Investment scam in which he is representing 12 000 defrauded shareholders

Battles

"It's a matter of major public concern. We have the situation where a number of politicians are lawyers — like F W de Klerk and Nelson Mandela — but what are they doing about civil justice?"

Mr Benson has joined forces with Ms Martie Griessel in the Transvaal and Mr Snowy Smith in Natal, both of whom have been waging battles with law societies for several years. Under the banner of Fair Civil Justice they are collecting signatures and affidavits to support a petition directed to Minister of Justice Mr Dullah Omar

Fair Civil Justice is calling for an independent Ombudsman's office with statutory powers to act in the interests of the public and to hold a roll of accredited legal practitioners

Common patterns emerged in readers' complaints Wrong postal addresses, wrong names, wrong dates, wrong reference numbers, long delays, closed disciplinary hearings and no reasons given for decisions, perceived collusion between legal people, files and affidavits being lost and abrupt and even aggressive behaviour by staff members at law societies

● Anyone with further information is invited to phone Spectrum on (011) 633-2577

WEDNESDAY
JUNE 7, 1995 ★

Societies 'do protect public'

(252)

MAX GEBHARDT

CT 7/6/95

LAW societies around the country believe they are successful in protecting the interests of the public.

The Cape Law Society said it was incorrect to say law societies were not capable of reconciling differences between their members and the public. They had often done this quite successfully.

Director Ms Ingrid Hoffman said the society proposed introducing at their forthcoming annual general meeting a motion that would provide observer status for lay people at disciplinary hearings.

Mr Raymond Koen, assistant director of the society, believes that, unfortunately, many members of the public either misunderstand or overestimate the jurisdiction and powers of law societies. That jurisdiction is essentially a punitive one, restricted to instances of misconduct.

"Many complaints relate to allegations of negligence or breaches of contracts on the part of attorneys. Complainants who allege such negligence or breach, and consequent damages, have civil remedies available to them," he said.

31 1990. gating officer in Makanyane's the parole boards.

The last victims of the gallows

■ BY JO-ANNE COLLINGE

The identity of the last person executed in South Africa depends on whether you choose to don apartheid spectacles or not.

Alpheus Sekoboane was hanged on November 13 1990 in what was at the time Bophuthatswana.

In South Africa "proper" the last execution had been carried out 364 days earlier, when 26-year-old Solomon Ngobeni went to the gallows

The reason for the gap? The existence of a moratorium on hangings which came into effect in February 1990 in the area directly under Pretoria's jurisdiction.

Little is known about Sekoboane's life or crimes, save that Lawyers for Human Rights made a last ditch attempt to stay the execution. The grounds were familiar enough: Sekoboane had not petitioned Bophuthatswana president Lucas Mangope for clemency because he did not have money for a lawyer.

He was hanged in Pretoria Central Prison.

A few days before Ngobeni's execution, Port Elizabeth brothers Tembinkosi Welcome Booi (31) and Boy-Boy Booi (22) were executed in Pretoria, along with 40-year-old David Mbusana, all convicted of murder. Mbusana's execution caused an outcry because, it was claimed, he had not exhausted all legal means at his disposal when his life was taken.

On the same day, at Bophuthatswana's Rooigrond prison Pieter Coetzee (62) was executed.

These few names are the permanent markers to the end of an era in the administration of justice. They tell little of the drama of the struggle against the death penalty — a human rights initiative that gained ground as the liberation struggle moved towards its democratic goal. Star 16/6/95

There were moratoria and repeated threats to end these periods of reprieve. There was a groundbreaking change to the law to allow judges more discretion in relation to the death penalty. There was political bargaining for sentences to be commuted and amnesty granted in relation to political offences.

Until 1990, Death Row was an almost certain route to the gallows. During the past five years, some inmates have found an outright escape route, but hundreds have existed in a kind of legal limbo in the shadow of the gallows. As of yesterday the shadow is gone — but the bars remain. (252)

Parties concerned over lack of viable alternative

Death penalty decision lauded and bemoaned

Star 7/6/95

(252)

■ BY BRENDAN TEMPLETON and CHERYL HUNTER

The scrapping of the death penalty yesterday was welcomed by many political and human rights organisations, but concern was also expressed that no effective alternative existed.

Some organisations said the Constitutional Court had ignored the majority will of South Africans who daily faced a rampant crime wave

The ANC welcomed the decision as a "major victory to the democratic forces" in SA, saying it would inspire confidence among the majority of South Africans in the rule of law and the integrity of the courts.

The NP, IFP and Freedom Front (FF) were among the organisations that bemoaned the court's decision.

"We are extremely disappointed at the outcome because we feel it gives out the wrong signal in a country where the crime rate is the highest in the world for a country not at war," NP justice spokesman Danie Schutte said.

FF justice spokesman Senator Rossier de Ville called for a referendum on the death penalty.

IFP justice spokesman Abram Mzizi said in his personal view the decision amounted to a double punishment for the families of rape and murder victims. They had lost their loved ones and now had to pay "for the welfare of the perpetrator" who might serve a life sentence.

DP spokesman Douglas Gibson said the Government had been "caught with its pants down" because no provision had been made to replace the death sentence with "proper punishment"

SA faces the threat of dangerous criminals being released from long prison terms after only a few years, he said.

"Life sentences are often commuted to as little as eight or nine years after remission for good behaviour and early release or parole"

Anglican Archbishop Desmond Tutu was thrilled that SA had abolished the death penalty. "I think there is no moral justification for the death penalty. Nowhere in the world has anyone found the death penalty has a deterrent effect on criminals."

The Black Sash supported the decision, saying the State and civil society should work together to develop an appropriate penal system and to bring down levels of criminal activity.

Cape Attorney-General Frank Khan said prison sentences were now the only deterrent criminals faced and that it had become imperative for the Government to review the whole system of parole.

"Court sentences have been slashed (by the Commissioner of Prisons) to the point where they are scarcely recognisable from the original sentence. As in the rest of the world, the sentencing judge should have the final say in parole matters."

One of the options open to judges is to sentence a person to an indefinite sentence, he added. This is the toughest sentence available to the court and has been imposed only once in SA.

Mr Justice Johan Els made legal history in March when he sentenced Andre Bashford to an indefinite jail sentence without the possibility of parole.

In the case of indefinite sentencing, it is the judge alone who may decide, after a number of years, whether to keep the criminal in jail, reduce his sentence or release him, Khan said.

He added, however, that this was not a viable option to replace the death sentence, as indefinite sentences for dangerous criminals required that the sentence be recommended after a psychiatric inquiry and that not all criminals fitted this profile.

'Suitable and effective' sentences for reprieved killers will be found

How to punish the 453

(252) Star 7/6/95

BY HELEN GRANGE and PATRICK BULGER

A 10-page summary of the judgment by the Constitutional Court abolishing the death penalty will be placed before today's special Cabinet meeting which will discuss how to take the reform further

The summary will be presented by the Public Works Minister, Zola Skweyiya, who is acting for Justice Minister Dullah Omar who is abroad.

Yesterday, a ministry statement assured the country that everything necessary would be done to ensure that alternative sentences for the 453 condemned prisoners now on Death Row would be "suitable and effective".

Advocate George Bizos has been appointed by the justice ministry to examine alternatives.

A Correctional Services spokesman says the prisoners will remain on Death Row in Pretoria until a decision has been taken.

President Mandela said yesterday the Constitutional Court's decision to abolish executions was "a sober and humane consideration of the issue" and in line with civilised norms.

STATE and all its organs are henceforth forbidden to execute any person – Constitutional Court

He said the decision would not have any bearing on the Government's commitment to tackling crime with all its resources and determination.

In announcing the judgment — a summary which took five minutes to deliver — Arthur Chaskalson, president of the Constitutional Court, said "With effect from the date of this order, the State and all its organs are forbidden to execute any person already sentenced to death under any of the provisions declared to be invalid and all such persons will remain in custody under the sentence imposed on them . . . until set aside in law and substituted by lawful punishments."

He said the Government's responsibility was to improve the country's policing and justice systems, which currently allowed approximately 60% to 70% of violent criminals to escape unpunished.

"The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished.

"It is that which is presently

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453 reprieved

◀ From Page 1

lacking in our criminal justice system and it is at this level that the State must seek to combat lawlessness"

Wim Trengove, who acted for two men on Death Row, said the nicest part of the ruling was the "superb quality" of the judgment "We can all be proud of this fine judgment going out to the world"

Former president F W de Klerk suspended the death penalty in February 1990 The country, third behind only Iraq and Iran, executed 1 123 people between 1980 and 1989

The Human Rights Commission said the court's decision emphasised a respect for life which it hoped would, over time, be reflected in society at large

Star 7/6/95

Law societies fail to protect citizens

(252) Sowetan 7/6/95

By Anita Allen
Spectrum

Hundreds claim they have no recourse against members of the legal profession

HUNDREDS OF SOUTH Africans are calling for a renewal of a legal system that fails to give them recourse against abuses by members of the legal profession

There has been widespread public reaction to recent newspaper and radio reports of the experiences of ordinary citizens at the hands of lawyers

Public dissatisfaction with the legal system came to light recently after reports of the case of Ms Elmie Eksteen of Sandton

For four years now she has been trying to wind up the estates of her parents, Mike and Elsie, who were brutally murdered on their farm in 1990 Since an article about her experiences appeared in April, more than 100 South Africans have contacted Argus newspapers citing similar experiences

Groups have been formed in the Cape, KwaZulu-Natal and Gauteng to campaign for fairer treatment from the legal profession Piles of documentation have been forwarded to Argus newspapers

Hundreds of individuals have signed petitions and scores have expressed their willingness to state their cases publicly

They were unanimous in their condemnation of what they claim was inadequate treatment by law societies throughout the country and of perceived unprofessional conduct among law professionals

Call for reforms

"We, the victims, are calling for reforms," said Capetonian Mr Richard Benson

Benson has joined forces with Ms Martie Griessel and Mr Snowy Smith Under the banner 'Fair Civil Justice', they are collecting signatures and affidavits to support a petition to Justice Minister Mr Dullah Omar

Griessel says she is past the point of complaining to law societies Fair Civil Justice is calling for an independent Ombudsman's office with statutory powers to act in the interests of the public and which will keep a roll of accredited legal practitioners.

Mr Ronald Edwards of Edenvale has a court judgment which he says effectively proves an attorney's unethical conduct

Yet the law society found "no unprofessional conduct" on the part of its member Subsequently, the attorney was censured in a court judgment

The Association of Law Societies' code of conduct states that it must "promote the interests of its members and the profession, while at all times taking into account the broader interests of the public who are served by the profession, and to strive, where these come into conflict with each other, to reconcile the interests of the profession and the public"

Only one person said her case had been reconciled, but this was only because she appealed directly to the then president of the Transvaal Law Society, Mr Michael Pinnock

Ms Angie Smisson said her complaint involved an attorney who refused to send her a copy of court documents in a case in which she was involved

The law society had looked into the matter and found there was nothing unethical in this

After complaining to Pinnock, the law society advised her that it had arranged for her to take possession of the documents

Common patterns

Common patterns emerged in readers complaints wrong postal addresses, wrong names, wrong dates, wrong reference numbers, long delays, closed disciplinary hearings and no reasons given for decisions, perceived collusion between legal people, files and affidavits being lost, and abrupt and even aggressive behaviour by staffers at the various law societies

Mr Moira Wingate said that, after months of delay in her case, she was advised by the Transvaal Law Society to take civil action through another attorney

However, in her documentation to the society, she had already notified it that that was exactly what she had done

When she challenged a senior staffer at the law society, he said her files had been lost or mislaid She had since been notified that the society found no fault with the attorney she complained about

Many readers expressed profound frustration and anger at the way they have been treated

Ms Gladys Lange described her case, which started in 1986, as one where attorneys had allegedly stolen money from the dead by filing fraudulent Liquidation and Distribution accounts in winding up an estate

> **'Fair Civil Justice is calling for an Ombudsman's office to act in the interests of the public and which will keep a roll of accredited legal practitioners'**

She claimed that the law society decided that no fault could be found with the attorney, despite the fact that the Master of the Supreme Court had had him removed as executor

Paraplegic Mr Vincent Newey said he was "traumatised" by his experience with the Transvaal Law Society

His complaint concerned an attorney who he said failed to act in his best interests after an accident in which Newey was knocked down while cycling

"That they could find no unprofessional conduct, I do not understand," Newey said

Files were 'lost'

In his months-long battle, he said his files were lost and correspondence was sent to the wrong address so that he missed the disciplinary hearing

When asked for comment on the allegations made by Newey, Wingate, Edwards and Lange, the Transvaal Law Society said they were not prepared to debate the merits of individual matters in the Press

"Policing themselves is impossible," was how Mr Karl McKeiver summed up the law societies' dilemma

"Minister Omar has got to do something He's the only one with the power to do it," Mr Mike Wasson said

(Spectrum is Argus Newspapers' investigative unit Anyone with further information is invited to phone Spectrum on (011) 633-2577)

The stars of the television series *LA Law* present the glamorous side of the law. However, many people complain that local law societies do not adequately protect the public.

Protection offered, but 'only in private'

Sowetan 7/6/95

By Max Gebhardt (252)

THE country's law societies believe they are successful in protecting the interests of the public But they do so behind closed doors

The Cape Law Society says it is incorrect to say law societies are incapable of reconciling differences between their members and the public They have, the statement says, on many occasions done this quite successfully

Director Ms Ingrid Hoffman says the society proposes introducing a motion at their forthcoming annual general meeting which will provide observer status for lay people at disciplinary hearings, to reassure the public that the society is not protecting members against public criticism

Mr Raymond Koen, the society's assistant director, believes many members of the public either misunderstand or overestimate the jurisdiction and powers of law societies That jurisdiction is essentially a punitive one, restricted to instances of misconduct

"Many complaints relate to allegations of negligence or breaches of contracts on the part of attorneys Complainants who allege such negligence or breach, and consequent damages, have civil remedies available to them," he says "Courts of law adjudicate upon such claims The Law Societies are not courts of law, and consequently have no power to consider such claims nor to make any findings as to liability for damages "

The Law Society of the Free State says they unaware of any unhappiness with their procedures, but they will take seriously any criticisms and suggestions from the public in this regard

The Natal Law Society, says enquiries involving their members are not held in public, and complainants may be present throughout the duration of the hearings

The Transvaal Law Society, similarly, has a policy of keeping proceedings confidential

Three parties to press for amnesty deadline extension

(252) Sowetan 7/6/95

THE Conservative Party, Inkatha Freedom Party and the Afrikaner Weerstandsbeweging are to push ahead with efforts to extend the amnesty deadline and obtain the release of former death row prisoners, CP leader Dr Ferdi Hartzenberg said yesterday

Prisoners from various political parties had agreed at a meeting on May 15 at Pretoria Central Prison that all political prisoners should be granted temporary amnesty, Hartzenberg said

These prisoners represented the African National Congress, CP, IFP, AWB and PAC The agreement was aimed at eliminating any discrimination against political prisoners, he said

It had also been agreed that the concession stipulated by President Nelson Mandela and Deputy President FW de Klerk, that all death row prisoners receive clemency or be released, be implemented as soon as possible

The prisoners had agreed that the May 10 1994 cut-off date for amnesty should be extended, but ANC and PAC prisoners had felt the Government should be left to handle this aspect

After the meeting it had been agreed that all representatives would contact their leaders to arrange a joint meeting between them and the "political prisoners committee"

"A meeting attended by prisoners from all parties had approved their original objectives"

This meeting had not materialised because the ANC and PAC leadership had advised their members to withdraw from the committee

Hartzenberg said this action could hamper the efforts of the ANC and PAC to secure the release of their members

A meeting yesterday attended by prisoners from all parties and with the ANC and PAC attending as observers, had approved their original objectives

A PAC representative who had attended withdrew, saying the PAC would continue its own efforts to secure the release of its members — *Sapa*

453 prisoners escape hangman

(252)

There was jubilation on death row when inmates learnt that the death sentence had been abolished

Sowetan 7/6/95

DEATH ROW PRISONERS burst into song yesterday after hearing on the radio that the death sentence had been abolished, prison officials said

Correctional services spokesman Brigadier Chris Olckers said the 453 prisoners started clapping, singing and shouting

Justice Minister Mr Dullah Omar said he would consult immediately with the correctional services department to arrange the removal of sentenced prisoners from death row

The Justice Ministry would ensure suitable sentencing in accordance with the law, he said in a statement

Olckers said the prisoners would in the meantime remain where they are until the courts had passed new judgments

Omar said he would inform the Cabinet of the Constitutional Court decision and its implications

Meanwhile, Police Commissioner George Fivaz said he did not believe the reintroduction of the death penalty would have been a deterrent to criminals

"It has always been my belief that the issue of the death penalty should be decided by the Government of National Unity If the Constitutional Court is of the opinion that the death penalty is not in line with the constitution, we shall have to administer our police work in terms of that"

Fivaz said there were people who said the death penalty would solve the problem of crime "I do not agree," he said

Lawyers for Human Rights welcomed the Constitutional Court's ruling, saying the decision was a turning point in South Africa's penal history

LHR, in a statement, said the ruling brought South Africa in line with the growing international trend towards abolition of the death sentence

Mr Abram Mzizi, Inkatha Freedom Party MP and member of the national assembly portfolio committee on justice, said in his personal view the abolition of capital punishment meant that rape and murder victims and their relatives were being "punished" doubly

"They've already lost their beloved and now they are being placed in the mainstream of those who are paying for the welfare of the perpetrator who might serve a life sentence

The National Party expressed disappointment at the scrapping of the death penalty, saying this sent the wrong message to South Africa which had the highest rate of crime and violence in the world — *Sapa*

Koale Nyoni

Rachel Talane

Vivian Makhoba

Frans Mbanyele

Mahlodi Mailula

Mixed reaction to abolition of death penalty

7/6/95 sowetan

By Themba Sepotokele

THE abolition of the death sentence yesterday caused mixed reactions, according to a snap survey conducted by *Sowetan*.

"In terms of the section 33 of the Constitution there are limitations of the fundamental human rights. People must be given opportunities to exercise their rights and we cannot deny them that," Mr Mahlodi Mailula, a law student at Unisa said

Mailula, of Mapetla in Soweto, said the death penalty was not the only possible sentence "Life sentence is one of the alternative to save human life," he said

Mr Kaole Nyoni, a managing consultant, shared Mailula's sentiments He said the death penalty was "unconstitutional and unchristian" "Both religion and the bill of fundamental human rights are against the death penalty The problem is that we are living in a violent society and crime can be attributed to the society we are living in."

Soweto police officer Warrant Officer Frans Mbanyele said he did not support the scrapping of the death penalty as it helped to reduce the high level of crime. "Now that the death penalty has been scrapped, criminals will think they are above the law," Mbanyele said

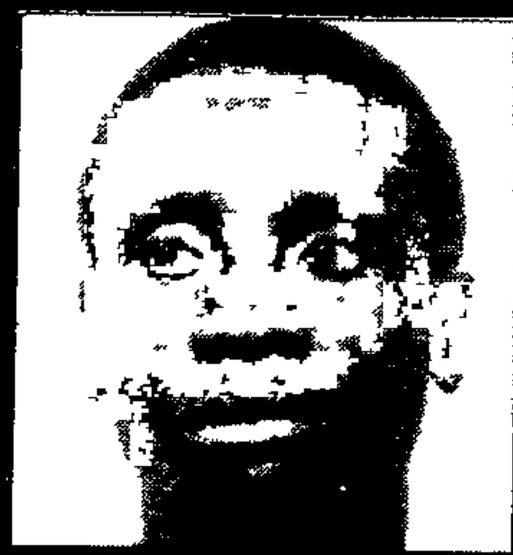
"It is very sad to see people who have committed horrendous crimes go free," Mrs Rachel Talane of Lombardy West said. "Although the death penalty is not subtle, criminals must feel the pain and pay for their deeds," she said

Mrs Vivian Makhoba of Spruitview said it was good that the death sentence had been done away with because a person who perpetrates a crime was entitled to live "My son was killed but I did not even attend court proceedings because any sentence imposed will not bring my son back to life," Makhoba said "The government is committing political suicide by scrapping the death penalty Anyone can take the law into their own hands as they are doing because the Government fails to protect us," Mr Freedy Mjwara of Emndeni said

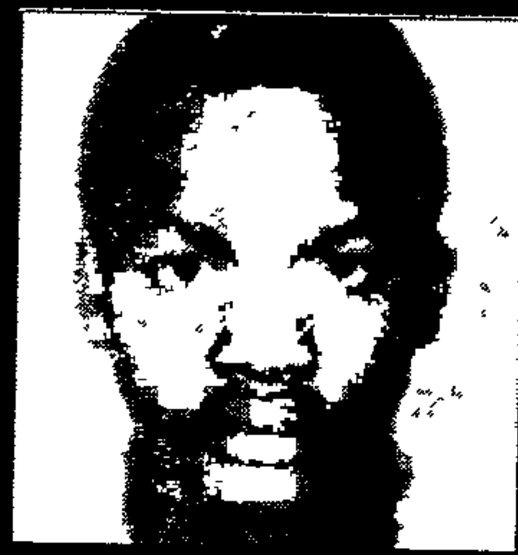
For them it came too late

PICS: COURTESY OF *MAYIBUYE*

Umkhonto we Sizwe combatant Solomon Mahlangu was hanged in 1986.



Sipho Xulu, a 25-year-old freedom fighter, was executed in 1986.



Clarence Lucky Payi (20) sacrificed his life for the struggle and was executed in 1986.

Sibuyiso Zondo faced the hangman in 1986 at the age of 19.

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NOOSE abolished

By Mzimasi Ngudle and Pamela Dube

DEATH ROW prisoners at Pretoria Central Prison were elated yesterday when Lawyers for Human Rights gave them letters informing them they would no longer be hanged.

Themba Makwanyane and Mavuso Mchunu, the two death row prisoners whose test case led to the Constitutional Court outlawing the death penalty yesterday, shared their moment of joy with about 300 other prisoners awaiting the hangman's noose at Pretoria Central Prison.

"I am happy because the noose is gone," said Mchunu during consultation with LHR lawyer Mr Mike Kekana. Another prisoner, Norman Molefe, hugged Kekana when he told him of the decision by the Constitutional Court.

The decision affects 453 prisoners who have spent years on death row. However, it came too late for 2 326 people who were hanged between 1911 and the 1989 moratorium. The last person to be hanged was Richard Ngobeni, in November 1989 for murder.

The highest number of executions was between 1978 and 1988, when an average of 120 people were hanged each year. This coincided with the upsurge in political activity by the liberation movements.

Delivering the judgment yesterday, Constitutional Court president Mr Justice Arthur Chaskalson declared that all laws sanctioning capital punishment were inconsistent with the constitution and therefore invalid.

"The state and all its organs are forbidden to execute any person already sentenced to death under laws which have been declared invalid

"All such persons will remain in custody under the sentences imposed on them until such sentences have been set aside in accordance with law and substituted by law f punishments," he said.

Chaskalson said although he was prepared to accept that many South Africans were in favour of the death penalty, the question before the court was not what the majority believed a proper sentence for murder should be.

"It is whether the constitution allows the sentence."

The African National Congress said the abolition of the death penalty represented a major victory for the democratic forces who had campaigned for its abolition.

"The Constitutional Court's decision will go a long way to inspire the confidence of the majority of our people in the rule of law."

A matter of life or death

Why the judges decided to abolish capital punishment — in spite of public opinion

(252) ARG 8/6/95

Argus Correspondent HELEN GRANGE examines how the Constitutional Court judges approached crucial principles which led them to abolish the death penalty.

THE significance of the Constitutional Court's landmark judgment abolishing the death penalty lies not only in its break with an eye-for-an-eye justice Perhaps the most explosive issue dealt with in the judgment relates to how the judges tackled the question of public opinion on capital punishment — found in past informal surveys to be weighted in favour of its retention

Arguing before the court in February for the retention of the death penalty, retired Attorney-General of the Witwatersrand Klaus von Lieres put it that what was cruel, inhuman or degrading depended to a large extent upon contemporary attitudes within society, and that South African society did not regard the death sentence for extreme cases as cruel, inhuman or degrading

The Constitutional Court president Mr Justice Arthur Chaskalson, in a response which provides a good reflection of the quality of the argument contained in the 243-page written judgment, commented

"It was disputed (between the judges) whether public opinion, properly informed of the different considerations, would in fact favour the death penalty I am, however, prepared to assume that it does and that the majority of South Africans agree that death sentences should be imposed in extreme cases of murder

"The question before us, however, is not what the majority believe a proper sentence for murder should be It is whether the Constitution allows the sentence

"Public opinion may have some relevance to the inquiry, but in itself, it is no substitute for the duty vested in the courts to interpret the Constitution and to uphold its provisions"

Mr Justice Chaskalson goes on to say that if public opinion were to be decisive, there would be no need for constitutional adjudication

He adds "The very reason for establishing the new legal order, and for vesting the power of judicial review of all legislation in the courts, was to protect the rights of minorities

"Those who are entitled to claim this protection include the social outcasts and marginalised people of our society It is only if there is a willingness to protect the worst and weakest amongst us, that all of us can be secure that our own rights will be protected"

The legal precedents on which Mr Justice Chaskalson relies are seminal cases which were decided in American courts in the 1970s, in which the point was made that the assessment of popular opinion is essentially a legislative, and not a judicial function

This approach was strongly supported by both Mr Justice John Didcott and Mr Justice William Kentridge in the Constitutional Court's judgment

Mr Justice Kentridge also pointed out that public opinion in South Africa had not expressed itself in a referendum nor in any recent legislation "Certainly there is no evidence of a general social acceptance of the death penalty for murderers such as might conceivably have influenced our conclusions"

The debate around these remarks will no doubt be ongoing in other cases to be heard by the Constitutional Court, but of equal importance in this case is the thought given by the judges to the effect of removing the death penalty

The problem of deterrence was afforded a great deal of consideration, and in his commentary, Mr Justice Chaskalson took the opportunity to counter the popular argument that violence and criminality flourish in the absence of the death sentence

"The cause of the high incidence of violent crime cannot simply be attributed to the failure to carry out the death sentences imposed by the courts (as a result of the 1990 moratorium) The upsurge in violent crime came at a time of great social change associated with political turmoil and conflict, particularly during the period 1990 to 1994"

He adds that homelessness, unemployment, poverty and frustration are other causes of South Africa's crime wave and that between 60percent and 70percent of criminals are unlikely to be caught

" There will always be unstable, desperate and pathological people for whom the risk of arrest and imprisonment provides no deterrent, but there is nothing to show that a decision to carry out

MR JUSTICE ARTHUR CHASKALSON: "The question is not what the majority believe a proper sentence for murder should be It is whether the Constitution allows the sentence"

P.T.O.

the death sentence would have any impact on the behaviour of such people, or that there will be more of them if imprisonment is the only sanction," he says

He argues further that the greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished "It is that which is presently lacking in our criminal justice system, and it is at this level and through addressing the causes of crime that the State must seek to combat lawlessness"

Mr Justice Laurie Ackermann puts the responsibility for finding effective alternative punishments squarely in the hands of the State's judicial system, which has been accused of expediently pardoning prisoners or using the parole system to empty overcrowded prisons

"With the abolition of the death penalty society needs the firm assurance that unreformed recidivist murderer or rapist will not be released from prison Society needs to be assured that in such cases the State will see to it that such a recidivist will remain in prison permanently"

The judgment, quite apart from the sudden dilemma it has imposed on the State to deal with those on death row, and the predictably emotive public responses it has illicited, has impressed the legal fraternity in the depth of its deliberation on the subject, which involved extensive research into international precedents on the matter

Legal Resources Centre director Wim Trengove, who acted for the two men appealing against the death sentence, described the judgment as being of "superb quality" and one which South Africa should be proud of

'The cause of the high incidence of violent crime cannot simply be attributed to the failure to carry out the death sentences imposed by the courts (as a result of the 1990 moratorium). The upsurge in violent crime came at a time of great social change associated with political turmoil and conflict, particularly during the period 1990 to 1994.'

*The death sentence was abolished this week. **Helen Grange** looks at how the Constitutional Court judges approached crucial legal principles in their unanimous decision.*

Court's duty to outlaw gallows

(252) Star 8/6/95

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STAR 8/6/95

The significance of the Constitutional Court's landmark judgment abolishing the death penalty lies not only in its break with an eye-for-an-eye justice Perhaps the most explosive issue dealt with in the judgment relates to how the judges tackled the question of public opinion on capital punishment — found in past informal surveys to be weighted in favour of its retention

Arguing before the court in February for the retention of the death penalty, retired Attorney-General of the Witwatersrand Klaus von Lieres, SC, put it that what was cruel, inhuman or degrading depended to a large extent upon contemporary attitudes within society, and that South African society did not regard the death sentence for extreme cases as cruel, inhuman or degrading

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"It was disputed (between the judges) whether public opinion, properly informed of the different considerations, would in fact favour the death penalty. I am, however, prepared to assume that it does and that the majority of South Africans agree that death sentences should be imposed in extreme cases of murder.

"The question before us, however, is not what the majority believes a' proper sentence for murder should be. It is whether the Constitution allows the sentence

"Public opinion may have some relevance to the inquiry, but, in itself, it is no substitute for the duty vested in the courts to interpret the Constitution and to uphold its provisions."

Chaskalson goes on to say that if public opinion were to be decisive, there would be no need for constitutional adjudication

He adds. "The very reason for establishing the new legal order, and for vesting the power of judicial review of all legislation in the courts, was to protect the rights of minorities

"Those who are entitled to claim this protection include the social outcasts and marginalised people of our society. It is only if there is a willingness to protect the worst and weakest amongst us, that all of us can be secure that our own rights will be protected."

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He adds that homelessness, unemployment, poverty and frustration are other causes of South Africa's crime wave, and that between 60% and 70%of criminals are unlikely to be caught

".. There will always be unstable, desperate and pathological people for whom the risk of arrest and imprisonment provides no deterrent, but there is nothing to show that a decision to carry out the death sentence would have any impact on the behaviour of such people, or that there will be more of them if imprisonment is the only sanction," he says.

He argues further that the greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished

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Judge Laurie Ackermann puts the responsibility for finding effective alternative punishments squarely in the hands of the State's judicial system

"With the abolition of the death penalty society needs the firm assurance that unreformed recidivist murderers or rapists will not be released from prison

Society needs to be assured that in such cases the State will see to it that such a recidivist will remain in prison permanently"

The judgment has impressed the legal fraternity in the depth of its deliberation on the subject.

CT 8/6/95

'Give judge parole role'

(252)

SOUTH AFRICA's parole system had to be reviewed if the abolition of the death penalty was to have a positive influence on South Africa's justice system, Western Cape attorney-general Mr Frank Kahn said yesterday.

"We have the almost farcical result where a judge imposes a sentence of say 10 years and faceless bureaucrats in the prisons department slash a sentence like that to under five years without any recourse to the judge, to the courts or to anyone else," he said.

"I think the parole system at the moment is out of step with German and other European models where the sentencing judge or a judicial officer is the prime person in charge of parole," Mr Kahn said. — Sapa

SA's last executioner's now retired

(252)

CAROL CAMPBELL

SOUTH Africa's last hangman and his assistant have retired following the scrapping of the death sentence by the 11-member Constitutional Court earlier this week

Court President Mr Justice Arthur Chaskalson said in a 244-page judgment that even the most "abominable" human being had the right to life and capital punishment was therefore unconstitutional

The hangmen, both pensioners, have been on full pay since the previous government announced a moratorium on the death sentence in 1989

Yesterday Justice Department spokesman Mr Pieter Durand said immediate steps would be taken to move the 453 prisoners off death row The public could be assured everything would be done to punish criminals in accordance with the law

Correctional Services spokesman Mr Chris Olckers said death row would continue to be used as a maximum security prison and many of the prisoners might stay there

Death row prisoners include Chris Hani's killers, Clive Derby-Lewis and Janusz Walus, and Sydney Mkhosana, the murderer of the Orffer family and their maid in Stellenbosch.

The Cape Town branch of Amnesty International hailed the decision as a victory for human rights

Rabbi David Hoffman of the Progressive Jewish Congregation said, however, he was "very sad" for the families of the victims of prisoners on death row CT 8/6/95

"Is this decision really compassionate for the innocent and the victims of crime in our society?"

The Rev Fano Sibisi of Christians for Truth said it was ironic that the same government that abolished the death sentence was considering legalising abortion

A focus on rationality

Abolition of the death sentence has greatly enriched the country's fledgling human rights culture, reports **Mzimasi Ngudle**, of our Political Staff: (252) Sowetan 8/6/95

THE CONSTITUTIONAL COURT's decision to abolish the death sentence has enriched the country's fledgling human rights culture

It has also inspired confidence in the independence of the judiciary, which has the task of interpreting and protecting one of the most democratic bills of rights in the world

While the unanimity of the 11 judges in scrapping the noose may look ominous to the public, angered by escalating crime rates, the decision demonstrates that a stable human rights culture is better served by rational pronouncement than by frenzied public opinion

This focus on rationality appears prominently in the main judgment of Constitutional Court president Mr Justice Arthur Chaskalson, who dealt at length with objections to the abolition of capital punishment

Firstly, Chaskalson found that capital punishment does not deter people from committing heinous crimes

"There will always be unstable, desperate and pathological people for whom the risk of arrest and imprisonment provides no deterrent," he said

"But there is nothing to show that a decision to carry out the death sentence would have any impact on the behaviour of such people, or that there will be more of them if imprisonment is the only sanction

"The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished

"It is that which is presently lacking in our criminal justice system It is at this level and through addressing the causes of crime that the state must seek to combat lawlessness "

Secondly, the court found it was not only the fear of death that prevented criminals from committing crime again

"While the death sentence ensures that the criminal will never again commit murders, it is not the only way of doing so Life imprisonment also serves this purpose "

Thirdly, Chaskalson noted that the righteous anger of family and friends of murder victims, and reinforced public abhorrence of vile crimes, were translated easily into a call for vengeance

"Capital punishment is not the only way society has of expressing its moral outrage," he said

"We have long outgrown the literal application of the biblical injunction of 'an eye for an eye, and a tooth for a tooth'

"A very long prison sentence is also a way of expressing outrage and visiting retribution upon the criminal "

Turning to arguments against capital punishment, Chaskalson put more emphasis on the arbitrariness of the imposition of the death penalty

Constitutional Court president Mr Justice Arthur Chaskalson ... The court's ruling on the death sentence enriches the country's fledgling human rights culture.

"It cannot be gainsaid that poverty, race and chance play roles in the outcome of capital cases and in the final decision as to who should live and who should die," he said

"Most accused facing a possible death sentence are unable to afford legal assistance and are defended under the *pro deo* system

Through an interpreter

"The defending counsel is more often than not young and inexperienced, frequently of a different race to his or her client, and usually has to consult through an interpreter

"*Pro deo* counsel generally lack the financial resources and the infrastructural support necessary to conduct an effective defence

"While this may possibly change as a result of the constitution, limits to the available financial and human resources are likely to exist for the foreseeable future, and will continue to place poor accused at a significant disadvantage in defending themselves in capital cases

"Homelessness, unemployment, poverty and the frustration consequent upon such conditions are other causes of the crime wave

"The differences that exist between rich and poor, good and bad prosecutions, good and bad defence, severe and lenient judges, judges who favour capital punishment and those who do not, and the subjective attitudes that might be brought into play by factors such as race and class, may affect any case that comes before the courts and is present in all court systems

"Such factors can be mitigated, but not totally avoided, by allowing convicted persons to appeal to a higher court Appeals are decided on the record of the case and on findings made by the trial court

"If the evidence on the record and the findings made have been influenced by these factors, there may be nothing that can be done about that on appeal

"Imperfection inherent in criminal trials means that error cannot be excluded It also means that persons similarly placed may not necessarily receive similar punishment.

"This needs to be acknowledged What also needs to be acknowledged is that the possibility of error will be present in any system of justice, and that there cannot be perfect equality between accused persons in the conduct and outcome of criminal trials

Non-custodial sentence

"We have to accept these differences in the ordinary criminal cases that come before the courts, even to the extent that some may go to jail when others similarly placed may be acquitted or receive non-custodial sentences

"But death is different, and the question is whether this is acceptable when the difference is between life and death

"Unjust imprisonment is a great wrong, but when discovered the prisoner can be released and compensated The killing of an innocent person is irremediable "

Chaskalson concludes that the purpose of a bill of rights is to withdraw certain subjects from the vicissitudes of political controversy

It also places subjects beyond the reach of majorities and officials, and establishes legal principles to be applied by courts

"To be consistent with the value of *ubuntu*, ours should be a society that wishes to prevent crime and not to kill criminals simply to get even with them "

"A very long prison sentence is also a way of expressing outrage"

Many disgruntled clients were keen to express their anger at the way they had been treated by law societies throughout the country, says Anita Allen, writing for Spectrum

Unanimous condemnation

(252) Star 9/6/95

Hundreds of South Africans are calling for a change in the legal system because they say it fails to provide them with recourse against abuses by members of the legal profession

Widespread public reaction has followed recent reports in newspapers and on radio dealing with the experiences of ordinary citizens at the hands of lawyers

Public dissatisfaction with South Africa's legal professionals was brought to light recently by reports of the case of Elmie Eksteen of Sandton in Gauteng

She has been embroiled in a four-year struggle to wind up the estates of her parents, Mike and Elsie, who, together with one of their workers, Andries Mothebu, were brutally murdered on their farm in 1990 (See accompanying story)

Since publication of an article about her experiences on April 29, more than 100 people have contacted Argus Newspapers citing similar experiences to Eksteen's.

Groups have been formed in the Cape, KwaZulu-Natal and Gauteng to campaign for fairer treatment from the legal profession. Piles of documentation, some dating back 20 years, have

GRAPHIC FRANCOIS SMIT

al addresses, wrong names, wrong dates, wrong reference numbers, long delays, closed disciplinary hearings and no reasons given for decisions, perceived collusion between legal people, lost files and affidavits, and abrupt and even aggressive behaviour by staffers

Moira Wingate said that after months of delay in her case, she was advised by the Transvaal Law Society to take civil action via another attorney However, in her documentation to the society she had already notified it that that was exactly what she had done

Wingate said that when she challenged a senior staffer at the law society he said her files had been lost or mislaid She said she had since been notified that the society found no fault against the attorney she complained about — a decision she continues to challenge

Many of the readers expressed frustration and anger at the way they say they have been treated

■ Anyone with further information is invited to phone Spectrum on (011) 633-2577

■ *The author is a senior writer on The Star Spectrum is Argus Newspapers' investiga-*

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Call to hold disciplinary hearings in the open

been forwarded to Argus Newspapers Hundreds of individuals have signed petitions and scores have expressed their willingness to state their cases publicly

They were unanimous in their condemnation of what they claim to be inadequate treatment by law societies throughout the country and of perceived unprofessional conduct among law professionals

"We the victims are calling for reforms," said Capetonian Richard Benson, whose battle dates back 20 years and relates to the National Fund Investment scam in which he is representing 12 000 shareholders who were defrauded

"It's a matter of major public concern A number of politicians are lawyers, like F W de Klerk and Nelson Mandela, but what are they doing about civil justice?"

Benson has joined forces with Martie Griessel in Gauteng and Snowy Smith in Natal, both of whom have been waging battles with law societies for several years Under the banner of Fair Civil Law they are collecting signatures and affidavits to support a petition directed to Justice Minister Dullah Omar

Griessel said she was past the point of complaining to law societies Fair Civil Justice was calling for an independent ombudsman's office with statutory powers to act in the interests of the public and to hold a role of accredited legal practitioners

"Use my name in block capitals What I have said is the truth and I can prove it," Ronald Edwards of Edenvale said

In his case, he has a court judgment which he said effectively proved an attorney's unethical conduct Yet the Transvaal Law Society found "no unprofessional conduct" on the part of its member Subsequently, the attorney was censured in a court judgment

Jannie Esterhysen referred to the book, *Stilte in die Hof*, by Advocate I A Nortje published in 1993, which claimed that "legal professionals were making a mockery and circus of the justice system"

The Association of Law Societies code of conduct states as its first objective that it must "promote the interests of its members and the profession, while at all times taking in to account the broader interests of the public who are served by the profession, and to strive, where these come into conflict with each other, to reconcile the interests of the profession and the public"

Only one person claimed that her case had been reconciled, but she had appealed directly to the then president of the Transvaal Law Society, Michael Pinnock

Angie Smisson said her complaint involved an attorney who refused to send her a copy of court documents in a case in which she was involved The law society had advised her that it had looked into the matter and found there was nothing unethical in this

After complaining to Pinnock, the law society advised her that it had arranged for her to take possession of the documents After getting the documents, Smisson did not proceed with the complaint against the attorney

"At most he would have been fined or cautioned, so what was the point?" she asked

Common patterns emerged in readers complaints Wrong post-

Law societies are being challenged to hold their traditionally secret disciplinary hearings against members in the open

"This is the only way justice can be seen to be done," said Elmie Eksteen of Sandton, who has waged a fruitless two-year battle with the Transvaal Law Society to get it to act against two of its members

Eksteen, who is the executor of her parents' estates, has filed affidavits and some 200 pages of documentation in support of her claims This paperwork was part of a much larger case which, she said, involved massive fraud in her parents' estates She claimed the matter was being investigated by the SAPS

Eksteen further claimed that in her case the society had acted purely to protect its members, thereby contravening its own code of conduct

She first complained to the society on March 22 1993 in an affidavit with 36 pages of supporting documentation She claimed that an attorney had breached client confidentiality by handing over documents to a person against whom Eksteen was taking legal action

She supplied further documentation purporting to show this attorney had tried to force her to file fraudulent liquidation and distribution accounts on her deceased parents' estates Had Eksteen acceded, it would have opened her to charges of fraud and investigation by the Receiver of Revenue.

On this complaint, the society found it could not make a decision because of lack of evidence But inquiries by Eksteen as to what further evidence was required beyond what she had supplied were ignored, she said

In a different complaint against a second attorney who acted for her father before his death, Eksteen submitted an affidavit with supporting documentation running to some 77 pages to the Transvaal Law Society alleging fraud and unethical conduct

In May 1993, the society passed on to Eksteen a letter from this attorney replying to her complaints She responded with a further five-page affidavit and another 27 pages of supporting documentation which she said refuted the attorney's letter and showed that he had misrepresented the facts

Months passed and, according to Eksteen, no reply was received from the law society But in the meantime, she said, she found evidence of further misconduct by this attorney In November 1993, she submitted another six-page affidavit with 36 pages of documentation, allegedly providing further proof that the attorney had been less than honest in his reply to the society

According to Eksteen, her evidence enabled her to show that

"In a transaction where her father sold a farm, the attorney had allegedly undersold the farm to save the buyer transfer costs, thereby defrauding the State fiscus

"The attorney never recorded the full purchase price of R5-million, but reflected only R3,8-million Further, contrary to contractual agreement, he held on to the deposit of R1-million for a year without passing on interest accruing

"The attorney had allegedly attempted to have the Eksteen estate pay the costs of a court case in which it was not a party"

In December 1993, Eksteen said she was informed by the law society that she had failed to provide sufficient evidence to prove any misconduct Nearly a year passed, during which she approached the SAPS to undertake an investigation into her parents' estates

Her affidavits to the law society form part of her submission to the SAPS, which is now investigating irregularities in the multimillion rand estates of Mike and Elsie Eksteen, who were murdered in December 1990

Eksteen's battle with the law society is continuing So far, two disciplinary hearings against the second attorney have failed to find any fault on his part Eksteen said she was invited in writing to attend the last hearing However, she said the hearing was cancelled telephonically via a message system by a law society staffer, who said she would be advised of the new date of the hearing. She claimed she was never contacted and the hearing went ahead without her

Daan Olivier, president of the society, has said that a further hearing would be held Eksteen could be represented by her own legal adviser, but he was adamant it could not be in an open session The reason he gave was that Eksteen would open herself to libel proceedings.

"The only way I'll have an objective hearing is if the media is there to report," Eksteen said "The threat of legal action against me does not worry me, because I can prove everything I am saying"

— ANITA ALLEN

tive unit

Richard Benson of Cape Town and Snowy Smith of the Fair Civil Law organisation in Durban are calling on Minister of Justice Dullah Omar to

- Appoint an ombudsman to oversee the Law Societies and assist the public who encounter problems with the legal system
- Set up advice centres for people wanting legal action
- Prevent lawyers from taking on matters for which they are not adequately equipped
- Prevent judgments being granted by default against defendants who have not received summonses in person from the Sheriff

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There is continuing search to improve

Law societies around the country believed they were successful in protecting the interests of the public

The Cape Law Society said in a statement that it was incorrect to say that law societies were not capable of reconciling differences between their members and the public They had on many occasions done this quite successfully, it said

Director Ingrid Hoffman said the society proposed introducing a motion at its forthcoming annual meeting which would provide observer status for lay people at disciplinary hearings This would reassure the public that the society was not protecting members against public criticism.

Raymond Koen, assistant director of the society, believed that, unfortunately, many members of the public either misunderstood or overestimated the jurisdiction and powers of law societies That jurisdiction was essentially a punitive one, restricted to instances of misconduct

"Many complaints relate to allegations of negligence or breaches of contract on the part of attorneys Complainants who allege such negligence or breach, and consequant damages, have civil remedies available to them," he said

The Law Society of the Orange Free State said it was not aware of any unhappiness with its procedures, but it would take seriously any criticisms and suggestions from the public in this regard

The Natal Law Society refused to comment It said in a statement that inquiries involving its members are not held in public, and that complainants may be present throughout the duration of the hearings

The Transvaal Law Society conceded that the present system was not infallible However, it emphatically rejected any notion that the system was corrupt

It said in a statement it was not prepared to debate the merits of any individual's case in the press However, it would take seriously any suggestions or criticism "in the society's continuing search to improve procedures to achieve the most reasonable and just method of protecting the interests of the public and of attorneys"

— MAX GEBHARDT

She has received little assistance

Funani Mngomezulu, a data input operator living in Soweto, wants to know whether the law societies are protecting the public or the attorneys

Mngomezulu was divorced in September 1993. As part of the divorce agreement, she was to receive R20 000 from her husband for her share of their house Two years later, she said, she was still waiting for the money from the attorney handling the liquidation of the couple's assets

"He said that the Soweto Town Council was being difficult about giving the transfer," she said "But it doesn't take two years to get a transfer"

Mngomezulu said she believed that the attorney had had the money for nearly two years

In May 1994 she approached the Transvaal Law Society to lay a complaint against the attorney. Six months later it responded by asking her to supply further documents as the previous papers had been lost Finally, in March this year, her case was heard

"The hearing was terrible," she said "You're all on your own and it's like being in a court"

Approached for comment, the Transvaal Law Society said that it was not prepared to debate the merits of individual cases in the press

She said the attorney which handled her divorce eventually gave up in sheer frustration in attempting to gain the money from the attorney handling the liquidation

Mngomezulu said she wrote to the Law Society last month to inform it that she had not received the money. She was waiting for a reply

She also claimed that the society told her that if she wanted to get hold of the R20 000, she should hire a new attorney "I can't do this as I have no money"

— MAX GEBHARDT

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Tightening the noose

Advocates Klaus von Lieres und Wilkau and Wim Trengove, each on opposing ends of the capital punishment debate, have had their say and Constitutional Court president Judge Arthur Chaskalson has announced the death of the death penalty in SA But even as the 453 prisoners on death row raised their voices in song at their reprieve this week, the public debate was starting all over again

Lawyers for Human Rights (LHR), which has campaigned for the abolition of the death penalty since 1987, welcomed the decision "I am extremely pleased," said LHR spokesman Ahmed Motala "The abolition has put us among democratic countries that have scrapped the death penalty" The decision created more certainty in SA law, he added, and would make judges think of more "creative" sentences for convicted criminals

Not so, says Democratic Party justice spokesman Douglas Gibson Government, he says, has been caught with its pants down as it has not provided any "proper punishment" in place of hanging Because society demands adequate punishment for aggravated crimes where there are no mitigating circumstances, he says, it is essential that the criminal courts be given sentencing options additional to the ordinary life sentence

A life sentence can amount to as little as eight or nine years in jail after remission for good behaviour and early release or parole — patently inadequate for some of the ghastly crimes which take place

Capital Punishment Campaign organiser Simon Grinrod calls the decision predictable, disappointing and contrary to majority opinion "This outcome represents a missed opportunity to combat the tidal wave of murder currently threatening the very foundations of our nation"

Pointing to the growing reversion to capital punishment among many US state legislatures, he argues that SA may also come to rethink its position, with violent crime escalating and public opinion heavily in favour of the death sentence A future Constitutional Court with a majority of conservative black jurists is a possibility

SA's democratic government is still in a fledgling phase and (thanks to the previous government's disregard for human rights) it was to have been expected that the Constitutional Court would be filled with liberal minds The court's ruling was unanimous and, notwithstanding any debates in parliament, Justice Minister Dullah Omar has already indicated that Cabinet will concur In fact, even before the Constitutional Court's decision, Omar had given instructions to legal advisers to prepare a Bill abolishing the death sentence

In his five-minute ruling, Judge Chaskalson said the State and its organs would in future be forbidden to execute any person Section 277 of the Criminal Procedure Act is now inconsistent with the constitution

The right to life and dignity are the most basic of all human rights and the source of all other personal rights in the Bill of Rights, he said "By committing ourselves to a society founded on recognition of human rights we are required to value these two rights above all others" ■

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Now Constitutional Court flexes muscles on juvenile whipping

(~~298~~) (252)

The Constitutional Court yesterday delivered its second watershed hearing in a matter of three days.

It abolished judicial corporal punishment for juveniles, saying it was inconsistent with the constitution

"It is my view that at this time, so close to the dawn of the 21st century, juvenile whipping is cruel, it is inhuman and it is degrading," Constitutional Court judge Pius Langa said as he announced the court's unanimous decision in Johannesburg

All corporal punishment sentences would have to be set aside and alternative sentences imposed, he said.

The Department of Justice said the abolition took South Africa a step closer to a human rights culture. A new juvenile justice system was being investigated.

The abolition did not apply to schools, Judge Langa said. Whipping at schools was not nearly as severe as that by the judicial system, he added.

However, Minister of Education Sibusiso Bengu said in a statement that corporal punishment in schools also contravened the constitution

"The new Education Policy Bill, which is being drafted, will include suitable provisions to abolish corporal punishment in schools and other educational institutions," he said.

Yesterday's ruling was generally welcomed

"We hoped it (the abolition) would be extended to schools because the same stigma is attached (to corporal punishment) as in the judicial system," Lawyers for Human Rights head Jody Kollapen said

The Campaign to End Physical Punishment of Children said the ruling was the first step in replacing the national ethos of violence against children with behaviour that would protect them from violence. The organisation felt, however, it was illogical and unjust not to ban corporal punishment in schools and other settings.

National Institute for Crime Prevention and Rehabilitation of Offenders spokesman Jeanette Schmidt said corporal punishment was administered to 75% of the 40 000 children sentenced by South African courts in 1993

In submissions before the court's decision, the State argued that corporal punishment for juveniles was a more humane alternative to imprisonment It also said SA lacked sufficient resources for alternative punishment

However, Judge Langa said "imaginative sentencing" such as house arrest, community service and job placement would humanise the criminal justice system and shift the emphasis from retribution to rehabilitation

He referred to recent decisions by the supreme courts of Namibia and Zimbabwe which found whipping to be "inhuman or degrading" — Sapa

Violence-torn Africa is divided over death penalty question

In east Africa, where crime is on the rise, the death penalty still applies. (252) **JOE KHAMISI** of Argus Foreign Service reviews the arguments.

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Nairobi – The landmark decision by South Africa to abolish capital punishment comes in the wake of divided opinion in east Africa over the issue Kenya, Uganda and Tanzania all have capital punishment in their statutes.

In Kenya, more than 400 inmates are on Death Row but the country has not carried out an execution for almost eight years

In Uganda, firing squads routinely execute capital offenders once legal steps have been exhausted, while in Tanzania the number of Death Row inmates is unknown

Last year, Kenya's parliament rejected an opposition motion seeking to abolish the death penalty The majority ruling party members argued that while the penalty was against Article Six of the Universal Human Rights Convention, it was not a violation of the right to life

In Tanzania early this year, a three-panel Bench of the Court of Appeal ruled that the death penalty was constitutional and did not violate the supreme laws of the land

"In societies where owning a firearm is almost as simple as owning a penknife, the death penalty may not be necessary to protect the public," the court ruled in one case. "But in societies like ours, where people go to the extent of sacrificing sleep to join vigilante groups, popularly known as sungusungu, in order to protect life and property, the death penalty may still be reasonably necessary"

The debate on whether or not capital punishment should be retained is complicated by escalating crime statistics in the region

Governments find themselves in a moral dilemma when it comes to weighing personal freedoms, rights and liberties against public interests

"If we say we have a man who has killed another and we want to keep him living, are we not failing?" Julius Sunkuli, an assistant minister in the office of the Kenyan President asked recently

Until Yoweri Museveni came to power in Uganda in 1986, executions were common The country was then ruled by dictators and facing internal insurgencies The most horrifying executions took place during the reign of Idi Amin in the 1970s

Thousands of opponents were put to death by firing squad in public squares Under Museveni the rule of law has been restored but capital punishment remains in place.

By its decision, South Africa has joined several African countries including Gambia, Guinea Bissau, Angola, Cape Verde, Namibia, Sao Tome and Principe and Mozambique, in abolishing the death penalty. South Africa is now the 53rd nation worldwide to have completely rid itself of capital punishment

London-based Amnesty International, along with other international bodies, want capital punishment abolished by the year 2000

A number was key to coffin and grave

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Executed prisoners lived by a number, were hanged by a number and buried by a number.

When a prisoner entered Death Row, he was given a number to quote at all times. As the prisoner climbed the steps to the gallows, the hangman called out the number and indicated which noose was for him (there were seven).

Once hanged, the body of the prisoner was the property of the State. Private undertaking firm Saffas was contracted in Pretoria to nail the coffin as soon as the prison doctor had declared the person dead. The coffin had a number.

Contrary to popular belief, there was no single graveyard for all executed persons. According to a document, Waiting to Die in Pretoria, prepared by human rights activist Phyllis Naidoo in 1990, prisoners were buried in different places according to race.

Black prisoners were buried in Atteridgeville or Mamelodi, Indians were either cremated or buried in Lenasia or Pretoria cemeteries, coloureds in Eersterus and whites in the white section of Pretoria cemetery.

Spokesman for Correctional Services Brigadier Chris Olckers confirmed that executed prisoners were buried in several places.

Nailed down

According to Naidoo, the naked body of the executed prisoner was placed in a coffin and the lid was nailed down. Saffas would take the coffin to the graveyard and the prisoner would be buried unceremoniously.

No family members would be present and no service was conducted.

The family was informed later at the prison what the number of the grave was where the prisoner was buried.

Perhaps the final indignity was that the clothes worn by the executed prisoner were reissued to new prisoners coming through the gates of Death Row.

In turn, new prisoners had to live with the knowledge that the khaki fatigues they wore had once been worn by someone who was now nothing more than a number on a grave.

Olckers could not confirm whether the clothing was passed from prisoner to prisoner.

He did confirm Naidoo's report that the rope that was used to hang the prisoners was used again and again instead of being replaced for each hanging.

Truth commission unlikely to hear Goniwe case

Cape Town — In spite of President Nelson Mandela's saying that the whole truth would have to be told about the murders of Matthew Goniwe, Sicelo Mhlawuli, Fort Calata and Sparrow Mkhonto, uncertainty remains on whether the case will be heard by the truth commission

The Grahamstown Legal Resources Centre, which is handling the case, has ruled out prospects of the commission hearing who killed the four United Democratic Front activists as they drove back to Cradock from a meeting in Port Elizabeth 10 years ago

Centre director Clive Plasket said that since two inquests had failed to establish the killers' identity, it would not be possible for the case to be reopened by the truth commission.

Although Eastern Cape Judge President Mr Justice Neville Zietsman had alluded to the possibility that charges of conspiracy or incitement to murder and perjury could be investigated against retired General Joffel van der Westhuizen, there was no prima facie evidence against him, Plasket said The case was highlighted by Mandela's recent visit to Cradock.
— Own Correspondent

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Extraordinary privileges mixed with deprivation

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Behind the massive concrete wall and heavy steel gates is a rocky pond surrounded by a grassy playground for families of rabbits, geese and ducks

Only a few metres away is a deadly steel contraption that can drop seven people at a time through a massive trapdoor beneath their feet The rope that would stop their fall would also snap their necks

The place is Pretoria Maximum Security Prison, which is home to 286 men who until this week had been living under the shadow of the gallows hidden in the chapel building near their cells

The men will not be hanged and the gallows will be dismantled But the place and the routines of the prison known as Death Row stay the same

When the Saturday Star visited the prison this week, the euphoria that greeted the announcement that the Constitutional Court had scrapped the death penalty had died down and the place was silent except for an occasional squawk from the pond

The entrance to the prison is guarded by a massive black metal gate Prisoners are brought through to the gate in trucks after being sentenced And, before the moratorium on the death penalty in 1990, they left through the same doors – in plain pine coffins

The immense concrete wall surrounding the prison is broken by four watchtowers and the entire compound is permanently floodlit

Access to the inner compound is through a pair of wooden doors reinforced with steel Behind those doors thousands of people have waited to die

Although condemned, the prisoners were encouraged to stay active – to study even Condemned prisoners had almost unlimited privileges, unlike any other prisoners, who have to earn their privileges through good behaviour

Visitors could come daily A sign outside the prison states that visiting hours are from 8 45-11 05 in the mornings and 13 40-15 10 in the afternoons But a thick sheet of glass separated them

Prisoners have unlimited mail, unlimited phone calls and – if they can afford it – a TV in their cells Most of them will have to give these up when they are re-sentenced

After a night under lights (the cell lights are never switched off), prisoners are woken up for breakfast at about 7am, after which their cells are opened so they can shower and go to the courtyard, to church or to school The courtyard is covered with a steel grille and warders pace above

> *'Have a nice day!' says the notice in gay colours on the blackboard of the Death Row's prison kitchen*

The prisoners are locked up again for a large lunch Doors are opened again for the afternoon, but supper (in their cells) is at 4 30pm.

For the rest of the night they are locked up – mostly in single cells, but a few men are in communal cells The cell doors are solid steel One small window looks out on the corridor

Signs abound. At the gate, one warns that prisoners may receive no flowers In the kitchen, the day's menu is chalked in colour on a blackboard and "Have a nice day!" adds a cheerful note

The worst is over for the inhabitants of the prison They know they will never have to go to The Pot – a section where prisoners were taken about seven days before they were executed There they would be weighed and measured to make sure their noose worked just right

They will never take that long lonely walk from The Pot to the room with the steel contraption

They will never again have to listen to the mournful singing that filled the prison when the gallows went to work or imagine the clanging of the steel trapdoor and the drop into the void below

Perhaps, soon, they may even have a nice day

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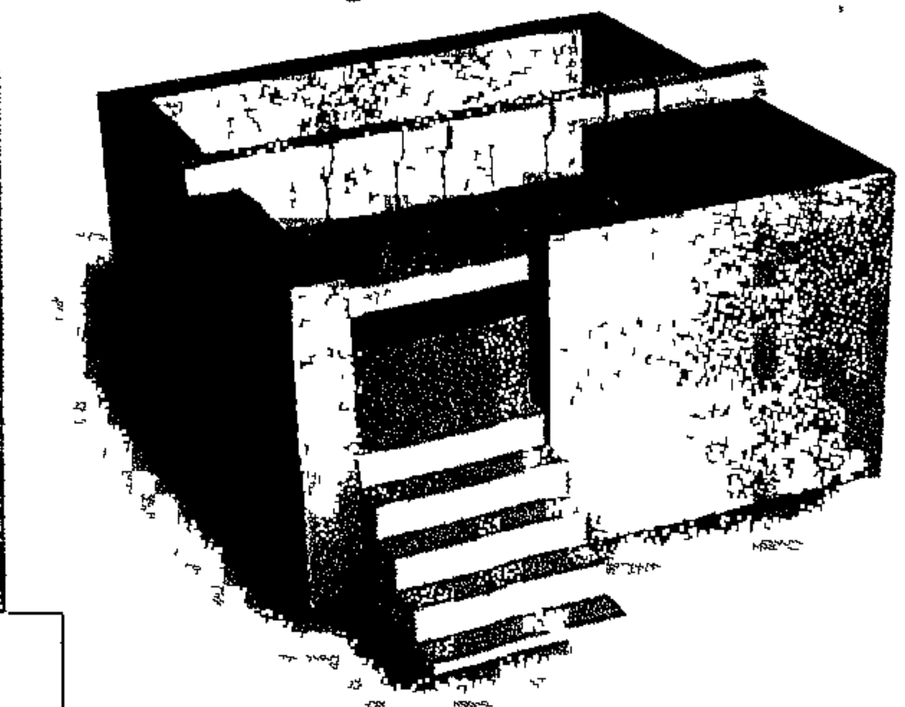
Pretoria Maximum Security Prison – a few quiet glimpses

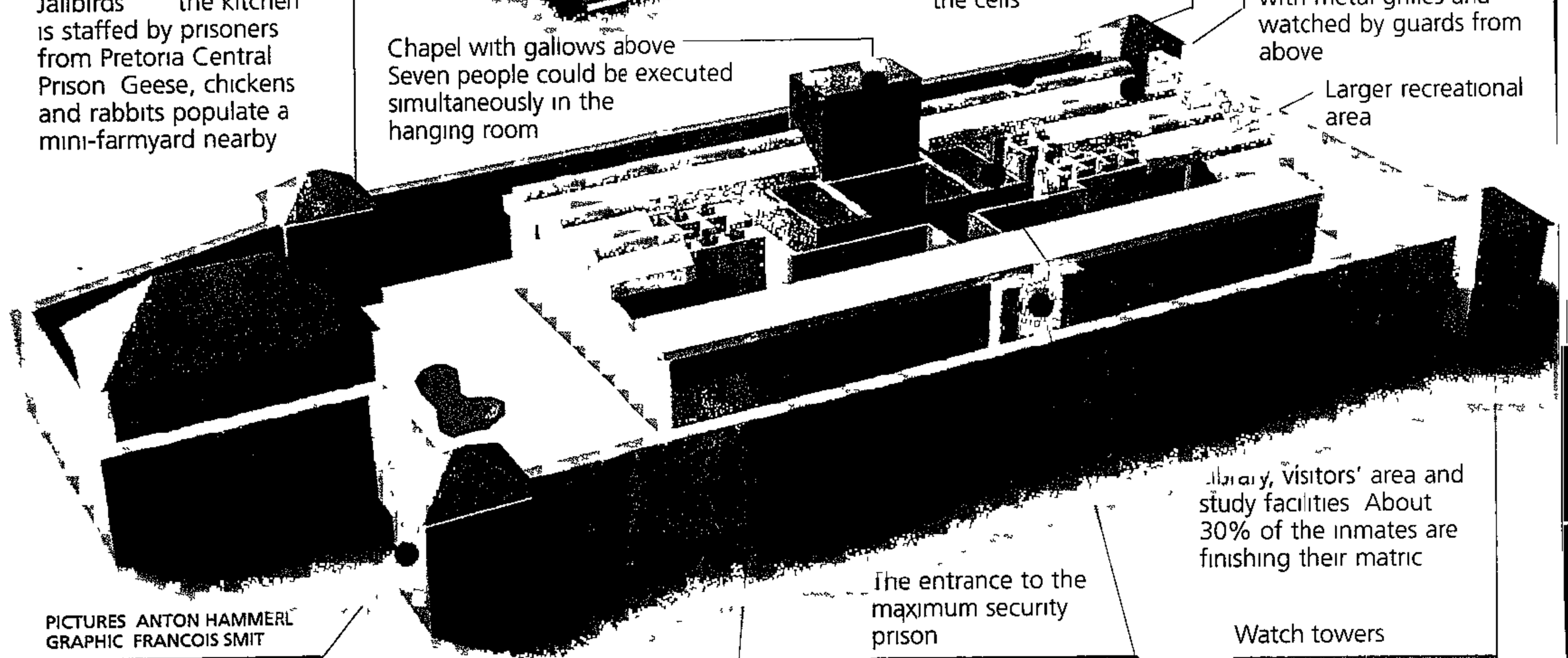
Jailbirds the kitchen is staffed by prisoners from Pretoria Central Prison Geese, chickens and rabbits populate a mini-farmyard nearby



Chapel with gallows above Seven people could be executed simultaneously in the hanging room

A warder overlooking the cells

Courtyards are covered with metal grilles and watched by guards from above



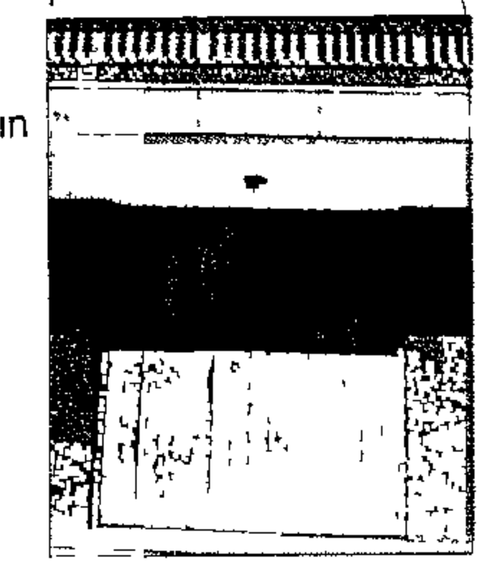
Larger recreational area

...ibrary, visitors' area and study facilities About 30% of the inmates are finishing their matric

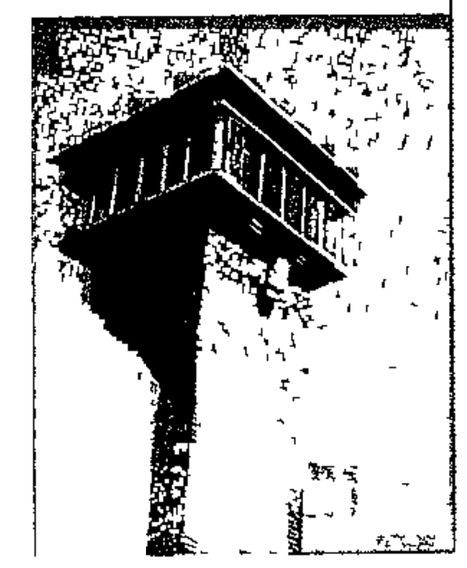
PICTURES ANTON HAMMERL
GRAPHIC FRANCOIS SMIT

The main gate – only a miracle could make you hear this key turn twice

The admin section in front of the prison



The entrance to the maximum security prison



Watch towers

Ex-Death Row prisoners are still waiting

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Bronwyn Littleton

Although 453 Death Row candidates no longer need to fear the noose it could take well over a year before they will hear of their alternative sentences

Condemned prisoners may have been given an absolute reprieve, but their wait is far from over

Their cases will now go back on to the heavily clogged court rolls for judges in the Supreme Court and Appellate Division to decide on alternative sentences

That could take months, or even years, legal experts said Until then, the death sentence remains on the prisoners' cards

Even after they receive a new sentence, the prisoners are likely to remain in the same cells in which they waited for the hangman

According to the order handed down by the Constitutional Court this week in the matter of the State versus T Makwanyane and M Mchunu, the case of the two men will be handed back to the Appellate Division for a decision on an alternate sentence This could take over a year

Several other cases were referred to the Constitutional Court by the Appellate Division, but were not dealt with specifically in the Constitutional Court judgment. They will also go back to the Appeal Court.

Other cases will go back to the Supreme Courts for judges to find an alternate sentence

"Until these alternate sentences are handed down, the prisoners will remain in custody under the sentences imposed on them, until such sentences have been set aside in accordance with law and substituted by lawful punishments," the order says

George Bizos, who has been appointed by the Justice Ministry to look into the matter of what to do with the 453 affected prisoners, said this week he had little idea of where to start But he added that he would be consulting both Appellate Division and Supreme Court judges

Whatever the courts decide on the alternate sentences, most of the prisoners affected will stay exactly where they are, despite a request from the Justice Ministry to move them

Justice Minister Dullah Omar said this week that immediate steps would be taken to consult officials of the Department of Correctional Services with a view to moving "all affected persons from Death Row"

However, prisons officials have pointed out that there is no facility called Death Row and that condemned prisoners were kept in maximum security prisons along with other maximum security prisoners

Spokesman Brigadier Chris Olckers said about 300 of the prisoners were at Pretoria Maximum Security Prison and the rest were in maximum security sections around the country

He said risk analyses would be done on the prisoners to see if they should be moved to medium security wings, but, considering they had all been convicted of murder, it was likely they would remain categorised as maximum security prisoners and would thus stay exactly where they were

Formerly condemned prisoners would now be categorised in the same manner as other prisoners and all privileges would be awarded accordingly, Olckers said They, like all others, would have to work their way up to Category A prisoners with maximum privileges

Condemned prisoners are not categorised and are allowed more privileges

'Millions' to unite to fight court ruling on the noose

ST 11/6/95 (252)

THE Constitutional Court decision this week to abolish the death penalty has angered South Africans of all races and political persuasions caught in a seemingly endless spiral of violent crime.

By KEN VERNON

Willem Theunissen is one of them. He had almost learnt to deal with the private hell of discovering the smashed and bloody bodies of his sister and her family in Stellenbosch last year His little nieces, aged six and four, his sister and brother-in-law and their maid were axed to death.

For Mr Theunissen, the abolition of the death penalty has brought back that hell "I'm just so angry I think that if anyone on that Constitutional Court had walked into my sister-in-law's house and seen what I had to see, they would have to be insane to do away with the death penalty The man that did that to those little children does not deserve to live"

For many South Africans, it is as simple as that

Ironically, the Constitutional Court's liberal-minded decision may be the spark that melds the growing but unorganised "moral right" into a major new player on the South African political scene

Organisations ranging from the South African Police Union to farmers' associations, women's organisations and churches such as the Zion Christian Church have joined forces with rapidly emerging fundamentalist church groups to attack the decision

The still loosely knitted "moral right" coalition could claim to represent more than 10 million South Africans united in their determination to preserve conservative Christian values

"We plan to undertake mass action to protest this decision," says the president of Christians for Truth, the Rev Fano Sibisi "We will be mobilising our supporters so that we can speak loud enough to force the government to listen to us"

Mr Sibisi says that he and his fellow preachers will be telling their congregations to make sure where political candidates stand on capital punishment before casting votes for them, and this includes votes in the forthcoming local elections

"We will not go away We will be there in all the coming elections and we are going to make a lot of noise," he says

Gerhard van der Merwe, the national organiser for the South African Police Union, says that while policemen may have favoured a more "lenient" application of the death penalty, the court decision "went too far It has had an extremely demoralising effect on a police force already under attack daily"

What binds these diverse groups together is a belief that South African society is heading in a wrong direction, and that letting killers live is symptomatic of that malaise

The question is, what are they going to do about it, and how effective will their protests be against a Constitutional Court that prides itself on being aloof from public opinion?

Peter Hammond, a director of the United Christian Church and one of the organisers for Christian Voice has no doubts they will overturn the court's decision, one way or another

"Christian Voice challenges the government to hold a referendum on the abolition of the death penalty. The people of this country want murderers executed and children protected"

He said that the court's decision would have the effect of "privatising" the death penalty "Ordinary people will begin to take the law into their own hands In fact, it's happening already in the townships"

While opposition to the decision is loud, it is difficult to quantify just how many supporters the "moral coalition" has.

The only scientific survey on the subject, carried out earlier this year by the country's largest consumer research organisation, Research Surveys, found that more than 80 percent of whites and more than 50 percent of blacks in metropolitan areas favoured keeping the death penalty. In rural areas the percentage would probably be higher

The president of United Christian Action, Dr Ed Cain, says Christian bodies with an estimated 5 million members under the umbrella of his organisation have vowed to fight the Constitutional Court decision

"We are considering a range of responses, including marches, petitions and court actions"

Judges split on rights of accused

(252) ST 11/6/95

By CARMEL RICKARD

DAYS after the Constitutional Court ruled on the death sentence, it also delivered its first split decision.

At issue was the question of whether the Bill of Rights applied in criminal trials which started before the constitution came into effect and were not yet complete, or only in cases which began after last year's elections.

In several trials which began before the Bill of Rights came into effect, the accused are now demanding rights promised by the constitution. Some of these include the full disclosure of all evidence against them and the right to counsel.

Criminal courts have been deeply divided on whether to allow such a claim, or whether the trial should be carried out as though the constitution did not exist.

In a judgment by Judge Sydney Kentridge, with the agreement of court president Arthur Chaskalson, Judge Laurie Ackermann and Judge John Didcott, it was argued that the constitution applied only to cases started after the elections.

The majority, however, disagreed. Led by Judge Ismail Mahomed, the rest of the court took the view that it was inconceivable for large groups of people to be systematically denied the protection of the new constitution.

In a judgment, which at times was passionately argued, Judge Mahomed said that, if the section was capable of two readings, the court should choose the meaning which honoured the intention of the constitution to bring everyone under the protection of the Bill of Rights.

He said the alternative would lead to arbitrary inequality.

Judges Johann Kriegler and Albie Sachs both wrote separate decisions, agreeing with the decision of Judge Mahomed.

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ST 11/6/95 (252)

By CARMEL RICKARD

IN A SERIES of dramatic judgments this week, the Constitutional Court has begun to transform the country's legal landscape, setting it firmly on a human rights course.

First came 11 separate decisions, unanimously outlawing the death penalty as an infringement on the right to be protected from cruel, degrading and inhuman treatment.

The reasoning in these judgments made it clear that the court would not hesitate to throw out any old laws and practices that infringed on the Bill of Rights.

On Friday, Judge Pius Langa handed down a decision which scrapped court-imposed whipping of boys. With the agreement of the rest of the court, he decided flogging infringed the right to dignity.

He rejected arguments that the practice was justified to avoid sending youngsters to jail.

The judge said other alternatives existed, and if the necessary facilities and funding were not available, it delivered a "timely challenge" to the state to provide an effective juvenile justice system.

Two other decisions also showed the direction of the new court.

In a case about the right to counsel, Judge John Didcott rebuked the state because evidence indicated that nothing had been done to make this right a reality.

The judge said this impression was "most disturbing". The court accepted that many demands were being made on state funds, but the constitution would not allow any undue delay in fulfilling promises about fundamental rights.

He said he "safely assumed" that despite the constitution, thousands were still being tried without legal representation because they were too poor to pay for it.

Unanimously supported by the rest of the judges, he said it was an "empty gesture" for the courts to tell an accused at the start of the trial that legal representation was available for those who needed it. It "made a mockery of the constitution" if there were no mechanisms to ensure the right was enforced.

cussed by Inkatha [illegible]
and provincial MPs

The resolution complained about central government's failure to assign to provinces powers related to land affairs, water, forestry, certain aspects of trade and commerce, consumer protection, education, provincial public media, gambling, lotteries, provincial public service, regional planning and development.

The national council endorsed Mdlalose's decision to withdraw from the intergovernmental forum. However, it was un-

Buthelezi said there [illegible] gress in efforts to break the deadlock over international mediation, and the exchange of constitutional documents with the ANC was a "farce" as Inkatha had made comprehensive submissions to the Constitutional Assembly which were available to ANC secretary-general Cyril Ramaphosa.

Jiyane said if there were to be future talks with the ANC on the issue, these would focus solely on the implementation of the mediation agreement.

Police respond to Inkatha threat

Ingrid Salgado

POLICE would be deployed in taxi ranks and bus and train stations to curb possible violence threatened by Inkatha Freedom Party members in Gauteng, the province's safety and security MEC Jessie Duarte said yesterday.

Duarte, speaking after meetings with premier Tokyo Sexwale and Gauteng police commissioner Sharma Maharaj, said she could not say how many police would be involved.

This followed the Inkatha Vaal Triangle branch's threat at the weekend that Gauteng would become ungovernable if President Nelson Mandela was not arrested in connection with the deaths of 11 Inkatha marchers outside the ANC's Shell House headquarters last year.

Sexwale would meet Inkatha's Gauteng leadership today to discuss the matter, Duarte said.

Farouk Chothia reports that Inkatha secretary general Ziba Jiyane said Inkatha's Gauteng leadership would establish a disciplinary committee to censure Youth Brigade leaders.

Jiyane said *agents provocateurs* were behind the statements and some members misunderstood the autonomy that was given to the Youth Brigade under Inkatha's new constitution. He described Inkatha deputy secretary-general Zakhele Khumalo, arrested last week on 13 counts of murder, as a hero.

Inkatha leader Mangosuthu Buthelezi said he was not shocked by the arrest as the Investigation Task Unit, whose investigation led to the arrests, was established to "demolish" him.

Khumalo was also former private secretary to Buthelezi.

Inkatha member Peter Msane was arrested on Friday in connection with the 13 killings in KwaMakhutha on the KwaZulu/Natal south coast in January 1987

Sapa-Reuter reports that Msane was released on R2 000 bail.

Msane was among 200 Inkatha members trained by the SA Defence Force in the Caprivi Strip in 1987. He was said to be close to Inkatha Gauteng deputy leader Themba Khoza.

Ministers tussle over Saldanha

Adrian Hadland

CAPE TOWN — A ministerial tussle is developing over which member of Cabinet has ultimate responsibility for Iscor's proposed Saldanha steel project.

Water Affairs Minister Kader Asmal, who visited the site on Friday, was adamant the project was a water-related matter, and therefore within his ambit.

The huge water demands of the proposed mill, together with the possible impact of the project on groundwater in the area were clear indications that water affairs had a superior claim to the matter, Asmal said in an interview.

However, a spokesman for Environment Affairs Minister Dawie de Villiers said the minister, who appointed a board of inquiry to investigate the project last week, definitely had "the overriding capacity" on the issue.

At provincial level, Western Cape NP MEC Lennie Fick, currently involved in a court case concerning the rezoning of the land, and Kobus Meiring are the responsible ministers.

It is believed both back the project due to its capacity to stimulate job creation and the regional economy.

De Villiers is believed to be under pressure from his party and Afrikaans business leaders in the Saldanha area to facilitate government approval, while Trade and Industry Minister Trevor Manuel is also understood to favour the mill.

The National Parks Board, which falls under De Villiers's portfolio, has indicated its opposition.

The ANC, noting fierce public opinions on the issue, appears to have adopted a circumspect attitude and wants a more thorough environmental assessment.

The environmental affairs department, meanwhile, was going through a list of about 15 people at the weekend to see who was available to chair the board of inquiry into the project.

Court bans the caning of juveniles

Susan Russell

THE Constitutional Court has abolished the practise of caning juvenile males for criminal offences, holding it to be a cruel, inhuman and degrading punishment, in a judgment handed down on Friday

Judge P Langa, with the unanimous concurrence of the other 10 judges, granted an order declaring juvenile caning invalid on the grounds that it was in violation of the fundamental rights to protect one's dignity and protection against "cruel, inhuman or degrading punishment".

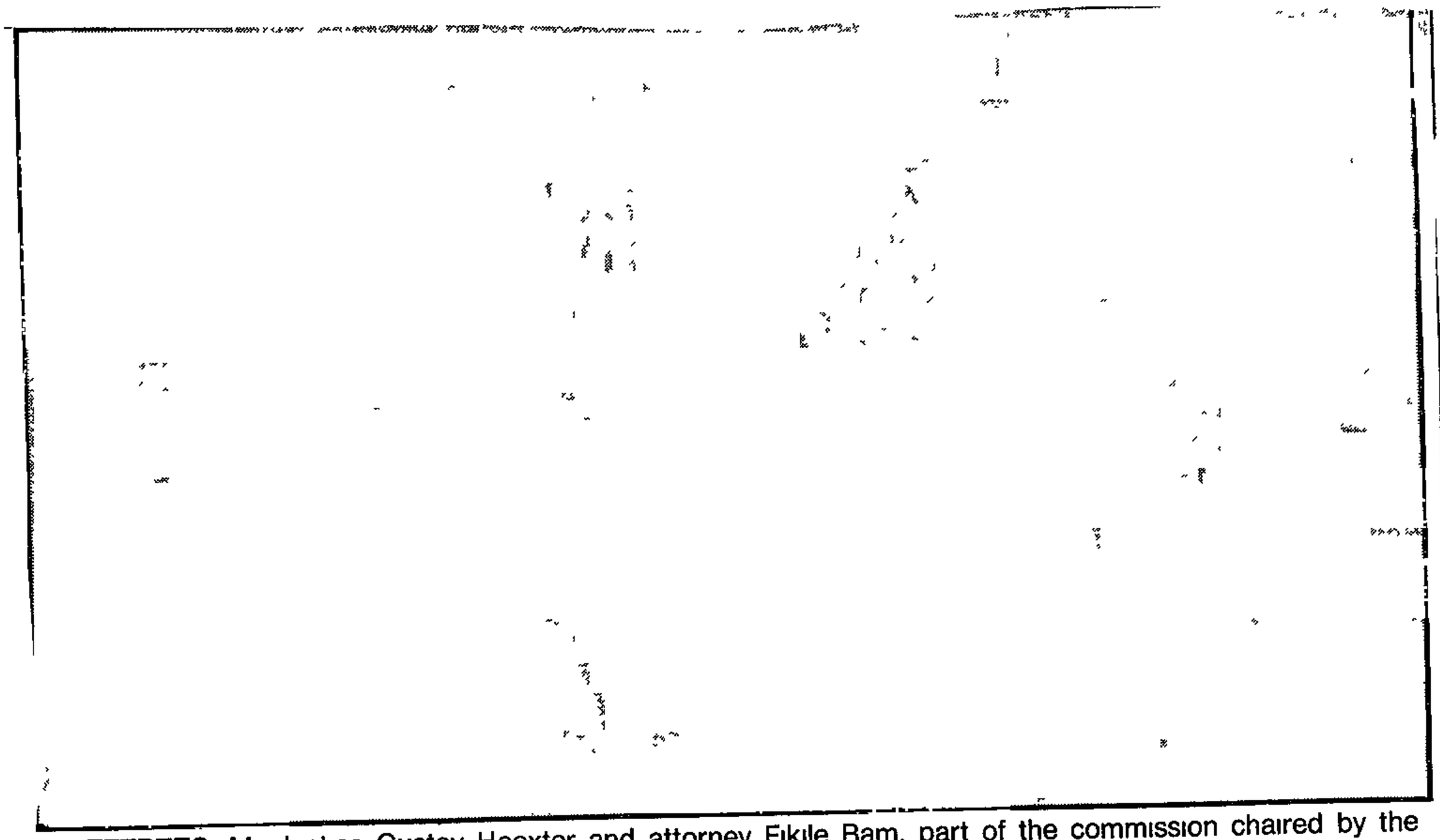
The issue was referred to the Constitutional Court by a full bench of the Cape provincial division of the Supreme Court where the question of constitutionality arose in five different cases involving six juveniles. The five cases were consolidated as one for the purposes of argument before the court.

The law still allows caning as a punishment for adult males between the ages of 21 and 30.

Langa said where juveniles were concerned, no minimum age was fixed in the Criminal Procedure Act, although practice and judicial decisions would seem to have fixed the lower age limit at nine.

In determining whether a punishment was cruel, inhuman or degrading, the punishment in question had to be assessed in the light of the underlying values

"There is unmistakably a growing consensus in the international community that judicial whipping, involving as it does the deliberate infliction of physical pain on the accused, offends society's notions of decency and is a direct invasion of the right which every person has to human dignity," Langa said.



☐ **REFEREES:** Mr Justice Gustav Hoexter and attorney Fikile Bam, part of the commission chaired by the judge which is investigating changes to the Supreme Court

(252) ARG 12/6/95

Move to redistribute court seats rumbles on

BRENDAN TEMPLETON
The Argus Correspondent

A QUIET revolution is occurring in an office in Church Street, Pretoria, where changes which could significantly restructure South Africa's legal fraternity are being considered

The office is home to the commission of inquiry headed by Mr Justice Gustav Hoexter who has been asked to beat the drum in a lawyer's battle of musical chairs

South Africa's interim constitution created new provincial boundaries, new provinces and abolished others, precipitating a scramble for Supreme Court seats and threatening the established legal order

Under the old system, each province and "independent state" had its own Supreme Court seat and local divisions That is no longer so and Mr Justice Hoexter will have to recommend where the seats should go

He said that the options open to him include giving each province a Supreme Court seat or introducing permanent circuit courts which handle civil litigation

He also will investigate ways for the Supreme Court to become more accessible and affordable for people

Lawyers in Pretoria and the Eastern Cape will be most concerned about the judge's recommendations because their areas have been profoundly affected by the redrawn provincial boundaries

If the new provinces are each given a Supreme Court seat, lawyers who had become used to dealing in Pretoria with civil litigation from the former Transvaal, face the prospect of their business moving elsewhere

A similar problem exists in the Eastern Cape where Umtata and Bisho are competing with Grahamstown for the Supreme Court seat Port Elizabeth and East London also have grounds for claiming the prize and competition is expected to be stiff

It is to be expected that provincial premiers would want their own Supreme Court seats and not be allocated a mere circuit court

Hoexter believes any centre which can support a viable seat for the Supreme Court needs to meet three vital requirements

- A significant number of attorneys, settled in the area, who are experienced in Supreme Court litigation
- A similar number of settled advocates who have proven track records in the Supreme Court
- Judges willing to move to or already living in the area

The commission has already asked interested parties to submit recommendations to its office Public hearings are also to be held

Interested parties should call the commission at (012)341 5544/9535 or fax (012) 341 7172 The address is PO Box 55367, Arcadia 0007

Heavy workloads, stress and poor salaries cause crisis in justice system

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ARG 12/6/95

Staff Reporter

MAGISTRATE'S courts across the country are facing a growing crisis as more discontented prosecutors and magistrates resign

Heavy workloads, stressful working conditions and grossly inadequate salaries are forcing increasing numbers of prosecutors and magistrates to leave the service and seek employment in the private sector.

While some have opted to become attorneys or advocates, others have started their own businesses.

One former prosecutor from the Cape Town Magistrate's Court has started his own coffee shop in the city

According to statistics released by the Department of Justice, 128 prosecutors resigned during the period May 1, 1994, to June 2, 1995.

Resignations of magistrates for the same period were 33 — including the resignation of one senior magistrate.

Discontent among personnel revolves mostly around poor working conditions, including disproportionate workloads and poor salaries.

Magistrates at the Cape Town Magistrate's Court are having to do an average of six criminal trials during their working day.

Obviously they manage to do so by postponing an inordinate number of cases with the result that justice is severely delayed

So overworked are prosecutors that many come to trial unprepared and not even having read the state docket — essential to the preparation of any case.

In his budget vote speech to the Senate recently, the Minister of Justice, Dullah Omar, admitted that there was "an immediate crisis with regard to salaries which needs to be addressed urgently".

Salary problems affected deputy attorneys general, state advocates, prosecutors, state attorneys, law advisers and other legal personnel, said Mr Omar

"A major problem in this regard is that while we are dealing with professionals, they are not being treated as professionals"

Mr Omar said that 449 recommended posts in the Department of Justice could not be created because of a shortage of funds.

In the 1993/4 financial year, personnel in the Justice Department worked 444 689 hours of voluntary unpaid overtime, he added

Apart from overwork and poor salaries, magistrates and prosecutors also complain about poor and congested working conditions and inadequate facilities

Former homeland areas are the worst affected with courts in many towns not having running water, electricity or functional sewerage systems.

Archaic communication and recording equipment are common and at one court, staff have to take turns at using the only available table to do their work.

Several attorneys said the criminal justice system was facing a serious crisis of credibility, something which was exacerbating a crime rate already out of control

Soaring crime is putting courts under pressure

ARG 12/6/95 (252)

□ *Dog-tired prosecutors quit in droves*

DAVID YUTAR
Staff Reporter

AS the crime rate throughout South Africa soars, magistrates' courts are finding themselves unable to cope with the increase in the number of cases

Hopelessly overworked and underpaid, prosecutors are leaving the service in increasing numbers

"Police and the justice authorities are now openly admitting what social theorists prophesied as early as the 1970s, namely that crime is more and more being administered rather than fought," says Lovell Fernandez, who lectures in criminal law and justice at the University of the Western Cape

Statistics released by the Department of Justice reveal that magistrates and prosecutors, already seriously underpaid, are now overloaded with work

For example, the Cape Town Magistrates' Court with its 10 courts handled 1 138 trials in January, 1 186 in February, 1 323 in March and 1 208 in April

There were 2 269 new cases in January, 1 731 in February, 1 889 in March and 1 638 in April

Based on April's figures, one court was having to handle approximately 120 cases a month

Given there are 22 court days in each month, this means about six trials a day for each court, besides all the new cases coming in

In the Cape Town Regional Court conditions do not look much better, with 659 trials being handled in April by seven courts

The Regional Court handles the more serious criminal matters such as rape and robbery

"The average court day is approximately five and a quarter hours (taking into account adjournments), which boils down to less than an hour for each trial," comments a senior justice official

So busy are most prosecutors that they come to court unprepared for trials and not having even interviewed state witnesses

"Prosecutors regularly obtain the docket on the day of the trial," says a senior Johannesburg advocate who often appears in the Magistrates' Court

"How can they possibly absorb what is written in the docket?

"Previously they would have to have the docket for a minimum of one week before the trial and in more serious cases for one month

"These days it is not uncommon for prosecutors to be seen going into court reading the docket for the first time

"Because prosecutors are so overworked the only way in which they can properly prepare for trial is to do so outside of working hours

"In the past nine months prosecutors worked 4 000 hours overtime, yet their salaries remained the same," says Professor Fernandez

"They are all highly stressed, work till late and regularly take files home

"Last week a prosecutor collapsed in court

"Not surprisingly, they are resigning in droves"

In one week recently, three prosecutors in the Cape Town Magistrates' Court (with a combined total of 27 years' experience) resigned

There have been four resignations since the beginning of January, all control staff or more senior personnel

Many prosecutors resign because of dissatisfaction with their low salaries

A prosecutor with a BA Llb degree will start off in the service with a salary of R33 000 a year

"That's less than some cleaners earn," says Professor Fernandez

"When a person who has spent five years doing his Llb and a further three years training at the Magistrates' Court, leaves the service to start his own coffee shop, that's eight years of the taxpayers' money wasted"

The burdens on magistrates are also just too great

"When the jurisdictional limitation of the Magistrates' Court was R20 000, magistrates had to sit for 105 hours a month — they were already 'overseated' (overloaded) by 21 percent

"Now that the jurisdiction has been increased to R100 000, this is even more so

"As a matter of urgency, magistrates' salaries need to be increased"

One of the reasons for their being overloaded, says Professor Fernandez, is that magistrates have to perform both criminal and administrative functions, such as performing marriages

Magistrates' courts handled approximately 98 percent of all criminal cases and 95 percent of all civil cases

"More than the Supreme Court, they shape the public's image of justice," he concludes "That's why it is so important that they are seen to function efficiently"

● In his recent address to the Senate during the budget vote, Justice Minister Dullah Omar admitted "serious problems" in the country's magistrates' courts

One of the most pressing of these was the problem of inadequate facilities, particularly in the rural areas

Many of the courts in the former homelands were in a bad state of repair

Problems included no running water, no electricity or functional sewerage systems, leaking roofs and blocked toilets

"So critical is the shortage of accommodation in certain areas, that court personnel are often obliged to take turns at using the only available table they have to do their work"

Many angry over abolition of death sentence

(252) CT 12/6/95

THERE has been public anger at the scrapping of the death penalty — and several organisations are banding together to fight the controversial move

Some churches, agricultural unions, the South African Police Union and hundreds of private individuals have voiced their outrage at the Constitutional Court's decision, saying it will increase violent crime. — Staff Reporter

Omar reinstates free legal advice

(252)

Susan Russell

BD 13/6/95

JUSTICE Minister Dullah Omar yesterday revoked a directive scrapping automatic free legal representation to people on trial for murder or other crimes where the death penalty could have been imposed

He said the departmental directive was issued in his absence last week without prior consultation with him.

The department had informed the registrars of the supreme courts that the pro deo system was to be scrapped with immediate effect because the death penalty was now deemed unconstitutional.

A unanimous ruling handed down by the Constitutional Court last week struck down capital punishment as being a cruel, inhuman and degrading punishment which violated the right to life.

Pro deo counsel, drawn from the Bar's ranks of advocates, has been provided to the accused of murder and other serious crimes in which the trial judge, until last week's ruling, had the discretion of imposing the death penalty.

Omar said concerns voiced to him by the Bar and judiciary in response to his department's directive were well-founded and he had instructed the justice department to withdraw it immediately. He expressed his regret at the "dislocation and inconvenience" caused by his department.

"I do not think such a step should have been taken without prior consultation with the legal profession and the judiciary," he said.

"The system certainly needs to be reviewed and the minister of finance and the department of state expenditure need to be consulted urgently as well," Omar said.

Sapa reports that Omar said: "During my absence, and without prior consultation with me, departmental officials took it on themselves to inform the registrars of the various supreme courts that in view of the unconstitutionality of the death penalty the pro deo system would fall away with immediate effect."

Omar said he had informed the vice-chairman of the General Council of the Bar of his decision as well as the Chief Justice and Senior Judge President.

He said he would be setting up consultations with the Bar Council, the judiciary and other role players to decide on an appropriate course of action.

Omar to review pro deo standing for serious crimes

ARG 13/6/95 (252)

Political Staff

THE pro deo system — state-sponsored legal counsel in serious criminal cases where the accused is indigent — is to be reviewed in the wake of the abolition of the death penalty, says Justice Minister Dullah Omar

In a statement yesterday, Mr Omar said the finance minister and the department of state expenditure would be urgently consulted to find a new approach to providing legal counsel for criminals likely now to get life imprisonment or other heavy sentences

To date, the pro deo system has applied almost exclusively to cases in which a death penalty was likely and the accused could not afford legal representation

Criminal and civil cases outside of the pro deo system are handled by the Legal Aid Board, a government-funded body to which accused can apply if they are indigent

The legal fraternity has been in a state of confusion since last week's abolition of the death sentence, which was followed by a justice department circular saying the pro deo system was to fall away

Mr Omar said the circular — which was sent to the registrars of the various Supreme Courts — was unauthorised

"I do not think that such a step should have been taken without prior consultation with the legal profession and the judiciary"

Mr Omar added that he had instructed the justice department to withdraw the directive with immediate effect

Meanwhile, he was setting up consultations with the Bar Council, the judiciary and other role players to decide on an appropriate course of action

Bar Council deputy chairman Gerrit Grobler said that had the pro deo system been scrapped without any alternative, courts would have come to a standstill

"I expect that in the future, pro deo cases will be handled by the Legal Aid Board, which will need to have new mechanisms created to shoulder the extra load," he said

● The justice department yesterday established that the man who appeared as South Africa's executioner in Sunday night's *Carte Blanche* programme on M-Net was the executioner's assistant

PREVIOUS DIRECTIVE 'ISSUED WITHOUT CONSULTATION'

Justice Minister restores free legal aid for serious crimes

CT 13/6/95 (252)

MINISTER OF JUSTICE Mr Dullah Omar has criticised officials who issued a directive that the pro deo system of legal representation would fall away after the abolition of the death penalty. **ANTHONY JOHNSON** reports.

THE government yesterday reinstated the pro deo system of free legal representation for defendants who cannot afford a lawyer in cases which used to allow for the death penalty

Announcing the reversal, Justice Minister Mr Dullah Omar slammed departmental officials who "took it upon themselves to inform the registrars of various Supreme Courts that, in view of the unconstitutionality of the death penalty, the pro deo system would fall away with immediate effect"

The minister said the directive was sent out in his absence and without consulting him

"I do not think such a step should have been taken without consultation with the legal profession and the judiciary," he said

Mr Omar said since his return from overseas he had listened to "the serious concerns" expressed by the Bar and the judiciary "I consider their concerns to be well-founded "

The minister said the system "certainly needs to be reviewed" and that the Minister of Finance and the Department of State Expenditure needed to be consulted urgently

"I have therefore instructed the department to withdraw the directive with immediate effect," he said

Mr Omar said he had also spoken with the vice-chair of the General Council of the Bar and the senior Judge President

"I regret the dislocation and inconvenience that has been caused in this regard I am setting up consultations with the Bar Council, the judiciary and other role players to decide on the appropriate course of action," Mr Omar said

● Bar Council chairman Mr Andre Blignault last night welcomed Mr Omar's announcement, saying the pro deo system had been stopped "overnight".

"There was no consultation over a substitute system (of legal aid)," Mr Blignault said

He said, however, that Mr Omar's announcement was not an end, but "the start of a process" of broad consultation over a new legal aid system

'Pro deo' system to be reviewed

Star 13/6/95 (252)

BY HELEN GRANGE

The *pro deo* system — State-sponsored legal counsel in serious criminal cases where the accused is indigent — is to be reviewed in the wake of last week's abolition of the death penalty, Justice Minister Dullah Omar said yesterday.

He said the finance minister and the Department of State Expenditure would be urgently consulted to find a new approach to providing counsel for criminals likely to get life imprisonment or other heavy sentences

To date, the *pro deo* system has applied almost exclusively to cases in which a death penalty was likely and the accused could not afford legal representation.

Criminal and civil cases falling outside of the *pro deo* system are handled by the Legal Aid Board, a government-funded body to which an accused can apply if he or she is indigent

The legal fraternity has been in a state of confusion since last week's abolition of the death sentence, which was immediately followed by a Justice Department circular saying the *pro deo* system was to fall away.

But yesterday Omar said the circular — which was sent to the registrars of the various supreme courts — was unauthorised and done in his absence.

"I do not think such a step should have been taken without prior consultation with the legal profession and the judiciary The system certainly needs to be reviewed and the minister of finance and the department of State Expenditure need to be consulted urgently," he said.

Omar added that he had instructed the Justice Department to withdraw the directive with immediate effect.

Meanwhile, he was setting up consultations with the Bar Council, the judiciary and other role-players to decide on an appropriate course of action.

Deputy chairman of the Bar Council, Gerrit Grobler, said the courts would have come to a standstill if the *pro deo* system had been scrapped without any alternative

"I expect that in the future, the *pro deo* cases will be handled by the Legal Aid Board, which will need to have new mechanisms created to shoulder the extra load," he said

■ The Justice Department yesterday established that the man who appeared as South Africa's executioner on Sunday night's *Carte Blanche* television programme on M-Net was in fact the executioner's assistant.

The executioner, who has refused to be identified or interviewed since the death sentence was abolished last week, alerted an Afrikaans daily newspaper on Sunday night that the reference to "the executioner" in the programme was incorrect

He said members of his family had phoned him following the programme to express their shock at the interview

Justice Department spokesman Pieter Durant said the executioner's assistant, who was silhouetted to hide his identity, did not wish to be identified at this stage either

Unburden the statute books

By Mzimasi Ngudle

(252) Sowetan

THE latest Constitutional Court [illegible] on juvenile corporal punishment [illegible] an urgent need for the Government to repeal statutes which are clearly in breach of the Constitution.

While sensitive issues like abortion, hate speech and capital punishment deser[illegible] unjaundiced counsel of Constitutional Court deliberations, there is no doubt that the flogging of juveniles could have been outlawed without the inevitable cost of enlisting the court's sanction.

Except for the death penalty, flogging — which was authorised by section 94 of the Criminal Procedure Act, and forced confessions which section 217 of the same Act made easy to extract — were so patently unconstitutional as to render Constitution Court sanction altogether superfluous.

While acknowledging that controversial issues like capital punishment were best left to the adjudication of the court, Mr Jody Kollapen, a human rights lawyer, agrees that sections 94 and 217 could have been dealt with by Parliament.

Delivering his judgment in the case of State versus Williams, which dealt with juvenile corporal punishment, Mr Justice Pius Langa noted: "The appellants and the state agreed that provisions in our law authorising corporal punishment for adults are inconsistent with the Constitution.

"This consensus does not remove those provisions from the statute book. They have not been set aside by a competent body or authority, and the relevant legislation has not been repealed."

Before the date of the hearing, the attorney-general of the Cape Supreme Court told the Constitutional Court he wished to withdraw his argument because he shared the view that provisions relating to corporal punishment were unconstitutional.

Langa's dictum, and the consensus between the state and the appellants, show clearly that the matter was a *fait accompli* before the hearing.

In Williams' case, six male juveniles were sentenced by different magistrates to the "moderate correction" of a number of strokes with a light cane. All the sentences came into operation after the Constitution came into operation on April 27 last year.

The presiding magistrate requested the sentences to be subjected to a special review because he doubted whether juvenile whipping was a permissible punishment in terms of the Constitution.

At this stage, magistrate's courts could have nullified the sentences if section 94 had been repealed, saving the costs of referring the case to the Cape Supreme Court.

The Cape Supreme Court could also have done the same, saving costs of having the matter being heard by the Constitutional Court. This would also trim the Constitutional Court's workload, leaving ample time for the judges to do more research on constitutional jurisprudence.

This is not to suggest that unconstitutional statutory provisions should stand until repealed by Parliament.

Lawyers for Human Rights director Jody Kollapen [illegible] agrees that Parliament could have dealt with juvenile corporal punishment instead of the Constitutional Court.

Aggre[illegible] proach the Constitution[illegible] challenge the [illegible] those laws [illegible] pealed by Parliament.

And unt[illegible] people [illegible] their constitution[illegible] quieting scenario [illegible] tional Court [illegible] deleting unconstitutional [illegible] the statute book.

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In addition to [illegible] ination of our la[illegible] Constitution [illegible] payer[illegible] tion [illegible] invest the Supreme [illegible] tutional court [illegible] argued [illegible] court [illegible].

While Adv[illegible] the Leg[illegible] legisla[illegible] line with the Constitution [illegible] as five [illegible] is little doubt [illegible] would be quicker than [illegible] litigation.

> **"The South African Law Commission can perform the task of identifying unconstitutional laws and recommend that Parliament repeal these laws"**

Apartheid victims demand justice

(252)

BD 14/6/95

Adrian Hadland

CAPE TOWN — Victims of apartheid atrocities wanted justice and were not prepared to forgive and forget, the Senate justice committee heard yesterday

Mhleli Mxenge, brother of assassinated Durban attorney and activist Griffiths Mxenge, said the families and victims of human rights abuses in the apartheid era were "demanding their pound of flesh"

Victims could be forced to take the law into their own hands if the commission swamped their appeals for justice, he said

"I do not see how we can forgive people who did us so much wrong."

Mxenge and Nontsikelelo Biko, widow of black consciousness leader Steve Biko, were addressing the committee on behalf of the Eastern Cape-based Association of Victims of Unsolved Apartheid Atrocities

The committee is currently considering amendments to truth commission legislation already passed last month by the National Assembly.

Mxenge and Biko rejected the amnesty provisions of the draft legislation, saying "the culprits must be charged".

Members of the association feared the truth commission process would overwhelm private initiatives to prosecute those responsible for the deaths of family members, Mxenge said.

"We are being overtaken by the truth commission, it is taking over and has got the power to wipe the slate clean"

News of the legislation had been greeted with "shock and dismay" by the association, Mxenge said

Association members, estimated to number around 500, were not prepared to forgive and forget even if this was in the interests of national reconciliation.

"The only way out of this that will satisfy us is to see justice done. We owe it to our members; we owe it to our families"

Mxenge said hopes had been high that the new government would prosecute human rights violators within months of the election last year

But government had become "so married" to the truth commission, what had happened in the past no longer appeared to matter, he said.

"In the light of this frustrating procedure, it is clear that people are being encouraged to take the law into their own hands in order to get their pound of flesh."

Biko said new information had come to light concerning Steve Biko's death, and demanded the reopening of the inquest.

It would be possible for the commission to hear new evidence in the Mxenge and Biko cases, according to State law adviser Gerhard Nel.

Committee chairman Mohseen Moosa said even though severe atrocities had happened in the past, the legislation was aimed at "trying to deal with that past in order to build a prosperous nation and put that pain behind us".

The gallows makes way for ubuntu

ST 11/6/95

CARMEL RICKARD reports on the 11 opinions which made up this week's landmark judgment outlawing the death penalty

(252)

WHEN the Constitutional Court ruled the death penalty unconstitutional this week, all 11 judges knew their decision could prove unpopular

The main judgment, written by the court president, Judge Arthur Chaskalson, paid special attention to the argument that public opinion favoured capital punishment In separate, concurring decisions, so did several of the other judges.

Judge Chaskalson said that if public opinion or a referendum were to be decisive, the court would not need to decide what the constitution meant Parliament, elected by the people, could take full responsibility for protecting rights

Yet the very purpose of the new constitution was to move away from parliamentary supremacy, empowering the court to protect the rights of minorities and other vulnerable groups

He said the court could therefore not allow itself to be deflected from its duty to act as an independent arbiter of the constitution by making choices "on the basis that they will find favour with the public"

The court's unanimous decision to outlaw capital punishment came as no surprise, but few expected all 11 judges to write judgments.

The result is a useful insight into the style and viewpoints of each member of the court,

But he says if there is an individual right not to be put to death by the state, there is also an obligation on the state to protect society from being harmed again by an unreformed killer or rapist

Judge John Didcott quotes extensively from court judgments in other countries, illustrating the degradation of capital punishment He offers figures showing that violent crime did not rise significantly after the death penalty moratorium, and notes that statistical arguments on whether capital punishment serves as a deterrent are "always inconclusive"

Interspersed among more conventional legal sources in the judgment of Judge Sydney Kentridge are quotes from Winston Churchill, Robbie Burns and The Times of London He acknowledges the horrifying callousness of many crimes but says the state should not "match" this callousness Instead it should set an example of evolving civilisation He also questions whether it is true that public opinion is strongly behind the death penalty

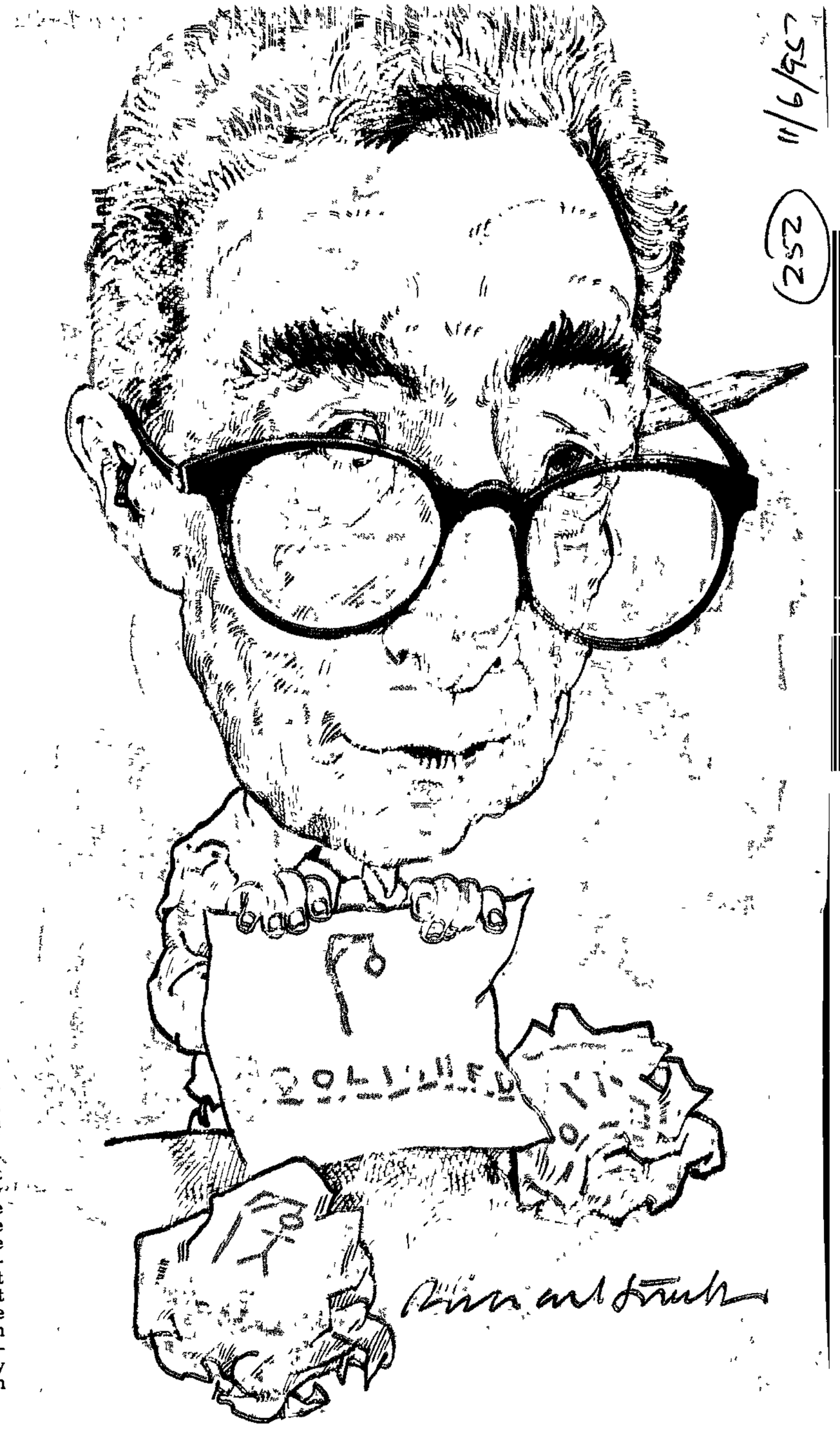
IN HIS remarks, Judge Johann Kriegler takes a slightly different approach, saying the issue is not whether he favours abolition or retention, nor whether the Constitutional Court, Parliament or public opinion favour it, but whether the constitution allows it.

before finding out the views of the black community, saying it amounts to canvassing black opinion for the court's decisions

The decision of Judge Ismail Mahomed contains some of the most ringing phrases of the collective judgment, pointing out that the new constitution marks a rejection of a "disgracefully racist, authoritarian, insular and repressive" past. Decisions taken by an elected body such as Parliament differ from decisions by the court, which often have to take into account quite different considerations

He says the death sentence shows "a philosophy of indefensible despair", and that when someone is executed it is not only the criminal whose dignity is invaded "The dignity of all of us, in a caring civilisation, must be compromised by repeating, systematically and deliberately, what we find so repugnant in the conduct of the offender."

Judge Mahomed says offenders are usually right when they calculate that they will not be caught. And he goes further than any of the other judges in saying what he thinks should be done to improve the chances of arrest and conviction the state must pay the police more, improve their training, station more in problem areas and help increase their legitimacy among the communities in which they work.



ST 11/6/95

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paratively little during debate so far It also shows the effect of appointing people from a broader cross-section of the community, with the judges' inputs complementing each other

The court deliberately failed to define two concepts or phrases previously thought crucial to a decision about capital punishment the "right to life" and "negating the essential content of a right"

ALTHOUGH he discussed both, Judge Chaskalson said he did not think he needed to resolve their meaning in this case Other judges explained that this avoided prejudging abortion and euthanasia — both bound to be heard by the court at some stage

The concurring judgments, handed down alphabetically, begin with that by Judge Laurie Ackermann He emerges as one of the serious academics on the bench, with quotes in German from the German Basic Law and speculation about the origins of the constitutional state compact — how the individual and the state interact in society

His judgment emphasises how the death penalty is arbitrary and unequal in its application and thus clashes fundamentally with the values of the new constitution

"The starting point, the framework and the outcome of the exercise must be legal" It is a decision made by lawyers who are "judges, not sages, their discipline is the law, not ethics or philosophy and certainly not politics"

Judge Pius Langa adds another dimension, recalling the way the political history of South Africa has led to life and human dignity being demeaned Through its policies, the state was part of this "degeneration", but the new constitution signals a dramatic change to the values of a "more mature society" relying on moral persuasion rather than force

He quotes the constitution, which urges that society moves from "victimisation to *ubuntu* (humanness)", and then discusses what *ubuntu* meant in traditional black societies and how this value could change society today

Ubuntu is also discussed by Judge Thole Madala, who says it is a value permeating the constitution The murderer might have shown no mercy to his victims, but society should not take its values and standards from the murderer; instead it should "impose" its *ubuntu* on him

He dismisses a suggestion by the Black Advocates' Forum that the court should not decide the death penalty issue

HE ALSO addresses the socio-economic causes of crime, urging community campaigns against crime and the restoration of the influence of moral authority figures such as teachers and religious leaders

Many support the death penalty because they believe the punishment should be "equivalent in form" to the crime — an argument he rejects "The rape of an offender is not a permissible punishment for a rapist Why should murder be a permissible punishment for murder?"

Judge Yvonne Mokgoro introduces another angle She says the constitution entitles the court to consider decisions of courts in other countries, but it should also consider the values and approach of "our own (ideal) indigenous value system" She says this issue was "regrettably" not argued during the death penalty hearing, and the responsibility to do so lies not only with the judiciary but also with legal practitioners and academics "It is not as if these resource are lacking, what has been absent has been the will and acknowledgement of the importance of the material"

The most academic judgment, that by Judge Kate O'Regan, notes that in the past the death penalty was sometimes imposed for crimes that were motivated by political ideals Thus capital punishment came to be seen as part of the repressive machinery of the former government

She says the actions of the criminals in the test case the court was considering were "abhorrent" The question was not whether perpetrators of such crimes should be punished severely — clearly they should — but rather whether the particular punishment proposed was constitutional

Judge Albie Sachs says the traditions, values and beliefs of all sectors of South African society must be considered in developing a new legal approach under the constitution Courts should benefit from judges of the previous era whose sense of justice transcended the limits of race and should acknowledge writers such as the late Professor Barend van Niekerk, who bravely broke the taboo on criticising the legal system Above all, it means giving recognition to African law and legal thinking as a source of ideas, values and practice.

Judge Sachs then examines historical records of traditional legal practice and concludes that in general capital punishment was not applied as a punishment for murder

Legal aid system being reviewed

CT 14/6/95 (252)

CAROL CAMPBELL
STAFF REPORTER

THE Department of Justice could open legal aid offices in all major centres to assist cash-strapped accused if it decides to rationalise the pro Deo system

Another alternative would be to bring the pro Deo system under the jurisdiction of the Legal Aid Board or, despite the scrapping of the death sentence, leave it to continue as it has

Under the pro Deo system poor people accused of committing serious crimes which could have resulted in the death sentence, were provided with legal representation by the state.

The Legal Aid Board administers legal aid for the poor appearing in Magistrates' Courts

The review of the pro Deo system follows a week of confusion in legal circles after the Department of Justice sent out a circular saying it was to be scrapped because of the abolition of the death sentence

This decision was reversed by Justice Minister Mr Dullah Omar when he returned from a trip overseas

Yesterday Mr Peter Brits, the senior legal administration officer for the Legal Aid Board, said work generated by the pro Deo system could be administered by the board without too much upset.

"Supreme Courts throughout the country hear about 2 000 cases a year — we administer 70 000 cases for the Magistrates' Courts so this extra work would not increase the work load that much."

Umbrella

Acting Judge President of the Cape Mr Justice J J Fagan said the Department of Justice might want the whole legal council system under one umbrella body which could slow down the court process

"The current system works very well," he said

Mr Pieter Durand from the Department of Justice declined to comment on the matter, saying it was still under discussion

TIMES

Call for justice, not truth commission

(252)

Star 14/6/95

BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — Family members of prominent victims of apartheid crimes yesterday rejected the proposed truth commission in favour of criminal prosecutions of security force members

Ntsiki Biko, the widow of Black Consciousness leader Steve Biko who died in police custody in 1977, and Churchill Mxenge, younger brother of anti-apartheid attorney Griffiths Mxenge who was assassinated in 1981, told a Senate hearing considering truth commission legislation that they wanted justice rather than a commission

Their objections are likely to further complicate the passage through Parliament of the legislation — specifically intended to provide solace and redress to families of victims

Although the Bill has already been passed in the National Assembly, it is now being delayed in the Senate, where the ANC has raised objections to the present draft without immediately proposing alternatives

Some parliamentarians said they now doubted the Bill would be passed during the current session of parliament, which is due to end in mid-September

Biko and Mxenge appeared on behalf of the Association of Victims of Unsolved Apartheid Atrocities, formed in the Eastern Cape in March this year as a pressure group "to take the necessary action to see to it that justice is done"

Mxenge, who is chairman of the group, said he had approached the Senate committee after a meeting with Justice Minister Dullah Omar

He said in a statement handed to the committee "When we voted the new government into office, we immediately nursed high hopes that at last the law was going to take its course To our shock and dismay, we find ourselves exactly where we were 10 years ago, if not worse off, at the height of the repression as victims

"The only exception created by the truth commission is that under this government, at least if the criminals tell the truth they will be forgiven, irrespective of whether the victims are happy with that or not

"If the commission wants to know what kind of response is expected by the victims from the commission, the commission needs to look no further than the Chris Hani case.

"In the Chris Hani case, we feel that justice was done"

Truth legislation: Victims' families prefer prosecution

(252)

POLITICAL STAFF

CT 14/6/95

FAMILY members of prominent victims of apartheid crimes yesterday rejected the proposed Truth Commission in favour of prosecutions of security force members

Mrs Ntsiki Biko, widow of black consciousness leader Mr Steve Biko, who died in police custody in 1977, and Mr Churchill Mxenge, younger brother of assassinated attorney Mr Griffiths Mxenge, told a Senate hearing on the Truth Commission legislation that they wanted justice rather than a commission

Their objections are likely to complicate further the passage of the legislation that is specifically intended to provide solace and redress to families of victims.

The bill is being delayed in the Senate, where the ANC has raised objections to the present draft without immediately proposing alternatives Some MPs now doubt it will be passed during the current session of Parliament

Heroes' families demand justice

Sowetan 14/6/95 (252)

Sowetan Correspondent

Biko's wife and Griffiths Mxenge's brother voice their dissatisfaction over the Truth Commission

FAMILY MEMBERS of prominent victims of apartheid crimes yesterday rejected the proposed Truth Commission in favour of criminal prosecutions of security force members

Mrs Ntsiki Biko, wife of Black Consciousness leader Steve Biko who died in police custody in 1977 and Churchill Mxenge, younger brother of anti-apartheid attorney Griffiths Mxenge who was assassinated by policemen in 1981, told a Senate hearing considering the Truth Commission legislation that they wanted justice rather than a commission

Their objections are likely to further complicate the passage through Parliament of the legislation which is specifically intended to provide solace and redress to families of victims

Biko and Mxenge appeared on behalf of the Association of Victims of Unsolved Apartheid Atrocities formed in the Eastern Cape in March this year as a pressure group "to take the necessary action to see to it that justice is done" Mxenge, who is chairman of the group, said he had approached the Senate committee after a meeting with Justice Minister Dullah Omar He called for the prosecution of former policeman Dirk Coetzee who has admitted to being implicated in the killing of Mxenge

Biko said the family was demanding that the case be reopened Police officers involved in the Biko case had since been promoted and should be charged instead, she said

COMBINED FORCE: Provincial police commissioner Lieutenant-General André Beukes and Western Cape attorney-general Mr Frank Kahn (right) announce that their departments are to work more closely together in the fight against crime *PICTURE: CLIVE SMITH*

'Punishment must fit crime'

(252)

CRIME REPORTER

POLICE and state prosecutors are to work together more closely to ensure criminals are appropriately punished now that the death penalty has been abolished.

Provincial police commissioner Lieutenant-General André Beukes and Western Cape attorney-general Mr Frank Kahn said this at a press conference yesterday when they announced that they would soon be discussing justice problems with community forums around the province

"The police and my department will work more closely together in concentrating on an effective system of apprehension, conviction, and punishment The third partner must be the community

"I would like to see a total restructuring of the parole system Too much authority vests in the prisons Faceless bureaucrats who account to no one make these decisions

"Lawyers should be involved in assisting with these decisions as happens in some overseas countries."

Mr Kahn said his department had given the relevant government departments suggestions on how the parole system could be improved and were still waiting for feedback

CT 15/6/95

IFP backs Nats' call for hanging referendum

(252)

Political Correspondent

THE Inkatha Freedom Party has backed a call by the National Party for a referendum on the death penalty

A snap debate on the restoration of the death penalty is to be held in parliament next week ARG 16/6/95

In the debate, the NP will ask for the constitution to be amended to allow capital punishment, following the Constitutional Court's ruling that the death penalty does not fit in with the constitution's right-to-life provision

Abraham Mzizi, chairman of the IFP committee on justice, said the court should not be allowed to decide as fundamental an issue as the death penalty

"The constitutional court is empowered to enforce the constitution, and override parliament when parliament oversteps its powers, but the court is not entitled to discover law in the constitution which does not exist."

The proper and democratic way to deal with the death penalty was a nationwide referendum and then for parliament to pass a law on the matter, Mr Mzizi said.

Call for poll on death penalty

CT 16/6/95

THE National Party and Inkatha plan to use Monday's snap debate in Parliament on the abolition of the death penalty to drum up support for a referendum on the issue.

Opinion polls this week show that more than three out of five South Africans oppose the Constitutional Court's decision to scrap the death penalty. The IFP yesterday supported the NP's call for a referendum, dismissing the ruling by a court which is "not elected by or accountable to anyone".

Political Correspondent

(252)

Parole comments: Prisons lash Kahn

(252) CT 16/6/95

STAFF REPORTER

A WAR of words has erupted between Cape attorney-general Mr Frank Kahn and the Department of Correction Services over parole

At a news conference on Wednesday with Western Cape police commissioner Lieutenant-General André Beukes where it was announced the police and prosecutors would work together more closely, Mr Kahn said he would like to see a total restructuring of the parole system

"Too much authority vests in the prisons. Faceless bureaucrats who account to no one make these decisions," Mr Kahn said

Department spokesman Captain Mike Green said yesterday Mr Kahn illustrated his "ignorance" of the prison system "with generalisations and tasteless statements".

He also suggested lawyers should be involved in parole decisions as happens in some countries overseas

But Captain Green accused Mr Kahn of attacking the department because he was "dissatisfied" with the sentence and parole of murderer Guiseppe di Blasi, who was freed in February after serving 17 months of a four-year sentence for murdering his ex-wife, Ms Francesca Gobbi

"It is unreasonable of Mr Kahn to abuse his position to slander the department just because there was one case which did not suit his strategy," he said

Overcrowding

He said SA had "one of the strictest parole systems in the world" and in no country did prisoners serve their full sentences

"It seems Mr Kahn is not informed about circumstances at Pollsmoor Prison. He should visit the prison and see the poor conditions caused by the overcrowding due to, among other things, the large number of awaiting-trial prisoners who wait unnecessarily long for their cases to be concluded

"This is a problem which could be largely solved if Mr Kahn and his office see to it that trials are expedited," Captain Green said

'Public protection dominant factor'

Star 16/6/95

Omar seeks full life sentences

(252)

BUILDING up of a human rights culture does not imply being soft on crime, asserts justice minister

■ BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — The Government wanted to introduce full life sentences for murderers and rapists who were beyond rehabilitation and who were a threat to public safety, Justice Minister Dullah Omar said yesterday

Omar's comments, made in an interview with The Star, came a week after the Constitutional Court unanimously scrapped the death penalty, prompting fears that early prison releases would unleash violent criminals on the public

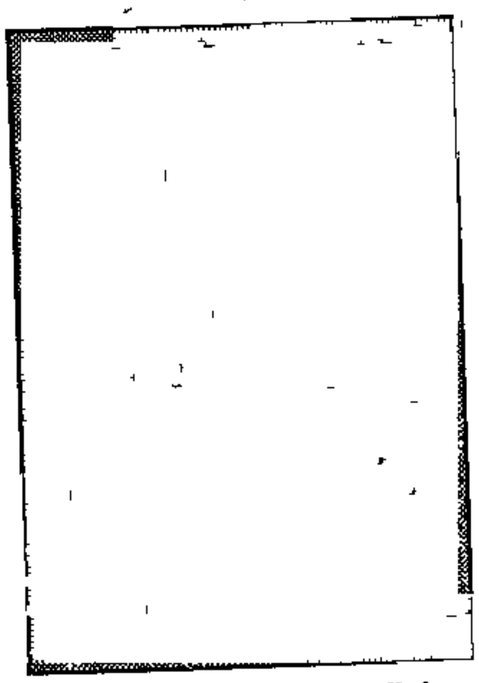
Dangerous

Omar said legislation was being prepared to ensure life sentences meant a life in jail and to ensure that dangerous criminals were not able to abuse their constitutional right to bail

"The matter of the meaning of a life sentence we are going into right now, said Omar

"There are cases where life sentences must mean life in prison People should know they are going to serve their whole sentence

"In cases of murder where there are no extenuating circumstances, the courts should not hesitate, as some of our courts have done, to impose life sentences



Justice Minister Dullah Omar .. 'legislation being prepared'.

"There is a category of crime where the protection of the public becomes the dominant factor, like murder, robbery and rape

In that category, while rehabilitation may be a factor in some cases, in general the protection of the public is the most important factor

"We cannot have a situation where people are prematurely released," Omar said

The justice minister said the only long-term solutions to crime were socio-economic upliftment and inculcating a human rights culture

In the short term, however, "something must be done to prevent the terrible crimes of violence which we are experiencing"

"There is a perception in some quarters that the courts give bail because the Ministry of Justice is soft on crime It's a terrible thing if people see the building up of a human rights culture as implying being soft on crime

"Building a human rights culture is a precondition for eliminating crime in the long term But it does not mean we are soft on crime

"We need to be hard on crime, we must come down hard on crime and on criminals Our courts are doing that"

Turning to the truth commission, which the minister has supported enthusiastically, Omar said there was a "misperception that the truth commission was an alternative to prosecutions"

Referring to evidence given by family members of Steve Biko and Griffiths Mxenge who told the Senate justice committee they wanted prosecutions instead of the truth commission, Omar said he could understand their point of view

Amnesty

"If there is any evidence that any person committed an offence, the Attorney-General is duty-bound to prosecute," he said

The constitution guaranteed people the right to ask for amnesty so, while prosecutions could take place, the accused also had the right to apply for amnesty

The Biko and Mxenge demand for retribution was "a classic example of what can happen unless there is a truth commission", said the minister

IFP recalls death penalty

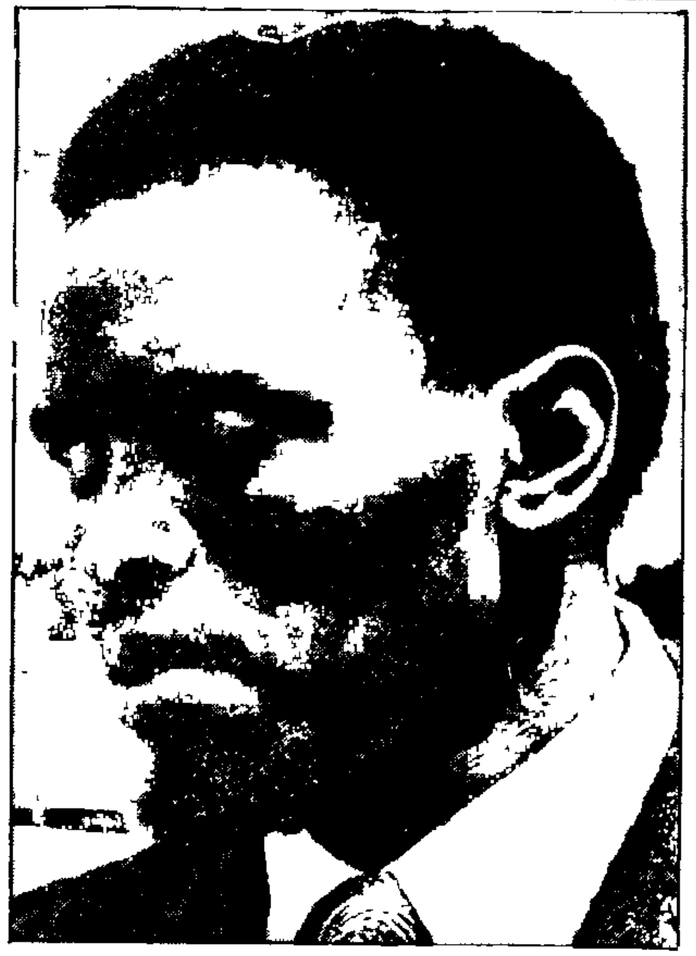
(252) Sowetan 16/6/95

THE Inkatha Freedom Party yesterday joined the National Party in calling for a referendum on the scrapping of the death penalty

Parliament will hold a snap debate on the issue on Monday in which the NP will call for a constitutional amendment to re-introduce the death penalty for serious cases of murder, robbery and rape The IFP said yesterday the Constitutional Court could only interpret the Constitution and not determine public policy

"The proper and democratic manner to deal with the death penalty is to hold a nationwide referendum and then for Parliament to pass a law dealing with the death penalty," the IFP said

Justice Minister Dullah Omar yesterday welcomed the debate on the issue He said the constitutional provision of the right to life was so strong that any court would have had difficulty coming to another opinion



'LEFT COLD' ... Steve Biko died in 1977

GUNNED DOWN ... Victoria Mxenge

WHO TO BLAME? ... Griffiths Mxenge

JUSTICE WAS DONE ... Chris Hani

'Charge the killers'

(252) CP 18/6/95

Covered-up cases should be opened

THE TRUTH Commission, in its current form, will not satisfy the families of victims of apartheid crimes. If the killers of Chris Hani were tried and sentenced, they argue, why shouldn't the killers of Steve Biko, the Mxenges and others receive the same kind of punishment? RAFIQ ROHAN reports.

A COMMISSION will not satisfy Ntsiki Biko, widow of Steve Biko Nor will it satisfy Churchill Mxenge, brother of Griffiths Mxenge.

They both told a Senate hearing on the Truth Commission this week that they want the perpetrators of the deaths of their loved ones brought to court and charged with murder

Biko delivered an impassioned speech to the hearing, insisting that her husband's case be re-opened, the culprits properly charged and the cover-up exposed Steve Biko died in police custody in 1977, whereafter the then minister of justice announced in parliament "The death of Steve Biko leaves me cold"

Security police at the time claimed that Biko died of a hunger strike Ntsiki Biko dismisses the claim The following is her testimony to the hearing

"The warrant of arrest or detention produced at the inquest had indicated that Steve should be treated like any awaiting-trial detainee but an affidavit produced by a magistrate who visited him at Walmer Police Station stated that he had not had a wash, was kept naked and chained His only daily meal was half a loaf of bread and water

"In our own investigations which we got from our sources, investigation of the cerebro-spinal fluid on doing a lumbar puncture, the speciman label was incorrectly named and the result was a heavily blood-stained fluid which was suggestive of brain damage Even the photographs presented in court as evidence showed the brain covered with blood

"Amazing still is that a patient in a serious condition could be transported naked in the back of a Landrover without proper medical staff and facilities and no food for twelve hours to Pretoria In our minds it is very clear that Steve was transported from Port Elizabeth to Pretoria dead already, so it was just a cover-up Hence the then minister of justice Jimmy Kruger in his shocking statement at a National Party meeting announced that his death left him cold' After his earlier statement that Steve died in a hunger strike, he retracted and said that he got all information from the Port Elizabeth Security Police Mr Vorster, Jimmy Kruger's prime minister, said Steve's death was unfortunate and did not make any further comments

"A statement by Mr Horak, who was with the security police at the time in Port Elizabeth, stated that they were in a bar in Port Elizabeth when somebody told them that Steve had insulted the head, Colonel Goosen They then went to Walmer Police Station where they severely assaulted Steve, who was chained with both hands and feet tied to a grille It is unfortunate that Mr Horak is now in hiding for fear of his life from his colleagues

"To show their contempt of the whole proceeding they were sarcastic enough to say that Steve was practising yoga When pressed further by the family advocate, Major Hansen of King William's Town Security Police confessed that it was just gossip and in his opinion Steve was not a violent man as he had met him on various occasions in King William's Town security offices for questioning

"His arrest was suspicious to us because Steve was arrested in Grahamstown for breaking his banning order in King William's Town

"When both major political organisations, the ANC and PAC, were banned, there was a vacuum, hence Steve and colleagues emerged with an idea for blacks to unite under one umbrella, Black Consciousness That, to us, seemed to have signed his death warrant

"Initial reports from police were that the security police concerned were transferred, but to our amazement the head of security, Goosen, was promoted to Pretoria as Commissioner of Police and Major Snyman was also promoted.

Churchill Mxenge testified at the hearing as chairman of the Association of Victims of Unsolved Apartheid Atrocities and presented a list of some of the many crimes that have gone unpunished

- A number of families in Alice, from a village called Umsobomvu Location, had their homes destroyed and family members shot and killed by unknown gunmen during the reign of the Ciskeian military government. Ciskei hit squads have been blamed for the atrocities.
- The perpetrators of the Bisho massacre have gone unpunished. The Ciskei military government passed a decree nullifying prosecutions. Mxenge said that an officer in charge of the troops carrying out the massacre has since been promoted

"Yesterday's killers," he said, "are being made today's heroes and yesterday's heroes becoming forgotten men of today".

- Another unexplained case is that of Phindile Baninawa Mfeti, who was detained in 1976, released in 1977 and placed under house arrest for five years He then disappeared without trace while in his final year of BProc studies at Natal University. Mxenge said that former security police officers like Craig Williamson and Dirk Coetzee should be called in to assist in this investigation
- Gwazo Twala from Alwal North was detained at the Umtata Central Prison "According to information received from his family, he was taken from the prison by the authorities and then thrown down a cliff The family is convinced that the murder was committed by the Umtata Central Prison staff," Mxenge said
- Mapetla Mohapi's wife, Nohle, is still not happy about the inquest finding on her husband's death It is clear that the police wrote a suicide note resulting in a "no blame" finding by the court, Mxenge said
- Victoria Mxenge was gunned down in front of her children at her home in Umlazi in 1985 Her inquest, too, resulted in a "no blame" finding. A former security policeman currently on trial should be charged with Victoria's murder, Mxenge said, also highlighting the case of his brother, Griffiths, who was similarly killed

In his presentation to the hearing Mxenge said "We hope our pleas for justice to be done will not fall on deaf ears In the Chris Hani case we feel that justice was done and we applaud the government for the stand it took and we want the same stand for everybody"

'140 shots at minibus'

Stephane Bothma

PRETORIA — Vlakplaas C10 unit members allegedly fired 140 bullets into a minibus carrying four would-be bank robbers during an ambush outside Nelspruit in 1992, the Transvaal Supreme Court was told last week.

About 224 spent cartridges found at the scene had been handed to him for testing, ballistics expert Brig Piet Gouws testified in the murder and fraud trial of former C10 commander Col Eugene de Kock.

Gouws said he had found 140 entry holes in the minibus, caused by R5 rifle, 9mm pistol and a 12-bore shotgun fire. The shotgun had been firing solid bullets and not the usual buckshot.

The State alleged De Kock, several of his C10 underlings and members of the Pretoria Murder and Robbery Unit had planned the ambush in March 1992. Outside Nelspruit they had fired at the vehicle before planting AK47 rifles and handgrenades in it and setting it on fire. Four "robbers" were killed in the ambush, while a fifth person, waiting at a petrol station for his friends, was later killed by C10 members, the State claimed.

The trial continues today.

Inkatha rejects Durban proposals

BD 19/6/95

Farouk Chothia

DURBAN — The Inkatha Freedom Party yesterday rejected Durban metropolitan council boundary proposals on the grounds that they discriminated against Indians and created economically unviable sub-structures.

In a preliminary report released earlier this month, the Demarcation Board had proposed that Chesterville be the sole black township in a sub-structure that included the Indian areas of Chatsworth, Shallcross and Reservoir Hills and the white areas of Westville and Queensburgh.

Inkatha election campaign deputy manager Anthony Grinker argued that this would give Chesterville residents disproportionate influence in the sub-structure. The bulk of the Indian population had been placed in one sub-structure, reducing their clout in the council.

The Local Government Transition Act stipulated that black areas would receive 50% ward representation on the sub-structure, while the remaining 50% would go to Indian, white and coloured areas.

Grinker said Chatsworth, the largest Indian township in the council, should be placed in an adjacent sub-structure that included Durban central, Berea, Bluff, Lamontville, Mobeni, Jacobs, Clairwood, Hillary and Yellowwood Park.

Inkatha wood make its submissions to the board today, the closing date for comment on the board's preliminary proposals.

Provincial Affairs Minister Roelf Meyer said last week a battle was looming over Durban metro's internal boundaries.

Observers pointed out that the battle had been expected to break out after the board had submitted its final report to provincial local government MEC Peter Miller.

Miller had the prerogative of amending the proposals before submitting them to the Provincial Local Government Committee for approval.

Inkatha also objected to the fact that Hambanathi was the sole black township in a sub-structure which included the Indian areas of Phoenix and Newlands and the white areas of Umdloti and Ian Mercy.

Grinker said the influence of the Indian community was once more being restricted. Phoenix, the second largest Indian township in the council, should be placed in a sub-structure that comprised the black areas of Inanda, Newtown and Ntuzuma.

Phoenix, which had a fairly large industrial area, would assist the sub-structure in attaining economic viability.

The board had proposed that Umlazi form a sub-structure on its own. Grinker argued that Umlazi be included in an adjacent sub-structure that had industrial areas such as Prospecton and Isipingo.

Meanwhile, Bloemfontein Mathibane reports that the November 1 local government elections might not take place if the ANC and opposition parties do not reach consensus on the demarcation of Johannesburg's boundaries.

The matter may be referred to the special electoral court for a ruling. Demarcation is supposed to be finalised by tomorrow and it seems unlikely that an agreement will be reached in time.

Pressure to review death penalty ban

(252) BD 19/6/95

Adrian Hadland

CAPE TOWN — Government is under growing pressure to reopen the debate on capital punishment following the rejection of the Constitutional Court's recent ruling by several political parties and calls for a national referendum.

The Inkatha Freedom Party joined the fray at the weekend, adding its voice to calls by both the National Party and the Freedom Front for the issue to be put to the public.

But justice minister Dullah Omar said he had no intention of supporting a referendum or renewed debate on capital punishment, according to his spokesman Sue de Villiers.

The Constitutional Court's ruling, which banned the death penalty, had been based on the constitution, which was signed by all parties, Omar said.

The issue of the death penalty was being used as a "red herring" to divert attention from the need to tackle the crime problem in all its aspects.

IFP justice spokesman [illegible] Mzizi said the court was packed with ANC supporters and was empowered only to interpret the Constitution and not determine public policy.

"The judges are not elected and are not accountable to anyone. It is anathema that the Constitutional Court should be allowed to determine such a fundamental issue."

The NP said last week the abolition of capital punishment would have a serious negative effect on crime. It called on government to hold a parliamentary debate followed by a national referendum on the issue.

Lawyers for Human Rights said, meanwhile, that the NP was rejecting the authority and independence of the court. It said the death penalty should not be put to a referendum.

"If public opinion were to be decisive there would be no need for constitutional adjudication," it argued.

Court's decision may not stand test of time

(252) BD 19/6/95

RADFORD JORDAN

THE abolition of the death penalty should force us to see that prisons reform hardly anyone and that the worst criminals should be imprisoned, not for their reformation or rehabilitation, but for the protection of the public The first two judges who subsequently found the weapon of the death sentence struck from their hands recognised this

Every state has enemies, actual or potential, against whom it needs the means of defence. Not all these enemies are external to it This is why the French publicist Joseph de Maistre saw the guillotine as a symbol of that sovereign power which has today come under attack from the perpetrators of hijacking and hostage-taking, and of outrages such as Lockerbie or Oklahoma.

Crimes of violence in SA, which assume a form much less dramatic than any of these, might force the reintroduction of the death penalty. After its abolition in the UK, it had to be partially restored to protect prison warders against murder by convicts under their charge What if our prison warders brought irresistible pressure to bear for similar protection? Failing compliance with their demand, a government might find itself without the effective power to imprison. This illustrates the need to treat abolition in a spirit of experimentation.

A beleaguered future government could well find itself having to ask a future Constitutional Court to rule that the Court which took the decision erred in finding that the requirements for an implied repeal of section 376 of the Criminal Law and Procedure Act — which governed the death penalty — were satisfied.

It is important that the retention or abolition of the death penalty should be seen as an issue on which reasonable men may differ in the light of the exigencies of time, place and perhaps even cost. In Australia, it has been shown that more is spent on keeping a convict in prison for a year than it should cost to send him to study for a year at Harvard University.

The Constitutional Court seems to have taken an apocalyptic view of its role in ending executions Justice Chaskalson linked the saving of condemned persons with the protection of minorities, among whom he included "the worst and weakest among us".

Only a willingness to protect these could secure the rights of all, he said

Presumably the learned Constitutional Court president did not regard the worst and the weakest as constituting a single undivided minority, since there can be no greater enemies of the weakest than the worst This truth is well illustrated by prison life, since those most familiar with it readily tyrannise newcomers and others weaker than themselves

Bad as the death penalty may be, it is not, in Burke's famous words, an organised hypocrisy.

Prison is just that· it is a place where anyone who reforms has to swim against the tide In the words of a warder with whom I once conversed, prison is "a place where we are supposed to make them better, but where they make us worse"

The death sentence might have gone sooner had it been recognised that at least the worst kinds of violent criminals should be imprisoned for the protection of the public and not in the hope of their reformation

☐ **Jordan is a former Wits University political studies lecturer.**

NP to call for free vote on death penalty today

CT 19/6/95 (252)

POLITICAL STAFF

THE National Party is to call for a free vote on the suspension of the death penalty during a snap debate in Parliament today on the Constitutional Court's recent decision

A free vote allows MPs to vote according to their consciences rather than take a position agreed upon by party whips

NP justice spokesman Mr Danie Schutte, who is also the party's leader in kwaZulu/Natal, said an alarming percentage of people felt unsafe in their homes

If Parliament did not overturn the decision they were "likely take the law into their own hands"

He said if a free vote favoured the re-imposition of the death penalty, the matter could then go to a referendum

The NP believed that a majority of parliamentarians — including those in ANC ranks — would support a change in the constitution to water down the right to life provision

Cruellest

The NP, which called for today's debate, believes that capital punishment should be applicable in the case of "the cruellest crimes"

Only the IFP and Freedom Front have backed the NP view, while the PAC, ANC and DP support the Constitutional Court's position

There will be no vote during the snap debate today and any change in the constitution would be likely to emerge from negotiations in the Constitutional Assembly

Justice Minister Mr Dullah Omar said at the weekend that there was no possibility of the court's ruling being overturned The provision in the interim constitution protecting the right to life was "so strong" that no court could have found otherwise

The NP had been the first to suspend the death penalty in November 1989 because it had proved not to work

National Party calls for hanging in some cases

☐ *But capital punishment unlikely under ANC*

ARG 19/6/95 (252)

Political Staff

THE National Party is to lead calls today in the national assembly for a constitutional amendment to allow capital punishment in certain cases

But African National Congress MPs are expected to hammer the NP on the issue by pointing out that it was the NP government which in effect scrapped the death penalty when former president F W de Klerk introduced a moratorium on executions in February 1990

Justice Minister Dullah Omar has already accused the NP of dishonesty and has argued that it scrapped the death penalty because it was not an effective deterrent

Mr Omar has called on the courts to impose full life terms on murderers and rapists who cannot be rehabilitated

And he has lashed out at department of correctional services officials for releasing criminals before they have served their full term

His criticisms are intended in part to provide the ANC with ammunition to head off an NP onslaught borne by a wave of popular indignation at rising crime levels and at perceptions of light punishments

This is intended, in part, to address popular indignation at rising crime, and perceptions of light punishments

NP justice spokesman Danie Schutte said last week support for the death penalty in certain cases was overwhelming

In the worst rape, robbery and murder cases, the NP wants the constitution changed to allow judges to hand down the death penalty

Today's debate has no effect on the constitutional court's declaration of the death penalty as illegal in terms of the interim constitution

Only a joint sitting of the national assembly and the senate could agree to a change, highly unlikely given the ANC's opposition to the death penalty and its majority in both houses

The ANC had to agree to the NP's request for a debate on the issue even though its own MPs are known to have a range of different views

By refusing a debate, the ANC would have seemed to be afraid of supporting its own political convictions in public

The debate will keep the issue current and will also allow parties to put their views on the record

Parties' views will likely form part of the respective parties' propaganda arsenals

Hanging: Hot debate likely this week

252

Sowetan 19/6/95

By Vuyo Bavuma
Political Reporter

SPARKS are expected to fly during this week's snap Parliamentary debate on the death penalty — with National Party and Inkatha Freedom Party set to intensify their calls for a referendum, on the matter.

But their views are set to be shot down by the African National Congress, the African Christian Democratic Party and the Democratic Party, who welcomed the recent abolition of capital punishment by the Constitutional Court.

The pro-abolitionists are likely to argue that the death penalty contradicts the constitution's right to life ruling.

Fundamental issue

Last week Mr Abraham Mzizi, chairman of the IFP's committee on justice, said the Constitutional Court could not be allowed to decide on such a fundamental issue as the death penalty.

He said the Constitutional Court was empowered to enforce the constitution and override Parliament when it overstepped its powers. "The court was not entitled to discover a law which does not exist," said Mzizi.

The first party to call for the referendum, the NP is expected to push for the amendment of the interim constitution to allow the re-introduction of capital punishment.

Topical issue

Another topical issue is the decriminalisation of dagga, supported by Correctional Services Minister Dr Sipho Mzimela, who said many people were unnecessarily jailed because of minor drug offences.

Mzimela is expected to touch on the subject when he addresses the senate this week. Earlier, he was severely criticised by Welfare Minister Abe Williams.

● Today Health Minister Dr Nkosazana Zuma will release draft proposals for the National Health Act, which includes forcing the medical graduates to do two years compulsory service in underprivileged communities.

Capital punishment referendum refused

(252)

BD 20/6/95

Adrian Hadland

CAPE TOWN — Calls for a national referendum on the abolition of capital punishment were rejected out of hand yesterday by Justice Minister Dullah Omar.

In a snap parliamentary debate, permissable on matters of public importance, Omar accused parties supporting the call of political opportunism which threatened to undermine the constitution.

Public opinion was not always the best judge of morally significant matters, Omar told the National Assembly.

Introducing the debate, NP justice spokesman Danie Schutte said violent crime in SA had increased 30% since the 1989 death penalty moratorium.

Urging government to submit to the nation the Constitutional Court's recent ruling which abolished the death penalty, Schutte said capital punishment "in our particular circumstances is imperative".

This view was supported by Freedom Front MP Joseph Chiole, who said "drastic steps are necessary to stop anarchy in SA".

Inkatha MP Ben Skosana said his party was reconsidering its opposition to the death penalty but called on government to allow the issue to be decided within provincial constitutions.

ANC justice spokesman Johnny de Lange accused the NP of attacking the judiciary's independence.

Omar said calling for a referendum immediately after the Constitutional Court's ruling "directly undermines its legitimacy and viability The proposal for a referendum calls into question the very basis of the constitutional state, the notion of core values of the constitution which should be beyond the reach of temporary majorities and the role of a constitutional court."

The NP had calculated that the majority of South Africans wanted to retain capital punishment and sought to use this for political gain. If there was a majority in favour of the death sentence, this was a transient one which would change with time, he said.

The NP opportunistically invoked majoritarianism at the expense of constitutionalism, Omar said.

If parties were interested in testing popular opinion "in a calm atmosphere without undermining the Constitutional Court and without whipping up the call for blood and vengeance, they should make submissions to the Constitutional Assembly".

Omar said 11 court judges had agreed unanimously there was no proof the death penalty acted as a deterrent.

Quoting the judgement, Omar said: "The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is presently lacking in our criminal justice system, and it is at this level and through addressing the causes of crime that the state must seek to combat lawlessness."

Sapa reports that DP leader Tony Leon said the NP's call for a referendum was hypocritical, dangerous and undermined the constitution and the Constitutional Court. "The real issue at stake should be about getting tough on crime and coming to grips with the causes of crime."

Outlawing of death penalty remains unchallenged — for now

ARG 20/6/95 (262)

CLIVE SAWYER
Political Correspondent

THE constitutional court ruling outlawing the death penalty will go unchallenged for the time being, following rejection by the national assembly of a motion calling for a referendum on the issue

The final word will be spoken by the constitutional assembly which will decide the issue when the 1999 constitution is written

The sponsors of yesterday's motion, the National Party, were accused in a snap debate of trying to use the death penalty controversy to mint political capital for the local government elections

The NP attracted scant support for the motion, with only the Freedom Front and African Christian Democratic Party backing it

NP justice spokesman Danie Schutte said opinion in favour of the return of the death penalty was overwhelming

The chairperson of the justice committee, Johnny de Lange (ANC), said the NP call for the debate had been motivated by political expediency

Ben Skosane (IFP) said the prerogative of the constitutional court should not be undermined. Joseph Chiolé (FF) said South Africa was caught in a spiral of total lawlessness

Tony Leon (DP) said the NP motion was political hypocrisy.

He quoted a 1993 speech by Nick Koornhof, parliamentary counsellor to NP leader F W de Klerk, rejecting public opinion turning the death penalty in a magic formula to restore law and order

Thenjiwe Mtintso (ANC) said her party was not going soft on crime Richard Sizani (PAC) deplored the opportunism of the NP in calling for the debate, and asked why there were no such calls for a referendum on whether South Africa should have Nuremberg trials

Kenneth Meshoe (ACDP) said the intellectual elite in the constitutional court had undermined the wishes of the majority of South Africans.

Arnold Stofile (ANC) said the death penalty was not a deterrent to crime

Justice Minister Dullah Omar said it seemed the NP calculated that most people wanted the death penalty to stay

"I do not know whether that assessment is correct," he said.

All constitutions based on judicial review left certain issues related to the core values of the constitution to final arbitration by a court

Mr Omar said he would be bound by whatever was decided by the constitutional assembly Meanwhile, the NP's moves should not be allowed to distract people from the real responsibility to deal effectively with crime, Mr Omar said

Four new acting judges appointed

CT 20/6/95 (252)

STAFF REPORTER

MR JUSTICE J J Fagan will continue as Acting Judge President of the Cape for a third term, the office of the Cape Judge President announced yesterday

This is while Cape Judge President Mr Justice Gerald Friedman undergoes a hip operation

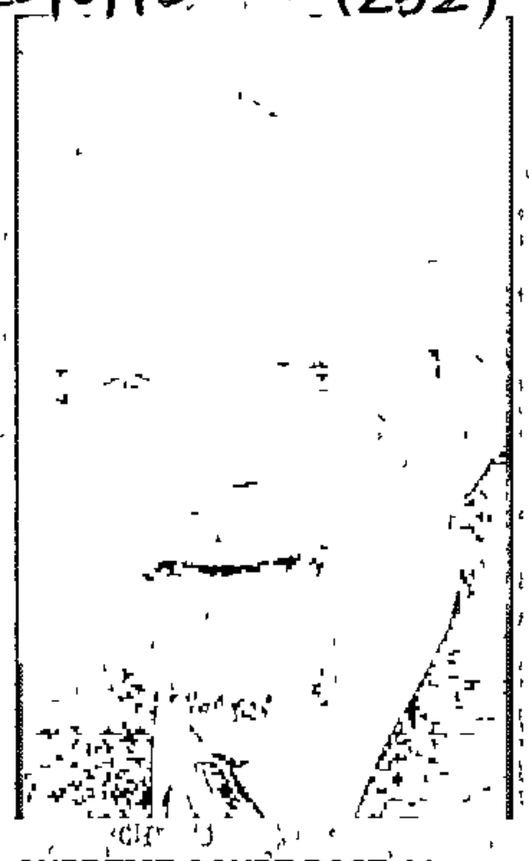
Judge D Scott has been appointed to the Appellate Division in Bloemfontein for two terms

Also announced was the appointment of four new acting judges to the Cape Supreme Court

They are Mr Peter Hodes, Mr Willem Louw, Mr Deon Irish and Mr Benny Griesel

Acting Judge Mr Abdul Motala will also continue for another term

Mr Siraj Desai takes up a permanent post as a Supreme Court judge from July 1



SUPREME COURT POST: Mr Deon Irish has been appointed one of four new acting judges in the Cape Supreme Court.

Amend Truth Bill call

ANC senators reviewing legislation to establish a Truth Commission said they wanted the bill amended to allow the cabinet to include foreigners among the commissioners CT 20/6/95

As the bill stands, only South Africans who are impartial and who do not have a high political profile will be eligible to serve on the commission, which will consist of between 11 and 17 members.

Opposition parties, including the NP, yesterday said they would oppose the amendment that seeks to include foreigners (252)

The bill is expected to come before the Senate next Wednesday. — Special Correspondent

ANC reject poll on hanging

(252)

ANC supporters yesterday rejected NP calls for a referendum on the death penalty, arguing that public opinion was not always the best judge of the core values of the constitution

ANC chief whip Mr Arnold Stofile told a "snap debate" on the death penalty called by the National Party that the African National Congress' long-time political creed, "the people shall govern", meant MPs had been given a mandate to decide certain issues on behalf of the electorate.

The National Party had called for a referendum on a possible amendment to the constitution to allow for the death penalty to be imposed in certain cases of rape, robbery and murder — Political Staff

CT 20/6/95

ANC wants foreigners on truth probe

(252) Star 20/6/95

■ BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — ANC senators reviewing legislation to establish a truth commission want the Bill amended to allow the Cabinet to include foreigners among the commissioners

As the Truth Commission Bill stands, only South Africans who are impartial and do not have high political profiles are eligible to serve on the commission, which will consist of between 11 and 17 members.

Opposition parties, among them the NP, have set great store by the composition of the commission and gave notice yesterday that they would oppose the amendment

ANC Senator Bulelani Ngcuka said the party wanted the Cabinet to be able to consider the inclusion of UN human rights experts in the same way that eminent foreigners were involved in the Independent Electoral Commission

SOWETAN Tuesday June 20 1995

'Scrapping death penalty is last straw'

(252) Sowetan 20/6/95

Mosibudi Mangena argues for the death penalty

Mosibudi Mangena

"The poor, hungry and homeless law-abiding citizens have a lot for which to envy the prisoners of today. The abolition of the death penalty by the Constitutional Court adds to these unfavourable perceptions of the justice system"

FOR MANY COMMUNITIES around South Africa under the reign of criminal terror, the scrapping of the death penalty came as a last straw

A perception has existed for a while now that the State is more concerned with the well-being and comfort of the criminal than of the victim and society as a whole

Firstly, thugs perpetrating heinous crimes such as murder and rape are seldom caught and brought to trial In some cases the criminals concerned are well known by the communities and it is assumed that police also know them

But the attitude of police towards their work is understood to be casual and their investigations of serious crime perfunctory

Secondly, those arrested are routinely granted bail even if their crimes involve murder, rape, armed robbery and child molestation While out on bail some continue their criminal activities against society

Thirdly, more often than not, the courts hand down ridiculously low sentences for serious crimes Parole and remission of sentence soon see criminals out of jail for another round of wrongdoing

Lastly, life in prison — in terms of diet and treatment — is said to be better and more comfortable than for a lot of people outside

The poor, hungry and homeless law-abiding citizens have a lot for which to envy the prisoners of today The abolition of the death penalty by the Constitutional Court adds to these unfavourable perceptions of the justice system by many among the general public

He deserved no other sentence

That explains why many people expressed regret at the decision of the court For the families of the six children in the West Rand who were raped, murdered and their body parts taken away by Moses Mokhethi for sale as muti, he deserved no other sentence than death

The presiding judge said as much and went on to criticise the abolition of capital punishment

Aware of indications that the majority of people in this country might favour the retention of the death penalty, Mr Justice Arthur Chaskalson argued that it is not a question of popular opinion, but of law and interpretation of the letter and spirit of the interim Constitution

That might be true But we also need to remember that the Constitution and the laws of a country must enjoy general support of the population to be effective and credible

A justice system that is alienated from the people and is viewed with suspicion by the citizens it is supposed to serve, is almost useless

In such a situation the danger exists that people might ignore the State's justice system and seek to deal with criminals themselves That is obviously highly undesirable

Purely theoretical level

It might therefore be a good idea to consider a referendum on the death penalty In a democracy, the views of people on matters of such fundamental importance need to be canvassed

On a purely theoretical level the arguments advanced for the abolition of capital punishment are cogent It is also true that the democratic credentials of any society can be measured by, among others, the manner in which that society treats its offenders

In our case we seem to be making mistakes in our eagerness to prove how advanced and profound democracy is We need to take a lot of factors into account as far as the death penalty is concerned, some of which are the following

- The maintenance of law and order is weak in many parts of the country Car hijackings, murders, rapes and cases of child abuse are rife

Communities affected by this believe the State is not doing enough to protect them In fact, it is alleged that elements within law enforcement agencies are part of crime syndicates

- The country is awash with lethal weapons that easily fall into the hands of criminals
- Respect for life has sunk to an alarming low Thugs, some of them as young as 14, kill at the drop of a hat, usually for a small gain In fact, success in some townships is a highway to the grave This explains in part the almost mass *trek* from the townships by the business people
- Unemployment is too high and the provision of social services too bad Too many people are homeless or in substandard housing, and the situation in education in the most affected areas, such as Gauteng, unacceptable

Builds good character

The school system keeps the youth occupied at the same time as it disciplines, builds good character and gives the young a sense of purpose in life It is the youth roaming the streets who soon turn to crime

- The gap between the haves and have-nots in this country must rank among the widest in the world.

It seems that our country should have solved, or at least reduced, the seriousness of the problems above and improved the efficacy of the criminal justice system before contemplating the abolition of the death penalty

Presently the timing is wrong

(The writer is president of the Azanian People's Organisation)

NP's gallows poll call is rejected

(252) Star 20/6/95

BY PATRICK BULGER

Cape Town — ANC speakers yesterday rejected NP calls for a referendum on the death penalty, arguing that public opinion was not always the best judge of the core values of the constitution.

ANC chief whip Arnold Stofile told a snap debate on the death penalty called by the NP that the ANC's long-time political creed, "the people shall govern", meant MPs had been given a mandate to decide certain issues on behalf of the electorate.

The NP called for a referendum on a possible amendment to the constitution to allow for the death penalty to be imposed in serious cases of rape, robbery and murder.

NP justice spokesman Danie Schutte said the scrapping of the death penalty had aroused an outcry and that ordinary people were entitled to be outraged.

But Justice Minister Dullah Omar said public opinion could change "easily and quickly"

"Values of the constitution are protected — even against majorities," Omar said. "The key to the whole negotiated settlement in South Africa is the move away from parliamentary sovereignty to constitutional supremacy.

"The immediate reaction of the NP to the unanimous decision of the Constitutional Court which consists of no less than six renowned Supreme Court judges is shocking.

"The complex arrangement contained in the constitution to place core values beyond the reach of temporary majorities is at risk if the NP proposal for a referendum is to be accepted.

"Not only does it undermine the Constitutional Court but it opportunistically invokes the principle of majoritarianism at the expense of the constitutionalism in respect of only one issue — the one on which it believes the majority is baying for blood. But it ignores others which are also controversial.

"Why should we not submit other issues of major concern to a referendum such as the future of languages, the national anthem, the flag, the need for radical land redistribution ... as well as far-reaching amnesty provisions — why should public opinion in these matters also not be tested in referenda?" Omar asked.

The NP came in for scathing criticism during the debate. DP leader Tony Leon accused the NP of "fraudulent intent" and said its view was a "spectacular somersault" on its earlier support for a constitutional state. "They think that with this motion they can ride the tiger of popular opinion by throwing a few chunks of red meat at it," Leon said.

The PAC and the IFP also opposed a referendum.

Heated death penalty debate

(252) Sowetan 20/6/95

By Vuyo Bavuma
Political Reporter

SEVERAL ANC MPs, backed by the Democratic Party and the Freedom Party, yesterday accused the National Party of trying to win cheap votes and of undermining the independence of the Constitutional Court by calling for a referendum to decide the death penalty issue

In a heated snap debate in Parliament yesterday, the MPs also accused the NP of being shortsighted in trying to use the populist mechanism to decide important issues.

Earlier, National Party justice spokesman Mr Danie Schutte suggested that the referendum be held at the same time as the November 1 local government elections. He said a referendum was necessary because ordinary people had had enough of the spiralling violent crime rate

In response, Justice Minister Mr Dullah Omar said the NP was being highly irresponsible and attempted to exploit the anger and concern of the people with regard to crime The NP was trying to whip up emotions, fears, and prejudices because this was the only way it could win

NP irresponsible

Omar said "The National Party is irresponsible because it is a co-author of the present Constitution which contains the chapter on fundamental rights and the creation of the Constitutional Court The key to the negotiated settlement in South Africa is to move away from parliamentary sovereignty to constitutional supremacy"

Mr Johnny de Lange, chairman of ANC justice committee, said the NP was using the death penalty for political expediency to whip up the most basic instincts in people

The debate called by the NP was an attack on the independence of the judiciary, particularly the Constitutional Court "It would appear that old habits of the NP die hard, despite the fact that we have a Constitutional state underpinned by the Bill of Rights and Constitutional Court to protect the integrity of the letter and spirit of the Constitution," De Lange said

Democratic Party leader Mr Tony Leon wanted to know why the NP did not ask for a public ruling on whether the *Die Stem* should be the national anthem or certain amnesty clauses favouring some of them should be in the Truth Bill

As I understand it, President Mandela will meet President Lech Walesa when a mutually convenient date is agreed to

†Dr W A ODENDAAL Madam Speaker, I should like to ask by way of a follow-up question whether the following perception, that has arisen in diplomatic circles, is incorrect

Here we have the President of Poland, who was the leader of the Solidarity trade union that brought down the communist government of Poland It was the first communist government to fall, after which the domino-effect followed that caused communism to collapse throughout the world

The time is all of a sudden no longer suitable now to receive President Walesa here, because it is hoped that after the next Polish elections, early next year, he will no longer be the President

My question is, as I said at the beginning, whether this perception which has caused raised eyebrows in diplomatic circles, is correct

†The MINISTER OF JUSTICE The perception is incorrect

The SPEAKER Order! I would again urge caution please to make sure that all supplementaries are directed to the answers

†Dr P J STEENKAMP Madam Speaker, arising out of the first reply of the hon Minister, the question is specifically whether President Walesa received an invitation to visit South Africa this year and what the relevant details are We are informed that he and Mr Mandela will indeed meet each other The question is, will they meet each other in South Africa this year or will they meet each other on a secret island? That is what we should like to know Will President Walesa be allowed in South Africa?

†The MINISTER Madam Speaker, I have already answered the question There was an invitation and I cannot take this aspect any further in any way I said

The invitation to President Walesa has not been cancelled and still stands As I understand it, President Mandela will meet President Lech Walesa when a mutually convenient date is agreed to

Dr W A ODENDAAL Yes, but where? [Interjections]

The SPEAKER Order!

Ministers

Questions standing over from Wednesday, 7 June 1995

Indemnity/release: norms used by Currin Committee (252)

*4 Mr J W MAREE asked the Minister of Justice †

(1) What norms were used by the Currin Committee to determine whether persons wre entitled to indemnity or release,

(2) whether all the recommendations of the Currin Committee in respect of the indemnity and release of persons were accepted, if not, which recommendations were not accepted?

Hansard 21/6/95 N668E

The MINISTER OF JUSTICE

(1) The Currin Committee applied a definition of a political offence which was more restrictive than the definition contained in the Further Indemnity Act, 1992 (Act No 151 of 1992) Applications falling outside their definition were considered by referring to the definition of a "political offence" as it had evolved since the start of the indemnity process

(2) No In the cases of the following persons, the President did not agree with the recommendations and did not remit the sentences or grant indemnity

M S Mavela
P Ndlovu
A K Vusi
D M Mavundla
J Bhengu
S Nyathi
N Z Mkhize
T J Radebe
M S Ngobese
M Khumalo

A further nine recommendations have been submitted to the President for consideration The decision in these case are awaited

Mr J W MAREE Madam Speaker, arising out of the hon the Minister's reply, does his reply imply that the Norgaard principles were or were not applied by the Currin Committee?

The MINISTER OF JUSTICE Madam Speaker, the Currin Committee applied the Norgaard principles to the best of its ability However, it also looked at the way in which the Further Indemnity Act of 1992 had been applied

Mr J W MAREE Madam Speaker, further arising out of the hon Minister's reply, if that was the case, could the hon the Minister please explain why the Currin Committee allowed people who had been sentenced for offences other than political offences to receive indemnity? I would like to draw the Minister's attention to numerous incidents, but I shall refer him to one specific incident

I refer to the ANC member Jabulani Khubeka, who received amnesty after he had been convicted during December 1988 on a charge of assault with the intent to do grievous bodily harm to, or to murder, Stompie Seipei

The question is How could the Currin Committee possibly have found that to be a political offence on the basis the hon the Minister has explained? [Interjections]

The MINISTER Madam Speaker, the Currin Committee considered various applications It came to its conclusions and recommendations on the basis that the offences with which it was dealing fell within the relevant definition

Mr J W MAREE Madam Speaker, further arising out of the hon the Minister's response, the hon the Minister signed all these releases personally Did he satisfy himself that these releases were related to political offences, because it is common knowledge that there are many releases which were not politically motivated or connected?

The MINISTER Madam Speaker, the hon member in his question did not ask about specific instances or specific names Had he submitted such examples to me I would have given him full details with regard to each specific case However, with regard to every single name, we satisfied ourselves that the recommendation for release was an appropriate one

Mr J W MAREE Madam Speaker, further arising out of the hon the Minister's response, I have given the Minister the instance of Jabulani Kubheka who was found guilty of attempting to murder Stompie Seipei What has that got to do with a political motive or a political offence? Could the hon Minister explain that?

The MINISTER Madam Speaker, we have come to the conclusion that there is a political element, whether that hon member liked it or not [Interjections]

Currin Committee mandate from Cabinet

*5 Mr J W MAREE asked the Minister of Justice †

(1) What was the mandate given to the Currin Committee by Cabinet,

(2) whether he will make a statement on the matter?

N669E

The MINISTER OF JUSTICE

(1) The Currin Committee was instructed to make recommendations in all the cases pending in the Indemnity Office in which—

(a) the applications were submitted before 6 May 1994, and

(b) the offences were committed before 12 00 on 8 October 1990

(2) A statement is not necessary

Mr J W MAREE Madam Speaker, arising out of the hon the Minister's reply, the hon the Minister said that the Currin Committee had received instructions to make recommendations in all cases pending in the Indemnity Office The Minister is aware of the fact that the committee took the liberty of opening closed files which had been dealt with Could the hon the Minister [Interjections] Is the Minister, in relation to his reply, prepared to explain to us why the Currin Committee went outside its mandate?

The MINISTER OF JUSTICE Madam Speaker, the committee did not go outside its mandate It examined all applications which it considered to be relevant within its terms of reference

Mr J W MAREE Madam Speaker

Adv J H DE LANGE Madam Speaker, may I ask a follow-up question before Mr Maree? I was up before him

Mr J W MAREE Madam Speaker, I had the floor before that hon member

Adv J H DE LANGE Madam Speaker, he was still sitting down when I got up

The SPEAKER Order! I am afraid I saw Mr Maree first I apologise I was looking in that

direction, so I am not sure which of you stood up first As I saw Mr Maree first, I ask him to proceed

Mr J W MAREE Madam Speaker, I listened carefully to what the Minister said He said that the mandate of the Currin Committee was to look at pending matters

The SPEAKER Order! Please ask a question

Mr J W MAREE I want to ask the Minister how matters which have been disposed of can be pending in terms of the ordinary meaning of the word

The MINISTER OF JUSTICE Madam Speaker, when that member's apartheid government was in office [Interjections] and set up its own structures to deal with indemnity matters, a large number of those matters were handled by an indemnity council Many applications were refused I was never satisfied that all those cases had been properly handled Where the Currin Committee considered it necessary to refer to any one of those matters, I considered it entirely justified

Adv J H DE LANGE Madam Speaker, arising from what has happened here today, I want to ask the Minister whether he can tell us if the Executive Deputy President of the largest minority party or any other NP member in the Cabinet, seeing that they set up the Currin Committee, at any stage raised any problems in the Cabinet in connection with this process If the Minister can answer this question, we will see whether the hon member is on a fishing expedition or not

†Dr W A ODENDAAL Madam Speaker, on a point of order I would just like to know to whom the hon member Mr De Lange directed his question

Adv J H DE LANGE Madam Speaker, the question was put to the Minister I asked if the Executive Deputy President in that member's party or any other NP member at any stage raised any problems in the Cabinet about the process we are talking about, which that member's party has problems with That is a very simple question, Dr Odendaal

The MINISTER Madam Speaker, the committee under the chairpersonship of Mr Brian Currin was set up by me as Minister of Justice I took the matter to the Cabinet and the Cabinet approved it

Mr J W MAREE Madam Speaker, the Cabinet's decision was that the Currin Committee could only look at pending matters On what authority did the Minister instruct the Currin Committee to go outside that mandate? Did he take the matter back to the Cabinet? Did the Cabinet reconsider this? Was the Cabinet informed that that Minister gave instructions to the Currin Committee that were completely out of bounds? Did the Minister inform the Cabinet that he was signing documents which were outside the mandate given to him by the Cabinet? We want a clear reply to all these questions [Interjections]

The MINISTER Madam Speaker, I am very happy about the work I did and about the work the Currin Committee did I am very proud of the committee's work Had it not been for its work, the people who were in prison as a result of that hon member's government would still have been sitting in prison As far as I am concerned, the Currin Committee acted within its mandate, and I am prepared to defend the work that it did [Interjections]

Mr J W MAREE Madam Speaker

The SPEAKER Order! We have had five supplementary questions That is the end of this question

Three persons: investigation by Office for Serious Economic Offences

*10 Mr A S BEYERS asked the Minister of Justice †

(1) Whether the Office for Serious Economic Offences has instituted any investigation into the activities of three persons, whose names have been furnished to his Department for the purpose of his reply, if so, what are the relevant details in each case,

(2) whether he will make a statement on the matter?

N674E

The MINISTER OF JUSTICE

(1) and (2) I am informed by the Office for Serious Economic Offences that no investigation has been instituted by it into the activities of the three persons referred to by the hon member An investigation has been launched into the affairs of a certain institution with which one of the persons has ties On completion of the investigation a report will be submitted to the Director of the Office for Serious Economic Offences

Primary school feeding scheme: percentage of budget paid out

*19 Mr M J ELLIS asked the Minister for Health

(1) What percentage of the budget for the primary school feeding scheme had been paid out as at the latest specified date for which information is available,

(2) whether any problems have been experienced with delays and inefficiencies in the rendering of the service, if so, (a) what problems and (b) what steps have been taken to solve these problems?

Hansard 21/6/95 N683E

The MINISTER FOR HEALTH

(1) Actual expenditure as on 31 March 1995 amounts to R134 823 786 of the total budget of R472 840 000 for the 1994-95 financial year The expected total expenditure for the 1994-95 financial year is R329 672 852

(2) Yes

(a) Some of the problems which are being experienced with the supply of foodstuffs include

* Delivery problems such as late or irregular deliveries,
* Poor quality of products,
* A unique problem occurred in one of the provinces, where food suppliers to whom contracts were not awarded, in an attempt to obtain contracts, decided to take mass action, take staff hostage, occupy offices, or destroy property,
* Some project committees lack the capacity to meet the requirements of the procurement system and the accompanying financial procedures with the result that the flow of funds to food suppliers is delayed,
* The existing temporary staff component lacks the capacity to deal with the additional workload caused by the Primary School Nutrition Programme with resultant delays

(b) Standard procedures and requirements are followed in dealing with suppliers when contracts are not adhered to A basic training programme is offered to local project committees to enable them to comply with the procedures This is, however, a slow process, because of the lack of staff The implementation of a permanent staff establishment for the Nutrition Programme should solve the problems around the shortage of staff

Actuarial deficits in government pension funds

*22 Mr K M ANDREW asked the Minister of Finance

(1) Whether there are actuarial deficits in any government pension funds, if so, what are these deficits,

(2) whether the Government is taking any steps towards reducing these deficits, if not, why not, if so, (a) by how much will the deficits be reduced in the 1995-96 financial year and (b) how will this reduction be affected by recent public sector pay negotiations?

Hansard 21/6/95 N687E

The MINISTER OF FINANCE

(1) Yes

Actuarial valuations are done every three years The valuation for 31 March 1994 is still in progress, and therefore the figures for 31 March 1991 are still the most recent available It is anticipated by the actuaries that the figures for 31 March 1994 will show an improvement over the following

	% Funded With increases	Without increases
Government Service Pension Fund	51,5	82
Temporary Employees Pension Fund	58	93
Authorities' Service Pension Fund	46	74
Authorities' Service Superannuation Fund	84,8	137
Associated Institutions Pension Fund	57	118

(2) Yes

Bilingual rule for lawyers to go

JUSTICE Minister Dullah Omar today tabled a bill in parliament to scrap the rule that attorneys and advocates must be proficient in both English and Afrikaans

Mr Omar said in a memorandum supporting the bill that all law faculties at South African universities and the Consultative Legal Forum felt the statutory requirement should be scrapped (252)

"It can also be argued that the requirement in respect of Afrikaans and English is a remnant of the previous constitutional dispensation in terms of which Afrikaans and English were the only two official languages

"The probable solution would therefore appear to be for the universities themselves to determine what their students require academically to become lawyers, rather than by way of statutory compulsion," the memorandum says ARG 21/6/95

Mr Omar has already abolished the requirement for a school-leaving pass mark in Latin as an entrance requirement to study law

The Admission of Legal Practioners Amendment Bill tabled today abolishes all language requirements for graduation in law — Reuter

Judge demands definition of 'life term'

(252)

Deborah Fine

BD 22/6/95

RAND Supreme Court judge Theo Grobbelaar has summoned a senior correctional services official to explain to the court what life imprisonment means.

This follows police probes which found that robber and murderer Mthuthulezi Ntshepe, 25, sentenced last month to two life imprisonment terms plus an extra 50 years, would have been up for parole in 2015 after serving only 20 years

Grobbelaar told correctional services' Brig Gert Jonker he needed to know how the department formulated parole dates "If I sentence a man to 30 years' imprisonment, I need to know what that means to the department. I — and the public — need to know what life imprisonment means."

Grobbelaar is presiding over the case of Evans Mdladla, 24, Gift Mokoena, 24, and Thosamile Nkozi, 21 — convicted of robbing and murdering Parktown businessman Peter Dodds in 1993, and robbing and assaulting Radio 702's Brett Hilton-Barber and his wife, Josie, in the same year.

W/O Johan Eksteen, who investigated Ntshepe's case as well as the current case, testified Ntshepe had been sentenced on May 17 Two days later he escaped from prison Investigating the escape, Eksteen had been told Ntshepe could be considered for parole in 2015

"I told a correctional services official this was shocking and incomprehensible because he had been sentenced to two terms of life imprisonment. The official told me Ntshepe could have been paroled even earlier for good behaviour?"

Jonker is expected to explain today how the department implements long-term sentences

Who should decide on the death penalty?

ARG 22/6/95

THIS week's parliamentary debate on the death penalty raised crucial constitutional issues, writes Staff Reporter **DAVID YUTAR**.

(252)

WHO should decide crucial public policy questions such as whether or not to retain the death sentence?

That is one of the central questions raised by this week's debate in the national assembly on a motion calling for a referendum on the death penalty

Although the motion was rejected, the snap debate showed that there is hardly unanimity on the question of abolition

Perhaps not unexpectedly, crime-weary South Africans have not exactly welcomed with open arms the constitutional court's decision to outlaw the death sentence

While African National Congress, Democratic Party and Pan Africanist Congress speakers in the debate endorsed the judgment of the constitutional court, those from the African Christian Democratic Party and the Freedom Front backed the National Party's motion calling for a referendum

Those who oppose the court's decision base their rejection of its ruling on two propositions

First they argue that it is not for a coterie of learned judges but rather for the South African people themselves to decide whether or not they wish to retain the death penalty

Second, say the retentionists, if a referendum were to be held today it would show incontrovertibly that South Africans want to retain capital punishment

Retentionists advance several reasons in support of retaining the death sentence

Perhaps one of the most frequently heard is that of deterrence

The death penalty, they argue, remains the most potent deterrent against violent crimes such as murder

Even the prospect of lifelong imprisonment, they argue, will not deter a potential murderer to the same extent as the knowledge that he will pay the ultimate penalty by forfeiting his life

To counter this argument, abolitionists point out that there is still no empirical proof that the death penalty has a greater deterrent effect than any other punishment

Dennis Davis, professor of law at the University of Cape Town and director of the Abolitionist Society was one of the counsel who argued the case for abolition before the constitutional court

He points out that nowhere in the world has it been shown that the death penalty remains the best deterrent

"There is no proof that the death sentence deters more (than other punishments) while there is a lot of evidence to suggest that it does not deter any better

"In its judgment the constitutional court came to the conclusion that the death penalty does not reduce crime more than any other measure"

The greatest deterrent to violent crime remains a high rate of apprehension, prosecution and conviction, says Professor Davis, reiterating a view expressed by the court

And it is because in this regard South Africa is so lacking, that there is very little deterrence to violent crime

But what about the fact that so many South Africans (if not a majority) favour the retention of the death sentence?

Why not simply put the matter to the democratic test by holding a referendum?

In a constitutional state such as South Africa has chosen to be, says Professor Davis, it is correct that the decisions of the constitutional court should take the lead on important moral and public policy issues such as capital punishment.

And although public opinion may lag behind at the moment, it will eventually catch up with the precedent set by the court

"If in five years we have a referendum on the question, we will have a very different result

"In other countries the experience has been that as they begin to put more resources into policing and apprehension of criminals, they have found that public opinion comes round to the view that the death penalty is not necessary

"A referendum makes no sense in respect of moral judements if one wants a Regstaat.

"A constitutional state should put certain issues beyond the reach of a transient majority"

The court's decision has made South Africa a moral pacesetter, says Professor Davis

As a developing democracy we have taken the lead over even established democracies like the United States in this crucial area of human rights, he says

"As a South African I feel proud that the court was able to make such a fundamental statement in defence of human rights"

ANDREA WEISS is away Her regular **METRO** column will be resumed on her return

Key to an enhanced image

De Rebus calls for law body hearings

(252) Star 22/6/95

■ BY MAX GEBHARDT
SPECTRUM

De Rebus, the journal of the Association of Law Societies, believes the legal profession would be better served if law societies held open disciplinary hearings It says this in an editorial scheduled for publication in its forthcoming edition.

This follows the overwhelming public response to an investigation conducted by Spectrum, the investigative unit of Argus Newspapers, into claims of inadequate treatment of complaints against lawyers and attorneys by law societies

The investigation was published on June 7 and June 9 in The Star, Pretoria News, Sowetan, Natal Mercury and Cape Times. Since then, Spectrum has received nearly 80 phone calls from around the country

The issue has also been aired on the Afrikaans programme *Monitor* on SAfm and on the Cape radio station KFM

Objected

Members of the public who phoned Spectrum complained that their impression was that law societies did more to protect their own members than to investigate their complaints properly

They objected to hearings being held *in camera* and claimed their experiences of dealing with law societies were characterised by incompetence and even corruption

Law societies said in response that the public did not fully understand their role or the limitations on their powers

Although some of the spokesmen conceded that the present system might not be perfect, they said it was not corrupt and that they did everything in their power to solve clients' difficulties

De Rebus notes that there appears to have been a fairly rapid growth in recent years in the numbers of complaints made by disgruntled clients to law societies It adds

"While the reasons for this regrettable state of affairs are beyond the scope of this article, it must be stated that prevention is better than cure

"What matters," the journal says, "from the point of view of the profession's image, is that complaints are dealt with in as effective a manner as possible and that complainants are as far as possible made to feel that they are getting a fair deal

"It is in the nature of things that unsuccessful complainants are unlikely to be satisfied Like litigants, they tend to have a blind faith in the justice of their cause

"However, the relatively secret way in which complaints are currently handled by the profession in South Africa opens the way for disgruntled complainants to elevate their original complaints to attacks on the profession as a whole"

Ignoring the situation is no solution, *De Rebus* says, and it confirms that the legal profession is not doing that

It says the matter is receiving attention at a national and provincial level and that, although changes being discussed would go some way towards alleviating the situation, they are not the full answer

"What, then, is to be done?" the editorial asks

"The first step, we believe, is for the profession to face the fact that the law societies' dual function of trade union and disciplinary body is at the root of the problem

"Heaven knows, if it is difficult for many practitioners to accept that both functions can be exercised by one body, then it will surely be impossible for the societies to persuade members of the public that they can act for both the public and their members evenhandedly

"We believe that the profession should rather consider whether it would not be advisable for the societies, after the preliminary sifting phase, to conduct their disciplinary procedures in public

"It is this which we believe could be the essential key to changing the public perception, incorrect as it is, that the law societies are there not to look after the public, but to protect the interests of their members

"The societies would (then) be able to answer allegations of protectionism with 'Come and see for yourself' — a powerful argument in anybody's language

Discipline

"The alternative to creating an open — and transparent, to use the catchword of the day — system may well be the imposition of a body beyond the profession's control to hear complaints and exert discipline

"We believe that it would be a great pity if the profession were to lose its control over disciplinary matters We believe discipline is a function which the profession handles fairly, and in the best interests of the public and its members

"The public needs to see that this is so We believe that the profession should give serious consideration to public hearings as a means of achieving that perception"

Life sentence 'means life'

Deborah Fine 252

LIFE imprisonment meant imprisonment for life, but it was "theoretically possible" for a prisoner sentenced to such a jail term to be paroled after 20 years, correctional services's Brig Gert Jonker told the Rand Supreme Court yesterday

But it was "highly unlikely" a "lifer" would be released after serving such a small part of the sentence

Jonker was summonsed by Judge Theo Grobbelaar to explain how the Correctional Services Department formulated parole dates

His appearance followed police probes which found that robber and murderer, Mthuthulezi Ntshepe, 25, sentenced last month to two terms of life imprisonment plus an extra 50 years, would have been up for parole in 2015 after serving only 20 years

Presiding over the case of Evans Mdladla, 24, Gift Mokoena, 24, and Thosamile Nkozi, 21 — convicted of robbing and murdering Parktown businessman Peter Dodds, and robbing and assaulting Radio 702 political editor Brett Hilton-Barber and his wife Josie in 1993 — Grobbelaar said he wanted to know how the department carried out the imposition of jail terms before sentencing.

Jonker said "lifers" were automatically entitled to a parole review after 20 years. But this did not mean automatic parole. The review would be sent to the National Advisory Council, which then advised the correctional services minister whether the prisoner was suitable for release

The council seldom advised the release of life prisoners after 20 years because of the severity of their crimes Jonker said prisoners could bring forward their parole reviews through good behaviour.

But a life prisoner who had been "an angel in jail" was an unlikely candidate for early release because the protection of the community was "more important than his good behaviour", he said

Mdladla, Mokoena and Nkozi will be sentenced today

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Mdladla, Mokoena and Nkozi will be sentenced today.

Sinn Fein to testify on arms supplies

Truth commission comes a step closer

Adrian Hadland

BD 23/6/95 (252)

CAPE TOWN — Truth commission legislation will be passed by Parliament next week after an ANC decision not to pursue any further substantial amendments.

ANC Senate justice committee chairman Mohseen Moosa had announced earlier this month the party would be tabling a number of major changes to the Bill possibly including the provision of "automatic indemnity" for senior party and liberation movement leaders.

ANC MPs confirmed yesterday that these major amendments would not be included in the Promotion of National Unity and Reconciliation Bill. One MP said while problems had been raised, no one had come up with a workable suggestion for how these should be tackled.

The Senate committee, which is currently considering the Bill, has proposed amendments mostly of a technical nature. They include the improvement of witness protection and remuneration of commissioners.

The Bill, which has already been approved by the National Assembly after more than 300 amendments, will be debated by the Senate on Wednesday next week.

If the Senate passes the Bill and the National Assembly's justice committee concurs with the amendments, the legislation will be passed on for President Nelson Mandela's signature by the end of next week.

It is believed the process of identifying possible commissioners, who will be appointed by Mandela, has already begun. A formal call for nominations will only be issued once the legislation has completed its passage through Parliament.

The commission, and its three committees — amnesty, human rights violations and reparation and rehabilitation — is likely to be up and running by September.

The December 1993 cut-off date for amnesty applications remains the most controversial outstanding issue.

Mandela has said a postponement, which may only be put into effect through a constitutional amendment, will only be considered once levels of violence in SA had been substantially reduced. Parties calling for a postponement include the Freedom Front, the PAC and the IFP.

Call for taxi industry to formalise structures

Nicola Jenvey

BD 23/6/95

DURBAN — KwaZulu/Natal transport MEC Sbu Ndebele yesterday urged the taxi industry to establish structures which would determine the number of operators on the roads and to talk to government before embarking on blockades and demonstrations.

Addressing a meeting called by the ministry for the province's local taxi associations, Ndebele referred to a blockade in Maritzburg on Wednesday, when the participants had taken the law into their own hands.

"Issues facing the taxi industry cannot be solved by violence and communication with government is the first step in breaking down the preconceptions the public has of the industry, and the taxi operators have of the traffic department," Ndebele said.

He said the industry would have to work hard at ridding itself of its negative image.

In view of the vast role taxis played in SA's transportation network, the industry believed it should receive state subsidies.

However, Ndebele said concessions for fuel and loan repayments were "impossible" without formalised structures.

The permit system was "a great problem" as permission to carry passengers had no meaning. Legitimate operators were competing with drivers not in possession of a permit who, if challenged, could use violence.

5337

R3-m for Street Law project

ARG 23/6/95 (252)

Staff Reporter

THE United States government is giving millions of rands to the University of the Western Cape's Street Law project to help along peace and democracy among South Africa's marginalised youth

Street Law and US Embassy officials today signed the R3 million agreement at a ceremony at the university

This is the biggest grant for the organisation in its 10-year history

Street Law, a non-governmental organisation, will use the money to educate youth and other community groups about human rights, parliamentary procedures, democracy and constitution-making exercises.

Street Law director Peter Volmink said the money would enable the organisation's law programme to take public legal education, particularly human rights and democracy education, to the youth of South Africa.

This will focus mainly on youth in rural areas and other underprivileged areas

"They have been marginalised from the legal system," Mr Volmink said.

"Their experience is that the law does not work for them"

The grant would also help the organisation to host a youth parliament planned for July 14 at parliament

About 150 youth representatives from Southern Africa will be asked to negotiate a constitution

Progress on Truth Commission

ANTHONY JOHNSON
POLITICAL CORRESPONDENT

CT 23/6/95

(252)

LEGISLATION paving the way for a Truth Commission is expected to be passed by Parliament next week.

The ANC's chief whip in the Senate, Mr Bulelani Ngcuka told a post-caucus media briefing yesterday that the National Truth and Reconciliation Bill would "definitely go through" on Wednesday.

MPs and senators have been grappling since the beginning of the year with one of the most complex and contentious pieces of legislation to come before Parliament.

It is understood that proposed clauses that would give automatic indemnity to liberation struggle leaders like Deputy President Thabo Mbeki have been dropped from the draft law.

The Truth Commission and its subsidiary committees are expected to be established within three months.

More light on life sentences

(252) Star 23/6/95

■ BY SUSAN MILLER

A person sentenced to life imprisonment could be eligible for parole after serving 20 years and six months of his sentence, a senior official from the Department of Correctional Services told the Rand Supreme Court yesterday.

Brigadier Gert Jonker, director of community relations for the department, said each life sentence was brought up for review after a period of 20 years

He was asked to appear before the court as a witness, at the request of Mr Justice T Grobbelaar, who said he wanted clarity on what a life, and other sentences, meant.

Jonker said each case which came up for review was referred to the National Advisory Council, which was made up of a judge, attorneys-general, members of the police and others The council would recommend appropriate action to the minister of correctional services.

"It is highly unlikely that the council would recommend that a person convicted on a life sentence for violent crimes like murder would get a recommendation for parole. Usually the council would decide to review their case in another five years," he said.

The judge then asked the brigadier what he could do to make sure a person served 30 years in prison.

"You could sentence a person to life imprisonment and make a specific order that the person should not be released before 30 years had been served. And if the authorities decide to release that person before 30 years, they would have to consult you," said Jonker.

"The court does not give out life sentences without meaning it," said Judge Grobbelaar.

Jonker said prisoners not serving life sentences came up for parole automatically once they had served half their sentence, but they could be eligible a third of the way through the sentence through credits earned for good behaviour.

Judge Grobbelaar is to hand down sentences today in the case of Evans Mdladla (24), Gift Mokoena (24) and Thosamile Nkosi (21) who were found guilty of murder, two charges of robbery with aggravating circumstances and the illegal possession of firearms and ammunition

Don't hang the death penalty

252 Sowetan 23/6/95

Educationist **Lebamang Sebidi** gives his views on the recent abolition of the death penalty in this country.

TO some people, the judgment of the Constitutional Court against the use of capital punishment by the State put paid to the feverish discourse surrounding the wisdom or inadvisability of abolishing capital punishment from our statute books

In our opinion, the debate has just begun People — especially religious leaders — should not allow this recent judgment to obscure fundamental moral issues inherent in this debate

First of all, what the Court was asked to do was investigate whether or not the provision of the death sentence in the Criminal Procedure Act was consistent or not with the "right to life" clause in the interim Constitution

In short, the Court was asked to come up with a factual judgment — not a value judgment Judge Arthur Chaskalson decided the death sentence is inconsistent with the interim Constitution In other words, the death sentence is un-constitutional

The unconstitutionality of the death sentence should not be confused with the immorality of the death sentence The two are not necessarily interchangeable

What is unconstitutional may or may not be immoral, and what is moral may or may not be constitutional

Interim constitution

The interim Constitution stipulates that every person must enjoy the right to life — even the most abominable thug has the right to life

This is a fundamental right, the interim Constitution says This is, undoubtedly, the fulcrum on which the recent abolition rests

But this fulcrum is fraught with a plethora of unexamined assumptions. For instance, it is easily assumed that when the interim Constitution states every human being has a fundamental right to life and this right is inalienable, it therefore means that the right to life is absolute

This is not only a terrifying *non sequitur* but it is also an assumption that flies in the face of everyday reality

Both the pro-abolition camp and anti-abolition campaigners are in full agreement that the right to life is a fundamental human right

The point of intense disagreement, it would appear, comes when the pro-abolitionists want to suggest that the right to life is an absolute right

And to say the right to life is an absolute right is to suggest there is no circumstance whatsoever that can ever justify the taking of another person's life

It seems to us this position is patently untenable This is reality — not religious poetry or political expediency

The recent announcement by President Nelson Mandela that he gave an order to the ANC's security to protect Shell House and the ANC leadership therein, if necessary to the point of taking human life, is a case in point

It would only be ethical naivete that could prompt one to accuse Mandela of complicity in murder. The president was enunciating a time-honoured ethical principle that is fully acknowledged and accepted — the right to self-defence The circumstances surrounding the legitimate use of force in self-defence, as in the Shell House case, torpedo the assumption that the right to life is absolute Self-defence is the use of justifiable, proportionate force against an unjust, actual threat to one's life or to one's vital goods

> **"The unconstitutionality of the death sentence should not be confused with the immorality of the death sentence"**

This use of force could even — if necessary — extend to the taking of the aggressor's life

So the principle the President was enunciating clearly indicates that while the right to life is fundamental, it is not absolute, it is relative It is relativised by circumstances in a given situation

While I have a fundamental right to life, I also have a fundamental duty and obligation to respect other people's lives

Hang those who continually snuff out unprotected lives with absolute impunity, because the death penalty is certainly a deterrent

China, for example, in August 1983 decided to crack down on callous criminals They executed 5 000 in five months

And, to leave no doubt in the mind of anyone about the seriousness of the State's resolve to deal effectively with serious crime, the Government started posting photos of executions throughout the country

Criminals in China got the point serious criminal cases during September and October dropped dramatically by 42 percent compared with the same period in 1982

We are not saying emulate China But what we are definitely saying is stop the sanctimonious gibberish and political gerrymandering when law-abiding people are faced with an undeclared war on their very doorsteps

(The writer is executive director of the Trust for Educational Advancement in South Africa)

Judiciary faces harsh judgment

(252) WM 23-29/6/95 (252)

Despite the process of reconciliation, there are obviously judges who are struggling to break out of the old mould, writes **Dennis Davis**

Attorney Kathleen Satchwell: There was an apparent campaign to discredit her and prevent her getting to the Bench PHOTOGRAPH RUTH MOTAI

It could surely not have been expected that there would be unanimous enthusiasm for the decision by the Constitutional Court that the death penalty was unconstitutional But for a sitting judge of the Supreme Court to condemn the Constitutional Court, thereby calling into question the Constitution is an entirely different matter

Judge Van Dyk's outburst against the authoritative interpretation of the Constitution raises pertinent questions regarding our judiciary's capacity for legal transformation The new Constitution imposes fresh philosophical demands and different legal perspectives from those of the apartheid era If a judge cannot accept these changes he or she should resign

It is ironic that it should be Judge Van Dyk who calls the Constitution as interpreted by the Constitutional Court into question It was he who found Barbara Hogan MP guilty of treason in 1983, finding that her (non-violent) work for the African National Congress had been clearly aimed "at destroying (the) peace and tranquility (in South Africa) and (was) also aimed at the very destruction of the state itself". So a non-violent contribution to the development of a non-racial democracy was held to fall within the common law crime of treason

Notwithstanding the much-heralded reconciliation process, there are obviously judges who are struggling to break from the old mould

The problem is compounded by the apparent difficulty in transforming the judiciary Thankfully, the Judicial Service Commission recommended the appointment of three black lawyers to the Bench in Gauteng; the fourth appointment was equally deserved, for Basil Wunsh has had a long and distinguished career as an attorney of the very highest calibre

Unfortunately the process was marred by an apparent campaign to discredit Kathleen Satchwell who was short-listed for appointment Her "crime" was that some 10 years ago, in seeking an order of court to compel the attorney general to prosecute a detainee, an award of costs was made against her It would appear that the court believed a security policeman who alleged, in contradiction to Satchwell, that she was never prevented from seeing her client in detention and that hence she could have brought her application at an earlier time, more convenient for the attorney general

This attack on Satchwell followed widespread rumours that judges on the Bench didn't want her to be appointed, hence the trumped up "charge" at the interview! Was an application for an order compelling an attorney general to charge or release a detainee to be brought only at the convenience of an attorney general?

Consequently a fine, experienced lawyer who would have made a real contribution and whose appointment could not have been labelled "gender tokenism" was not recommended for appointment at all because a court from the Van Dyk era believed a security policeman!

With this approach, the JSC is failing the challenge of the country, by ignoring the imperative of changed perspectives Or are the standards of the reasonable security policeman still to be used as the yardstick?

A further even more disturbing question arises Is it the attitude of the JSC that only advocates are welcome to the Bench — save for the odd exception like Wunsh? For example, one of the finest women academics in the country, Carol Lewis, didn't even obtain an interview from the JSC By contrast the Johannesburg Bar endorsed the candidature of one Des Duke, who told the JSC in the style of humour which is doubtless popular at the Bar Common Room that his acting judicial career had brought him into contact with the "jewellery trade" (he tried "necklacing cases")

Unless the JSC grasps the imperative that new approaches to law are needed, that the old standards cannot be slavishly followed, the Van Dyks will be replaced by the Dukes, (albeit with a little more tact) to the detriment of legal transformation in South Africa

Professor Dennis Davis is head of the Centre for Applied Legal Studies at Wits and lectures at the University of Cape Town's Department of Commercial Law

I'm glad hanging has been abolished, but . . .

'What we really need is better policing which, when enforced, will actually keep criminals off our streets'

By DESMOND TUTU

(252) ARG 24/6/95

AS a member of the Society for the Abolition of the Death Penalty in South Africa, and as a Christian, I was delighted to hear of the Constitutional Court's decision to abolish the Death Penalty.

The Constitutional Court is a wonderful institution It is going to prove quite crucial to guard against the vagaries of transient majorities which could impose things on society that are unacceptable and which we would later regret The court's decision leaves the United States of America as the only country in the West where the death penalty is used and even there only in certain states

However, I know this decision has raised real fears. They are due to increasing criminal activity which has not been helped by inept state policies which, in the past, have led to prisoners being released too soon, or by mistake

I've got fears too. I have a family and grandchildren.

Just the other day my wife 'phoned me from Soweto to say that she was ill, but that doctors are reluctant to make house-calls in Soweto because cars are frequently hijacked while the doctor is visiting a patient.

Some time ago, a neighbour two doors away went outside to his car and was shot in the driveway

What can we do to help the people in our country to feel safe?

The death penalty is no deterrent to criminals and no relief for people's fears. We have to deal with the root causes of the rising crime rate otherwise we're dealing only with the symptoms We have to ensure that our economy improves and that people have jobs, otherwise we're going to be in trouble. We must aspire to be a society which has a deep reverence for life and let us work to achieve this goal.

It seems absurd to want to demonstrate our reverence for life by ourselves judicially taking the life of someone who has committed murder We don't punish rapists by raping them, do we?

The death penalty never made it safer for us to walk on the streets, or live in security

What we really need is better policing which, when enforced, will actually keep criminals off our streets

There needs to be a change in the way criminals are sentenced for some crimes. It may be necessary for a judge to stipulate a minimum term of imprisonment without the possibility of parole for serious crimes The parole system must be changed to provide sentences which will keep criminals in prisons and not release them back onto the streets, merely to repeat the same crimes.

Many people believe their taxes are spent on creating a cosy life in prison, which does not deter criminals at all. But recently, the Minister of Correctional Services, Dr Sipho Mzimela, closed down two prisons which he said were "not fit for pigs to live in"

A life sentence in prison is adequate punishment for serious crimes. Prison sentences, if carried out as the law intended, should provide the protection people seek to calm their very real fears.

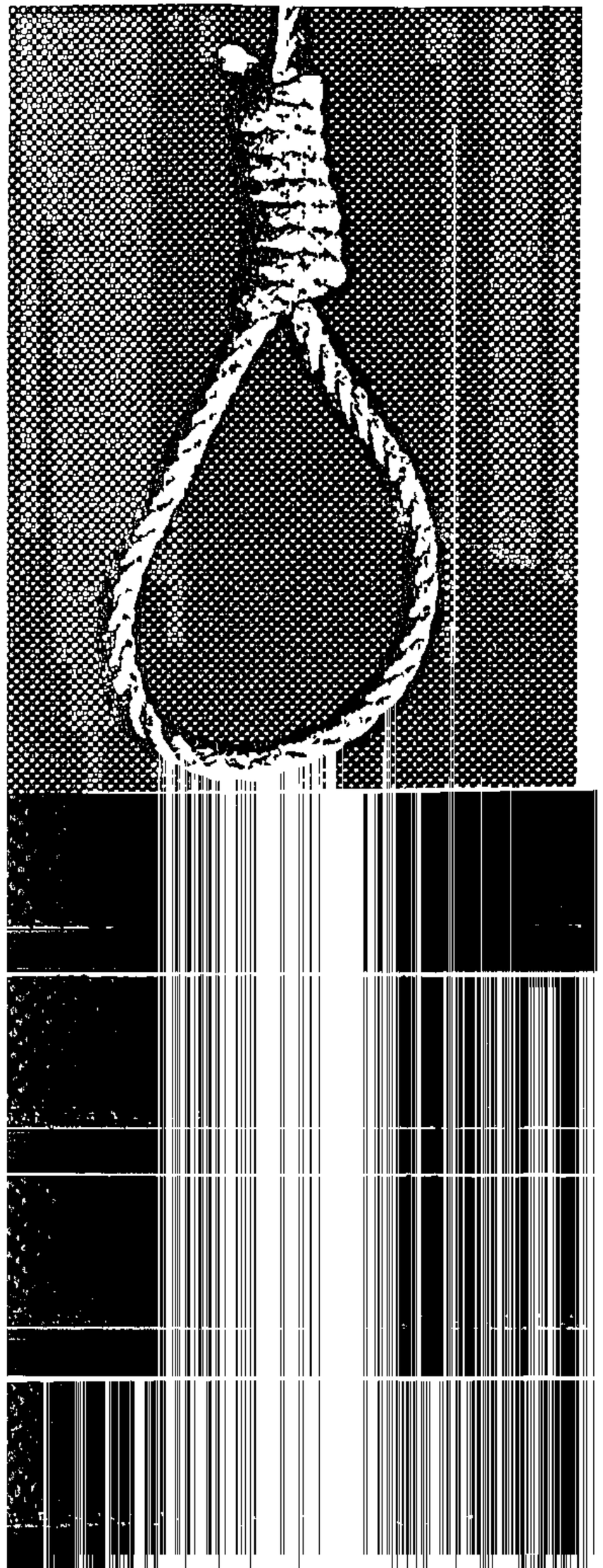
The death penalty must be replaced by a commitment to implement alternative ways for making us feel safe and secure Our country really needs to develop a commitment to reverence for life.

Anything which undermines the integrity of another is contrary to this belief. This reverence for life must be reflected not only in our courts, our policing structures, our political policies, but also in our own attitudes and actions

■ The Most Reverend Desmond M Tutu, DD, FKC, is the Anglican Archbishop of Cape Town.

The man-in-the-ghetto says: Keep the noose!

(252) ARG 24/6/95



By LEBAMANG SEBIDI

I FULLY agree with a certain Ian Glauber, who urges us to distinguish between murders committed as a result of near uncontrollable passion or emotion and murders committed by cold-blooded, unfeeling, irreformable criminals, who have no psychological or emotional links with their unfortunate victims because the whole of society is the potential target of their venom and merciless destruction

Society needs to defend itself against such people

If you doubt that, go and ask the people who live in the dark, unpoliced ghettoes of this country. Ask for their opinion They will tell you, almost invariably, that the material conditions of the poor people living in the dark shantytowns are dramatically different from the conditions of people living in the Sandtons of this country.

They will plead with you It is not yet time to do away with the death penalty — rather hang those who continually snuff out our unprotected lives with absolute impunity Who said, they will ask you, that the death penalty was not a deterrent? Some might even give the example of China, where the death penalty has acted as an effective deterrent

In August 1983 China decided to crack down on callous criminals. It executed 5 000 in five months And to leave no doubt about its determination to deal with serious crime, the Chinese government started sticking up photos of executions throughout the country

Criminals in China got the point· Serious criminal cases during September and October dropped dramatically compared with the same period in 1982

We are not saying South Africa should emulate the rather lurid example of China. What we are saying is Stop the religious, sanctimonious gibberish and political posturing when the law-abiding people of this country are faced with an undeclared war on their doorsteps.

Remember that the primary duty of the state is to protect the lives of its citizens

The current impotence of the South African Police Service in protecting the country's citizens against the psychopaths and maniacal murderers that freely roam our streets is not only legendary, it is sickening A potential murderer can call a Press conference, speak for almost an hour about his intentions to slaughter innocent people, and all one gets as a reaction from police is a standard promise Oh, we are going to arrest him.

And, of course, we know such people are rarely arrested and if they are, by luck, apprehended, they are out in a jiffy because their fundamental rights to life and free speech must be respected.

Apparently they are the only ones who have rights — the rest of us can continue to stew in our paralysing fear and insecurity.

It is high time these people were told If you adopt a lifestyle that tramples on other people's basic rights, you are running the risk of forfeiting your fundamental right to life. Your right to life is, after all, not absolute

■ **Lebamang Sebidi is executive director of the Trust for Educational Advancement in SA.**

Judge insists life means life

(252) ARG 24/6/95

PRETORIA. — A judge who jailed four armed robbers for more than 100 years each lashed out at "administrative bureaucrats" for interfering with court sentences.

Mr Justice L F Weyers was commenting in the Pretoria Supreme Court after sentencing the four men yesterday for a R3,4 million hold-up in which three security guards were "cold-bloodedly" shot dead

"I find it disturbing that, regardless of what a judge says, other people with whatever qualifications and background and not having been steeped in the trial, then alter the sentence," Mr Justice Weyers said

Security guards Jan Hendrik Cronjé, Daniel Mattheys Willemse and Rianne Andre Kriel were killed when a gang of robbers, including the four accused, attacked their vehicle with AK-47 rifles on the N1, near Verwoerdburg, in September 1993.

Meshack Siluale, 35, of Boksburg, Tevor Liesering, 36, of Brakpan, and Vivian Mayesa, 26, of Durban, received effective sentences of 140 years each Henry Johnson of Brakpan was sentenced to an effective 105 years.

Only a fraction of the stolen money was recovered

Mr Justice Weyers said the perpetrators of such cruel, callous and calculated crimes should never see the light of day again.

"I am not sure that is what I have achieved, but I tried my best," he said.

He requested the authorities not to consider parole without first consulting him, and then not before the accused had each served at least 30 years.

Mr Justice Weyers said he believed a life sentence should mean just that, but he added that in practice even multiple life sentences apparently had little effect. — Sapa.

NP loses parliamentary fight to the death

ST 25/6/95 (252)

By EDYTH BULBRING
Political Correspondent

NATIONAL PARTY members of Parliament are licking their wounds after coming off second best in a debate in the national assembly this week on holding a referendum on the death penalty.

The motion, introduced by Justice spokesman Danie Schutte, followed the Constitutional Court decision to scrap the death penalty

However, it was pointed out during the debate that Mr Schutte's motion contradicted the NP's submission to the Constitutional Assembly on the death penalty four weeks previously.

ANC and DP members who opposed the motion also argued that it undermined the principle of a "Rechstaat", which the NP had fought for since 1990

Embarrassed NP members complained after the debate that the party had been unprepared and that its unsophisticated approach had made it vulnerable to accusations that it had sacrificed a principle to political point-scoring.

Mr Schutte said the death penalty would curb crime and that a referendum could be coupled with the local government elections

In response, Justice Minister Dullah Omar said· "The implication of the NP proposal is that the core values of the constitution should be revisited Why should we not submit other issues of major concern to a referendum, such as the future of languages in our country, the national anthem, the flag, the need for radical land redistribution, the unpopular property clause in Chapter 3, as well as the far-reaching amnesty provisions?"

DP leader Tony Leon pointed out that the NP had proposed to a constitutional committee less than four weeks ago that the Constitional Court — not Parliament or public opinion — should determine whether or not the right to life included or excluded the death sentence

Deputy President F W de Klerk said in response to questions this week that the suggestion of a referendum was merely to determine whether consideration should be given to amending the present constitution or to the accommodation of the death penalty in the final constitution.

Mr de Klerk said that a Bill of Rights could be drafted and interpreted so as to include or exclude the death penalty. The NP's motion did not affect the principle of a "Rechstaat", which refers to the rule of law, the supremacy of the constitution and a Bill of Rights, he said

Judge 'in the dark' over how to send a criminal to jail for life

(252) By CHRIS BARRON (259)

THE Supreme Court in the person of Judge Theo Grobbelaar threw its hands up in despair this week, and decided that the ways of the Department of Correctional Services when it came to the release of prisoners were obscure beyond all reasonable comprehension.

Judge Grobbelaar said he had been "shocked to my core" by the story of Nthuthuzeli Ntshepe, who was sentenced to two terms of life imprisonment plus an additional 50 years last month, for a range of crimes including double murder

Two days after sentencing, Ntshepe escaped. Which in the event was a "fortunate" thing, said Judge Grobbelaar, because it was only when a detective went to inquire about his escape that he came across a document showing that the department had already decided on a date, 20 years hence, for his parole And, said a departmental official, the murderer might even have been released earlier for good behaviour.

If he hadn't escaped, said the judge, this example of the department's modus operandi, which smacked of "a measure of arrogance and irresponsibility", would never have come to light. Now he needed a senior official to provide "clarity" on the department's thinking

About to sentence three men guilty of murder and armed robbery, he had to know what his sentences would mean

"I want to know what a life-long sentence means according to your policy," he asked Brigadier Gert Jonker.

"Life-long sentence is precisely what it says," answered the brigadier "However, it doesn't mean he spends the rest of his life in prison."

Clearly, clarity was not going to come easily.

"What I want to know is after how long is a person entitled to parole?"

"After a minimum of 20 years," responded the brigadier.

"If I give a person 40 years, when would the aspect of parole be weighed?"

"After half his sentence."

"So according to the present system, life-long means after a minimum of 20 years. If I want him to be properly punished I must give him at least 50 years. Then after 25 years he will be reviewed for parole?"

"The prisoner can earn credits which will move the review date forward by a maximum of one-third (of his sentence)," answered Brigadier Jonker.

"If I give him 30 years, what is the maximum credits the prisoner can get?"

"He can be reviewed for parole after 10 years."

Judge Grobbelaar then introduced the matter of Ntshepe's parole date. "On an official document it appears this prisoner would be freed after 20 years, or earlier."

This was "an administrative date," said the brigadier.

The judge said according to his reading of the document, the department allowed that a double murderer "would have walked after 20 years."

"Never," insisted the brigadier. "This is when the National Advisory Board reviews his case."

"If we understand each other," sighed the judge, "life-long means life-long. But you have another interpretation"

"Life-long remains life-long," responded the brigadier tenaciously.

"According to your system it was possible this man could walk after 20 years."

"Theoretically," said the brigadier. "But in practice I cannot see it. I know the high standards of criteria (of the board)."

"A person who got seven years, nine months effective sentence apparently walked in the front door of prison and out the back door," said Judge Grobbelaar, referring to the release of fraudster Alwyn Lombard "Is this an example of high standards?"

The brigadier began explaining the department's system of "credits".

"How do you decide on credit for a murderer and robber guilty of all these things?" the judge asked.

"Credits are a small factor," explained the brigadier.

"But the court said this man must serve two life sentences and 50 years," insisted Judge Grobbelaar. "Now we hear that in the year 2015 he is up for parole?"

The judge said it was "an exercise in futility" to set parole dates if there was no possibility of parole being granted on these dates.

"Brigadier Jonker's evidence is alarming, to put it mildly," said prosecutor Joe Davidowitz after the brigadier had gone.

"That is putting it very mildly," agreed Judge Grobbelaar. "I am still in large measure left in the dark"

He sentenced the three accused to an "effective" 30 years, 30 years and 25 years. Whatever that means.

ST 25/6/95

'Flurry of bills' towards recess

CT 26/6/95 (252)

PARLIAMENT adjourned for a month-long winter recess last night, after passing a flurry of legislation on the last day of this part of the session

The National Assembly passed a formidable 20 bills on Wednesday, while the Senate managed to approve 16

The assembly's passage of Senate amendments to the Promotion of National Unity and Reconciliation Bill, was the final parliamentary step towards setting up the country's long-awaited and controversial truth and reconciliation commission

The legislation now merely awaits President Nelson Mandela's signature

MPs and senators officially return to Cape Town on July 31, with the first two weeks of their work programme devoted to Constitutional Assembly work

Parliament is expected to adjourn for the year in mid-September

Politicians are then expected to focus their efforts on campaigning for the scheduled November 1 local government elections.—Sapa

Parties agree to letting truth Bill go through

Adrian Hadland

BD 28/6/95

(252)

CAPE TOWN — Amended truth commission legislation was passed by the Senate yesterday and would be forwarded to President Nelson Mandela today for his signature.

Concerns were raised prior to the Senate debate yesterday that several of the dozens of new amendments proposed by the second chamber's justice committee did not have the support of some parties, including the ANC

But to prevent a delay in the appointment of commissioners and a prolonging of the parliamentary session, while acknowledging that none of the proposed changes would affect the spirit of the legislation, multiparty agreement had determined the Bill be ushered through

This was explained by ANC MP and National Assembly justice committee chairman Johnny de Lange

"We did not want to stop the process and waste six weeks."

The National Assembly's justice committee would consider the amended Bill as its first item in the new parliamentary session in August and would draw up a new Amendment Bill if further changes were required, De Lange said.

The National Assembly's justice committee would therefore concur today with the Senate's amendments, allowing the Promotion of National Unity and Reconciliation Bill to go to Mandela for enactment

NP senator Raymond Radue said among the proposed amendments were the appointment of two international experts to the commission's human rights committee, the removal of unnecessarily complex words, a clarification of the amnesty application process and the protection of deceased estates from liability.

In his speech to the Senate, Justice Minister Dullah Omar said the Bill represented "an historic act of generosity on the part of the victims of apartheid"

While the Bill provided for the equal treatment of all individuals, there was no moral equivalence between those who had fought against apartheid and those who had fought to maintain it, he said.

"We owe it to future generations to put the historical record straight."

De Lange said he expected the commissioners to be appointed by early August.

The Freedom Front voted against the Bill while the IFP abstained

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MD 28/6/95

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Call to avoid constitutional clashes

Farouk Chothia

DURBAN — The Maritzburg Chamber of Commerce and Industries called on KwaZulu-Natal political parties yesterday to ensure the provincial constitution was compatible with the national constitution.

It asked, too, that the sovereignty of SA be recognised.

In a submission to the KwaZulu-Natal legislature's constitutional affairs standing committee, chamber president David Gush said if the national constitution stated that a certain power was the exclusive domain of central government, the provincial constitution should not be in conflict with that.

In marked contrast with recent submissions by Durban business, the Maritzburg chamber refrained from calling for a federal constitution and the maximum devolution of power to KwaZulu-Natal — the clarion calls of the IFP.

Gush said the judiciary should remain within the exclusive domain of central government, a position also adopted by the Durban chamber and the ANC. The IFP wants a provincial judiciary to adjudicate on matters related to the province's legislative and executive authority.

Gush said the provincial constitution should "simply associate itself" with and adopt the bill of rights contained in the national constititution.

The IFP wants the national bill of rights to be "extended" before it is incorporated into the provincial constitution.

Specific provision should be made to ensure the political neutrality of the Zulu king and other traditional leaders.

Park strike 'not a hazard'

Renee Grawitzky

MD 28/6/95

A WAGE strike by about 2 000 workers in 23 rest camps in the Kruger National Park had not endangered visitors, park spokesman Harold Braack said yesterday.

The strike began after wage negotiations between the SA Commercial Catering and Allied Workers' Union and the National Parks Board deadlocked.

Conciliation and mediation failed to bridge the gap between the union's demand of an R879 minimum wage and an across-the-board increase of R200 and management's final offer of an R800 minimum and an increase of R120.

The current minimum wage is R604 a month. During negotiations, management said it would, over the next two to three years, bring the minimum wage in line with market rates.

The union said there were racial disparities in wages, with black rangers earning four times less than white rangers.

Braack said contingency plans had been put into place and temporary workers were keeping all facilities operative.

He said the parties had agreed to strike rules, which included rules relating to picketing, which were being adhered to. In terms of the rules, a maximum of three strikers were entitled to picket at the entrance to each rest camp.

Striking workers had also agreed to congregate around staff quarters away from visitors' facilities.

The rule that provided that the medical services division would not participate had been complied with, Braack said.

Parties differ sharply on Reconciliation Bill

(252)

ARG 28/6/95

TYRONE SEALE
Political Staff

SHARP political differences have emerged in the senate over proposed legislation on the truth and reconcilation commission

But Justice Minister Dullah Omar says the bumpy passage through parliament of the Promotion of National Unity and Reconciliation Bill is a vindication of efforts to develop a checked and balanced democracy in the country and in the legislature

In the senate yesterday, the Freedom Front voted against and the Inkatha Freedom Party abstained from voting on the truth Bill as amended by the senate committee on justice, and which differs considerably from that approved by the assembly several weeks ago

The Freedom Front objection hinges on refusals by other parties to consider the extension of the cut-off date for amnesty from December 5 1993 to May 10 1994, the day on which Nelson Mandela was inaugurated as president

Rosier de Ville (FF) said his party's request had been reasonable and had at one stage enjoyed the support of the National Party which, it turned out, had done so simply in the hope that it could persuade rightwingers to vote for the NP in the November local election

Even with the African National Congress, the National Party and the Democratic Party supporting the senate bill, this draft legislation will be sent back to the national assembly today, where further differences would result in the Bill being debated by a joint sitting of the two houses

Closing the senate debate on the second reading of the Bill, Mr Omar said he did not see the referral of the Bill back to the assembly as a problem

"I think it's a tremendous thing when one house examines a bill afresh and comes up with ideas," Mr Omar said

Julius Radue (NP), chairman of the senate committee on justice, said among the more important improvements made to the Bill by the senate justice committee was the granting to the commission of powers that provided for the investigation of the disappearance of any person and the clarification of the definition for gross violations of human rights

Mr De Ville said the Freedom Front would support the Bill on as many levels as possible, as the FF believed the it would enhance the greater aims of nation-building, but it would try to have the cut-off date changed

James Selfe (DP) said with the banning of the ANC and the Pan Africanist Congress in 1960, the first casualty had been the truth, and the second casualty the moral compass the nation had developed

Bulelani Ngcuka (ANC) said that the Bill was not designed to serve the interests of the ANC, but rather those of the whole of South Africa

WEDNESDAY
JUNE 28, 1995 ★

Senate OKs truth bill

252

POLITICAL STAFF

CT 28/6/95

LEGISLATION to establish a truth commission passed another hurdle yesterday when the Senate accepted the Promotion of National Unity and Reconciliation Bill.

The IFP abstained from voting on the bill, while the Freedom Front opposed it.

The bill is due to be considered by the National Assembly today.

Introducing the bill in the Senate, Justice Minister Mr Dullah Omar said people would be treated equally by the truth commission.

However, those who fought against apartheid could never be morally equated with those who had defended it.

Mr Omar was addressing the Senate on the bill which makes provision for a truth commission to investigate human rights violations committed in the context of the political struggles of the past.

Speaking in the debate to pass the legislation through the Senate, Mr Omar said the constitutional provision granting amnesty was an "act of great generosity".

present, I think that Question 6 will have to stand over

Automatic granting of amnesty

*7 Mr D M BAKKER asked the Minister of Justice †

Whether his Department has made any proposals to him in respect of the automatic granting of amnesty, if so, (a) on whose initiative were these proposals made, (b) what was the content of these proposals and (c) what was his reaction thereto?

N858E

Hansard 28/6/95

The MINISTER OF JUSTICE

No However, the Head of the Office for Indemnity, Immunity and Release expressed a point of view to the Senate Justice Committee

(a) The said officer made the proposal on his own initiative

(b) The suggestion put was that the President should create a new category in terms of section 2(1) of the Indemnity Act, 1990 (Act No 35 of 1990), by virtue of which any person who before 6 December 1993 committed an offence with a political objective relating to the conflicts of the past, would automatically acquire indemnity in respect of any such offence, provided that no person was killed or seriously injured as a result of the commission of the offence It was further proposed that the President, in terms of section 82(1)(k) of the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993), should remit the sentences imposed on persons in respect of offences of the said nature

(c) The proposals are being studied

The DEPUTY MINISTER FOR SAFETY AND SECURITY· Mr Speaker, the Minister of Correctional Services was called away suddenly, but I understand that he is returning to the House I wonder if Question 8 could stand over until he arrives

The DEPUTY SPEAKER If we have time

Certain person appointed as personal adviser

*9 Mr J A MARAIS asked the Minister of Defence †

(1) Whether a certain person, whose name has been furnished to the South African National Defence Force for the purpose of his reply, was appointed by him as personal adviser; if so, (a) what is the name of the person, (b) from what date is this appointment effective and (c) for what remuneration has the person been appointed,

(2) whether this person has been involved in any criminal activities at any stage, if so, (a) what was the nature of the activities and (b) in respect of what date or dates is this information furnished?

N862E

The MINISTER OF DEFENCE

(1) Yes I have appointed a special adviser

(a) He is Adv Fana Hlongwane,

(b) with effect from 1 November 1994

(c) Regarding salary and qualifications I respectfully refer the hon member to my written reply to Question No 62 in the Senate on 5 May 1995, in which I provided comprehensive details

(2) No I have been informed by my adviser and according to SA National Defence Force records he has not been involved in any criminal activities, and (a) and (b) therefore fall away

The DEPUTY SPEAKER. Order! I note that the hon the Minister of Mineral and Energy Affairs has returned to the House Perhaps he would now like to deal with Question 6

Storage facilities for crude oil at Saldanha

*6 Mr A S BEYERS asked the Minister of Mineral and Energy Affairs.†

(1) Whether Iran has indicated that that country wishes to acquire storage facilities for crude oil at Saldanha, if so, what are the relevant details,

(2) whether it has been decided to accede to this request; if not, what is the position in this regard, if so,

(3) whether it has been established whether such storage of crude oil will have an effect on the environment, if not, why not, if so, what are the relevant details,

Hansard 28/6/95

(4) whether he will make a statement on the matter?

N857E

The MINISTER OF MINERAL AND ENERGY AFFAIRS

(1) Yes, Iran is interested in leasing storage facilities for crude oil in Saldanha The negotiations are being conducted by SFF Association, the government body responsible for the facility, and the Minister of Mineral and Energy Affairs is being kept fully informed These are commercial negotiations and since other parties have expressed similar interest it would not be in the interests of South Africa to disclose the details before any agreement has been reached with Iran or with other parties

(2) No agreement has yet been concluded with Iran or any other interested party The current negotiations originate from a Cabinet decision on 28 September 1994 that under-utilised storage facilities resulting from the reduction of strategic stock be leased to oil-producing countries

The target level for strategic stock as approved by Cabinet is 35 million barrels, of which 10 million barrels are to be stored inland at Ogies, and 25 million barrels at Saldanha Saldanha has a total capacity of 45 million barrels The 25 million barrels of strategic stock planned for Saldanha will leave an under-utilised capacity of 17 million barrrels after providing for the three million barrel capacity leased to a local oil company

(3) Crude oil has been stored in Saldanha since January 1980 Since this date 545 cargoes of crude oil of an average of 1,5 million barrels each have either been imported or exported from the harbour without any effect on the environment

The handling of crude oil, however, remains a hazardous operation which can have serious detrimental effects on the environment in case of an accident

The following measure are taken to prevent accidents and, should an accident occur, to prevent or minimise any damage to the environment

— Strict quality control policies, procedures and standards are applied to ships, their owners and crews before ships are allowed to enter the harbour The performance of ships and crews is monitored during loading and discharge and ships that do not maintain the required quality standards are blacklisted

Due to the possibility of increased crude oil traffic in the harbour resulting from an agreement with an oil producing country, an environmental impact study has been commissioned to determine the effect that increased traffic may have on the environment and what additional steps may be needed to minimise the impact on the environment

— A substantial amount (R25 million) has been invested in oil pollution control equipment in Saldanha The responsible people are fully trained in handling this equipment and prevention as well as contingency plans are regularly reviewed The equipment includes an oil pollution control vessel named *Plus Ultra*, a name implying a task that transcends the normal The technical capacity of this ship compares with the best in the world The skimmer which gathers oil slick from the surface of the sea is the largest of its kind in the world Instead of importing a vessel or having one constructed in South Africa, SFF bought an existing vessel and had it refitted in Cape Town, saving about one million rand in doing so

(4) I will make a statement on this matter at the appropriate time

The DEPUTY SPEAKER Order! I note that the hon the Minister of Correctional Services is now available Could he deal with Question 8?

Abolition of death penalty

*8 Mr G C OOSTHUIZEN asked the Minister of Correctional Services †

(1) Whether it has been established (a) whether the implications are implicit in the long-term detention of prisoners whose death sentences were lifted by the Constitutional Court and (b) whether the abolition of the death penalty will lead to an increase in the number of prisoners to whom long prison sentences are handed down, if not, what is the position in this respect, if so, what are the relevant details,

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(2) whether he or his Department is considering any steps in this regard, if not, why not, if so, what steps, in each case?

N861E

The MINISTER OF CORRECTIONAL SERVICES

(1) (a) No

(b) and (2) Only the judiciary could answer this question, but if longer sentences of imprisonment are handed down, that will have an impact on prisoner totals and the available accommodation

Attorneys Act, 1979: amendment

*10 Dr F J VAN HEERDEN asked the Minister of Justice †

Whether he intends introducing any legislation with a view of amending the Attorneys Act, 1979 (Act No 53 of 1979) in order to make the legal profession more accessible for law students who have completed their studies, if not, why not, if so, what is the nature of the amendments envisaged?

N863E

The MINISTER OF JUSTICE (Reply laid upon table with leave of House)

As I have stated in this House and elsewhere on numerous occasions in the past, the whole question of access to justice, the key objective of the justice system, is of paramount importance and is receiving my Department's ongoing attention Included in this broad concept (which has many facets), is the role of lawyers and the legal profession and of course the accessibility in general to the legal profession by law graduates.

For the sake of completeness I would like to refer briefly to actions already taken in the recent past and pending changes having a bearing, to a greater or lesser extent, on the question of accessibility to the legal professions by law graduates

(a) Latin was abolished as a statutory requirement for admission to practise as an advocate (and in certain cases as an attorney)

(b) Legislation has also been submitted to Parliament, amending the Attorneys Act, 1979 and the Admission of Advocates Act, 1964, which, if adopted, will do away with English and Afrikaans as statutory requirements for admission to the legal professions

(c) Legislation has already been prepared and will be submitted to Parliament shortly in terms of which provision is made for attorneys to have the right of appearance in the Supreme Court

(d) In terms of the Recognition of Foreign Legal Qualifications and Practice Act, 1993 certain foreign legal qualifications obtained by South African exiles were recognised in the Republic and these exiles could be exempted in certain instances from the admission requirements contained in the Attorneys Act and Admission of Advocates Act This Act was amended recently to broaden the category of persons qualifying for the said exemptions, so as to include a spouse or child of an exile

(e) In 1993 the Attorneys Act, 1979, was amended comprehensively The primary aim of what amendment was to broaden the basis for persons with legal qualifications to gain admission to the attorneys' profession In terms thereof various new ways were enacted in terms of which persons with legal qualifications can be admitted to the attorneys' profession, in the place of the existing service of articles of clerkship These include—

(i) the attendance of a law school for four months plus—

(a) one year of articles of clerkship, or

(b) the performance of one year of community service at a legal clinic of a South African university or any other recognised law clinic or community service performed on behalf of and under the control of the Legal Aid Board,

(ii) one year of articles of clerkship plus the performance of one year of community service,

(iii) the performance of two years of community service, and

(iv) the exemption from service under articles of clerkship of persons who have obtained five years' appropriate legal experience

In respect of the last-mentioned category and under section 81(1)(b) of the Attorneys Act I recently made regulations in terms of which other appropriate legal experience is recognised for the purpose of exempting aspirant attorneys from the service of articles of clerkship, namely—

* Service as a practising advocate or advocate contemplated in section 6 of the Attorney-General Act, 1992 (Act 92 of 1992), by any person who has been admitted to practise as an advocate of the Supreme Court of South Africa under section 3 of the Admission of Advocates Act, 1964 (Act 74 of 1964)
* Service as a magistrate by any person who has been appointed as a magistrate under section 9 of the Magistrates' Court Act, 1944 (Act 32 of 1944), read with section 10 of the Magistrates' Act, 1993 (Act 90 of 1993)
* Service as a public prosecutor by any person who has been appointed as a public prosecutor under section 6 of the Attorney-General Act, 1992 (Act 92 of 1992), in a court of a regional division established under section 2(1)(b) of the Magistrates' Court Act, 1944 (Act 32 of 1944)
* Service as a Director-General or Deputy Director-General in the Department of Justice

The question of accessibility to the professions has also come under the spotlight at the various Legal Forums which have been held thus far, particularly the Consultative Legal Forum held at Somerset West from 11 to 13 November 1994 At this Legal Forum the question of para-legals, advice offices, the so-called "Ladder System", a possible extension of the legal aid and the Public Defender systems and the better use of candidate attorneys in the courts were, amongst others, debated More discussions and consultations with all role players in this regard are essential The issue is receiving the on-going attention of the Department and other role players

Natal Command: officer commanding

*11 Mr J A MARAIS asked the Minister of Defence †

(1) Whether the officer commanding of the Natal Command undertook to investigate allegations by leaders of a certain political party, the name of which has been furnished to the South African National Defence Force for the purpose of his reply, that in certain areas in Natal, specifically in the Port Shepstone area, the Defence Force is not acting impartially, if so,

(2) whether the investigation has been completed, if not, what is the position in this regard, if so, what was the outcome of the investigation,

(3) whether the outcome of the investigation has been discussed with the leaders concerned in Natal, if not, why not, if so, what are the relevant details,

(4) whether he will make a statement on the matter?

N864E

The MINISTER OF DEFENCE

(1) Yes The Officer Commanding Natal Command is currently investigating allegations made by certain leaders of the Inkatha Freedom Party regarding actions by troops of the SA National Defence Force in the Port Shepstone area on 24 May 1995

(2) On 24 May 1995 a board of inquiry was convened to investigate the complaints However, after receiving further complaints, the mandate of the board of inquiry was extended to include all incidents up to 17 June 1995 As such the investigation has not yet been completed

(3) Progress made by the investigating team was discussed with Dr Frank Mdlalose on 22 June 1995 as was the need for more witnesses and evidence

(4) No As the inquiry has not yet been completed I feel any statement now would be premature Depending on the findings of the inquiry I shall consider releasing a statement

Former head of intelligence in Department

*12 Mr L T LANDERS asked the Minister for Posts, Telecommunications and Broadcasting

(1) Whether, with reference to certain articles in the *Argus* dated 7 and 8 June 1995, copies of which have been furnished to his

present, I think that Question 6 will have to stand over

(252)

Automatic granting of amnesty

*7 Mr D M BAKKER asked the Minister of Justice †

Whether his Department has made any proposals to him in respect of the automatic granting of amnesty, if so, (a) on whose initiative were these proposals made, (b) what was the content of these proposals and (c) what was his reaction thereto?

N858E

Hansard 28/6/95

The MINISTER OF JUSTICE

No However, the Head of the Office for Indemnity, Immunity and Release expressed a point of view to the Senate Justice Committee

(a) The said officer made the proposal on his own initiative

(b) The suggestion put was that the President should create a new category in terms of section 2(1) of the Indemnity Act, 1990 (Act No 35 of 1990), by virtue of which any person who before 6 December 1993 committed an offence with a political objective relating to the conflicts of the past, would automatically acquire indemnity in respect of any such offence, provided that no person was killed or seriously injured as a result of the commission of the offence It was further proposed that the President, in terms of section 82(1)(k) of the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993), should remit the sentences imposed on persons in respect of offences of the said nature

(c) The proposals are being studied

The DEPUTY MINISTER FOR SAFETY AND SECURITY Mr Speaker, the Minister of Correctional Services was called away suddenly, but I understand that he is returning to the House I wonder if Question 8 could stand over until he arrives

The DEPUTY SPEAKER If we have time

Certain person appointed as personal adviser

*9 Mr J A MARAIS asked the Minister of Defence †

(1) Whether a certain person, whose name has been furnished to the South African National Defence Force for the purpose of his reply, was appointed by him as personal adviser, if so, (a) what is the name of the person, (b) from what date is this appointment effective and (c) for what remuneration has the person been appointed,

(2) whether this person has been involved in any criminal activities at any stage, if so, (a) what was the nature of the activities and (b) in respect of what date or dates is this information furnished?

N862E

The MINISTER OF DEFENCE

(1) Yes I have appointed a special adviser

(a) He is Adv Fana Hlongwane,

(b) with effect from 1 November 1994

(c) Regarding salary and qualifications I respectfully refer the hon member to my written reply to Question No 62 in the Senate on 5 May 1995, in which I provided comprehensive details

(2) No I have been informed by my adviser and according to SA National Defence Force records he has not been involved in any criminal activities, and (a) and (b) therefore fall away

The DEPUTY SPEAKER Order! I note that the hon the Minister of Mineral and Energy Affairs has returned to the House Perhaps he would now like to deal with Question 6

Storage facilities for crude oil at Saldanha

*6 Mr A S BEYERS asked the Minister of Mineral and Energy Affairs †

(1) Whether Iran has indicated that that country wishes to acquire storage facilities for crude oil at Saldanha, if so, what are the relevant details,

(2) whether it has been decided to accede to this request; if not, what is the position in this regard, if so,

(3) whether it has been established whether such storage of crude oil will have an effect on the environment, if not, why not, if so, what are the relevant details,

Hansard 28/6/95

(4) whether he will make a statement on the matter?

N857E

The MINISTER OF MINERAL AND ENERGY AFFAIRS

(1) Yes, Iran is interested in leasing storage facilities for crude oil in Saldanha The negotiations are being conducted by SFF Association, the government body responsible for the facility, and the Minister of Mineral and Energy Affairs is being kept fully informed These are commercial negotiations and since other parties have expressed similar interest it would not be in the interests of South Africa to disclose the details before any agreement has been reached with Iran or with other parties

(2) No agreement has yet been concluded with Iran or any other interested party The current negotiations originate from a Cabinet decision on 28 September 1994 that under-utilised storage facilities resulting from the reduction of strategic stock be leased to oil-producing countries

The target level for strategic stock as approved by Cabinet is 35 million barrels, of which 10 million barrels are to be stored inland at Ogies, and 25 million barrels at Saldanha Saldanha has a total capacity of 45 million barrels The 25 million barrels of strategic stock planned for Saldanha will leave an under-utilised capacity of 17 million barrels after providing for the three million barrel capacity leased to a local oil company

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The following measure are taken to prevent accidents and, should an accident occur, to prevent or minimise any damage to the environment

— Strict quality control policies, procedures and standards are applied to ships, their owners and crews before ships are allowed to enter the harbour The performance of ships and crews is monitored during loading and discharge and ships that do not maintain the required quality standards are blacklisted

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— A substantial amount (R25 million) has been invested in oil pollution control equipment in Saldanha The responsible people are fully trained in handling this equipment and prevention as well as contingency plans are regularly reviewed The equipment includes an oil pollution control vessel named *Plus Ultra*, a name implying a task that transcends the normal The technical capacity of this ship compares with the best in the world The skimmer which gathers oil slick from the surface of the sea is the largest of its kind in the world Instead of importing a vessel or having one constructed in South Africa, SFF bought an existing vessel and had it refitted in Cape Town, saving about one million rand in doing so

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Hansard 28/6/95

SA's first public protector is appointed

Tim Cohen (252) BD 29/6/95

CAPE TOWN — A joint sitting of both houses of Parliament has voted to appoint Goldstone commission member Selby Baqwa as SA's first public protector, with only the NP opposing his appointment

Baqwa only just gained the appointment, with 75,9% of MPs present voting in favour yesterday A 75% majority is required by the constitution

According to the constitution, the functions of the public protector will be to investigate complaints concerning maladministration or corruption by government officials The public protector also has the power to investigate "abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct" by government officials

The public protector would have to ensure people were treated with respect and dignity when they dealt with government departments, DP senator James Selfe said

Unlike the ombudsman of the past, who had probed only government corruption, the public protector would be empowered to ensure government was more "user-friendly", he said

The constitution provides for wide powers for the public protector, including an effective right of subpoena and to enter premises and seize anything deemed to have a bearing on an investigation.

The NP opposed Baqwa's appointment because it considered him too closely aligned to the ANC

The IFP opposed Baqwa's original nomination a month ago, but the party withdrew its objection after talks between President Nelson Mandela and IFP leader Mangosuthu Buthelezi

'Amnesties no solution to serious jail overcrowding'

(252)

ARG 29/6/95

TYRONE SEALE
Political Staff

AMNESTIES are not a sustainable way of resolving the serious problem of overcrowding in South African jails, a parliamentary committee has warned.

The national assembly portfolio committee on correctional services said overcrowding could only be addressed through the development of a comprehensive release policy by the department of correctional services.

This had to be done in conjunction with other departments, such as the departments of justice, safety and security, and welfare.

The committee, chaired by ANC MP Carl Niehaus, made this recommendation in its report on the final report of Kriegler commission of inquiry into unrest in prisons.

The commission, under the chairmanship of Judge Johann Kriegler, investigated instances of death, violence and breakouts in prisons between April 26 and June 13 last year.

The portfolio committee was subsequently asked by Correctional Services Minister Sipo Mzimela to comment on the Kriegler findings which found that amnesty, the department of correctional services' new release policy and prison conditions had been the main causes of prison unrest

In its report, adopted finally yesterday for presentation to Dr Mzimela, the committee said that if the Kriegler recommendation that a general remission of one quarter of all sentences, subject to a maximum of three years, were to be granted, about 52 000 prisoners would have to be released.

It should be considered that amnesty was not a general part of the department of correctional services' release policy, but a unique mechanism which was the prerogative of the president and usually marked an important event.

Indemnities granted by President Mandela on June 10 last year and April 27 this year had in the first instance been intended to mark the transition to a non-racial democracy.

"The amnesties were not intended to resolve the serous problem of overcrowding in our prisons"

The crime wave and the high levels of recidivism (returning to jail) among prisoners who had benefited from previous amnesties, had mitigated against the granting of more substantial amnesties.

As amnesties were a presidential prerogative, it would be inappropriate to create an Amnesty Resolution Committee.

The committee acknowledged there were "very serious problems" in respect of the department's general release policy

It said the question of the actual time prisoners served in relation to full sentences imposed by the courts should be re-considered within the development of a general release policy which was fair to prisoners, while keeping the protection and safety of the community in mind.

Selby Baqwa elected as Public Protector

STAR 29/6/95 (252)

Former Goldstone Commission member Advocate Selby Baqwa was elected South Africa's first Public Protector by a special joint sitting of Parliament yesterday

His name will be submitted to President Mandela for signing into law

Baqwa's nomination received 75,9% of the votes of the 353 MPs and Senators present, just making the constitutionally required 75%

Only the National Party voted against — constituting 83 votes — while the African Christian Democratic Party's two MPs abstained.

The NP's Senator Attie Jooste said the constitution stipulated that the Public Protector had to be able to act without any whiff of partiality

While Baqwa had made a good impression in the screening interviews, he had said he was a member of the ANC from which he would resign if elected Public Protector

ANC MP Baleka Kgositsile said her party had no doubt Baqwa stood head and shoulders above the other nominees and would be impartial

Freedom Front Senator Rosier de Ville said the NP did not think of the broader national interest and did not know what it wanted.

He added, to a chorus of angry interjections from NP members, that the party's opposition to Baqwa was also racist because he was black.— Sapa.

BRIEFING

*Supreme Court Reporter **Susan Miller** reviews two recent cases where the State failed to obtain convictions for very serious crimes, including murder and rape. In a third, only a culpable homicide conviction, rather than one for murder, could be obtained*

Police inexperience foils courts

(252) Star 29/6/95

In three recent separate case, judges in the Rand Supreme Court questioned police procedures and investigative techniques in the cases before them.

In one of the cases, two men accused of murder walked out of court free men, partly because of a hitch in the initial investigation carried out by police

However, the acting Attorney-General of the Witwatersrand, Kevin Attwell, said this was an unlucky run and the standards of police investigations was generally good under "very trying circumstances"

In the most recent case, a man, Isaac Hendricks, thought by a judge and his two assessors to be guilty of raping an eleven-year-old girl and murdering her nine-year-old sister, was acquitted.

According to the judge, the acquittal was partly because the only witness to the attack was the minor child, and because the police had not followed the correct procedures when they had held an identity parade.

Mr Justice J H Coetzee said he and his two assessors believed the man was guilty but had found the State's case too full of gaps to secure a conviction.

He questioned the police procedure at the identity parade and said a guilty person would go free if the rules were not followed.

"Out of eight men on the parade only the accused had a scar on his cheek. They should have put plasters on the cheeks of all the men. There was also an allegation that a policeman talked to the girl and pointed out the accused man to her," said the Judge.

Another of the cases dealt with the tragic story of Wondra Pieterse, who was found dead, lying naked next to the Old Heidelberg Road with an axe wound in her head after a drunken night in Elsburg, Germiston.

Two men were with her the night that she was killed. One was charged with her murder, and the other turned State witness.

The accused, Stefanus Schultz (31), was acquitted.

In his summation, Mr Justice G Gordon said the case was full of questions which led to other questions and these seemed to have no answers.

He said he and his two assessors had agreed "with regret" that the evidence against Schultz fell short of proof beyond reasonable doubt. He was highly critical of the State witness who had changed his story

Judge Gordon raised questions about the "amateurish" investigation carried out by a Germiston traffic officer hours after Pieterse's body had been found.

He said this traffic officer, Elmar Snyman, had driven past the scene where police were working and "taken it upon himself" to find out Schultz's address and go and arrest him.

While at Schultz's house, Snyman had found a brandy bottle, a glass and an axe, which he had handled in the boot of Schultz's car

The judge said there was little doubt that either Schultz or Page or both or them could have been responsible for Pieterse's death but that the State had been unable to prove this beyond reasonable doubt.

"Why were Schultz and Page not asked to produce the clothes and shoes they were wearing that night? Why was Snyman the only one able to testify that the axe allegedly used in the murder and found in Schult'z car was damp?" he asked.

He said it was left up to the court to "speculate" on these matters.

Judge Gordon said it was "remarkable" that the axe had been sent by the police for forensic testing via registered post and had then been lost in the post.

Captain Wikus Weber, SAPS Head of Public Relations for the East Rand Police, said a top-level inquiry had been launched in an effort to answer some of Judge Gordon's "very serious" questions.

He said specific answers could not be divulged until a proper investigation had been made in conjunction with the police legal department.

In the third case, Sam Khoza (38), a breadwinner, husband and father, died in agony, with blood seeping out of his mouth and ears after being brutally assualted by two white teenagers in Krugersdorp.

Acting Judge Mike Hannon queried how the SAPS had not told the district surgeon that Khoza had been murdered and she was working on a corpse from a murder case.

He said the district surgeon's evidence about when the fatal blow was struck would have been vital in assisting the court in deciding whether to charge the youths with murder or culpable homicide.

"I intend to take this matter further with the relevant authorities," he said.

The two youths were found guilty of culpable homicide and will be sentenced shortly

One of the lessons which the police could possibly learn from all this is that the first 24 hours after a crime has been committed is crucial for gathering the evidence which the prosecutor will need to prove his case.

Warrant Officer Andy Pieke, spokesman for the SAPS, said the police looked "in earnest" at each case where police methods were questioned.

Pieke said the lack of experience, the ever-increasing crime rate and the fact that experienced detectives were leaving the police because of low pay were serious problems.

Pieke said the inexperience of some of the police and prosecutors was another problem.

Truth Commission gets go-ahead

Star 29/6/95 (252)

■ BY PATRICK BULGER
POLITICAL CORRESPONDENT

Cape Town — Parliament yesterday finalised its approval of a Bill to establish a Truth Commission, ending a protracted process of negotiations and consultation lasting about a year

By contrast, the Remuneration of Traditional Leaders Bill was rushed through in such haste that legislators said they were being asked to sign a blank cheque to pay chiefs

The Promotion of National Unity and Reconciliation Bill provides for the establishment of a commission to probe human rights abuses committed in the course of the political struggles

This is not an arbitary piece of legislation, but rather one that gives legal form to the constitutional provision of amnesty negotiated at the Kempton Park talks

The Bill provides for amnesty for offences committed before December 5 1993. But amnesty will only be granted on disclosure of details of the deeds for which amnesty is sought

And any deeds committed will have to be deemed to have been for a political purpose and the nature of those deeds will have to bear some similarity to the stated political purpose

The Truth Commission is the judicial mechanism by which amnesty will be granted to allow the whole legal and constitutional system to start afresh.

The Truth Bill was debated for more than 300 hours in the portfolio committee on justice The chiefs Bill was rushed through Parliament in days.

It was tabled last Wednesday after an earlier acrimonious Cabinet dispute over whether the central Government could pay traditional leaders when the provinces have constitutional jurisdiction over traditional affairs

The IFP charged that the ANC and the central Government were attempting to "bribe" traditional leaders while denying charges that it was trying to entrench its control over traditional leaders by resisting the Bill.

The Bill does not interfere with the right of provinces to pay their traditional leaders for "statutory" functions

(252) Sowetan 29/6/95

Public protector selected

FORMER Goldstone Commission member Mr Selby Baqwa has been picked as South Africa's first public protector by a special multiparty parliamentary committee

The National Party was the only party to vote against the appointment, which must be ratified by a joint sitting of the National Assembly and Senate

The role of the Public Protector will be to ensure that no maladministration or corruption occurs in government Unlike the Ombudsman of the past, who only probed government corruption, the Public Protector will also have to ensure that people are treated with respect and dignity when they deal with government departments

The Inkatha Freedom Party opposed Baqwa's original nomination a month ago after he had announced himself an ANC supporter during his interview for the post The IFP withdrew its objection after talks between President Nelson Mandela and IFP leader Chief Mangosuthu Buthelezi

Breaking the deadlock

In an attempt to break the deadlock the IFP agreed to the appointment on condition that a Constitutional provision that the Public Protector report once yearly to a multiparty, joint Parliamentary committee, be written into the Public Protector Act, Mr Abraham Mzizi said — *Sapa*

SOWETAN Friday June 30 1995

Lawyers' journal bids for change

(252) Sowetan 30/6/95

Law societies respond to complaints of expediency from the public

Max Gebhardt, Spectrum

"The public does not understand the role of these organisations or the limits on their powers"

DE REBUS, the journal of the Association of Law Societies, believes the legal profession would be better served if law societies held open disciplinary hearings. It says this in an editorial scheduled for publication in its forthcoming edition.

This follows the overwhelming public response to an investigation conducted by Spectrum, the investigative unit of Independent Newspapers, into claims of inadequate treatment of complaints against lawyers and attorneys by law societies.

The investigation was published on June 7 and June 9 in *Sowetan, The Star, Pretoria News, Natal Mercury* and the *Cape Times*. Since then, Spectrum has received nearly 80 phone calls from around the country.

The issue has also been aired on the Afrikaans programme *Monitor* on SAfm, and on Cape radio station KFM.

Members of the public, who phoned Spectrum, complained that their impression was that law societies did more to protect their own members than to properly investigate public complaints.

They objected to hearings being held in camera and claimed that their experiences of dealing with law societies were characterised by incompetence and even corruption.

Law societies said in response that the public did not fully understand their role or the limitations on their powers.

Although some of the spokesmen conceded that the present system may not be perfect, it was not corrupt and that they did everything in their power to solve clients' difficulties.

Fairly rapid growth

De Rebus, noting that "in recent years there appears to have been fairly rapid growth of the number of complaints made by disgruntled clients to law societies" says:

"While the reasons for this regrettable state of affairs are beyond the scope of this article, it must be stated that prevention is better than cure.

"What matters, from the point of view of the profession's image, is that complaints are dealt with in as effective a manner as possible and that complainants are as far as possible made to feel that they are getting a fair deal. "It is in the nature of things that unsuccessful complainants are unlikely to be satisfied, like litigants, they tend to have blind faith in the justice of their cause.

"However, the relatively secret way in which complaints are currently handled by the profession in South Africa opens the way for disgruntled complainants to elevate their original complaints to attacks on the profession as a whole."

Ignoring the situation was no solution, *De Rebus* said, and confirmed that the legal profession was not doing that.

It said that the matter was receiving attention at a national and provincial level and that, although changes being discussed would go some way towards alleviating the situation, they were not the full answer.

Face the fact

"What, then, is to be done?" the editorial asked. "The first step, we believe, is for the profession to face the fact that the law societies' dual function of trade union and disciplinary body is at the root of the problem.

"Heaven knows, if it is difficult for many practitioners to accept that both functions can be exercised by one body, then it will surely be impossible for the societies to persuade members of the public that they can act for both the public and their members even-handedly.

"We believe that the profession should rather consider whether it would not be advisable for the societies, after the preliminary sifting phase, to conduct their disciplinary procedures in public.

"It is this which we believe could be the essential key to changing the public perception, incorrect as it is, that law societies are there, not to look after the public, but to protect the interests of their members.

"The societies would then be able to answer allegations of protectionism with "come and see for yourself" — a powerful argument in anybody's language.

"The alternative to creating an open and transparent, to use the catchword of the day, system may well be the imposition of a body beyond the profession's control to hear complaints and exert discipline.

"We believe that it would be a great pity if the profession were to lose its control over disciplinary matters.

"We believe discipline is a function which the profession handles fairly, and in the best interests of the public and its members.

"The public needs to see that this is so, we believe that the profession should give serious consideration to public hearings as a means of achieving that perception."

Omar: Law must restore dignity of victims

Staff Reporter ARG 1/7/95 (292)

JUSTICE Minister Dullah Omar said yesterday it was the duty of the state to achieve maximum social justice if it could not bring about individual justice in South Africa

Speaking at a conference on "The role of law in transition", Mr Omar said South Africa should take part in the continued development of international law to bring about a just society

He said the Promotion of National Unity and Reconciliation Bill was drafted on the basis of international law

"International law says if someone is guilty of a violation of human rights he must be prosecuted and punished"

Mr Omar said the law was there to serve society and allow people to live in peace and harmony

"To make this possible we should look at the plight of the victims of our struggle," he said

"No discussion will be complete if we do not pay attention to the victims and what can we do to restore their dignity," Mr Omar said

University of Western Cape Law Professor Medard Rwelamira spoke on "Punishment and Amnesty for violations of human rights"

He said South Africa's approach to punishment and amnesty should be seen against the background which the system of apartheid was created and its creation of desire for vengeance

Professor Rwelamira said the Truth and Reconciliation Commission had three objectives

- To ensure those responsible for human rights violation were known and made accountable
- To evolve strategies and mechanisms to make sure that such violations did not occur again
- To ensure the dignity of the victims was restored

secure the release of the prisoners and requests to the South African government to Appeal to the Zimbabwean Government to release the said prisoners

(2) (a) Yes, on various occasions

(b) Yes

(i) Written and oral requests were made by the Department of Foreign Affairs, politicians, the attorney of the prisoners and the prisoners themselves to the Zimbabwean Government (President, Ministers and officials) for the release of these prisoners

(ii) Since 1989 until as recent as 2 March 1995

(iii) Consular access was granted on 10 January 1995 to the South African High Commission to visit the prisoners

(3) The Department of Foreign Affairs, in conjunction with other government departments, is looking into alternative approaches to secure the release/transfer for these prisoners to South Africa

(4) (a) Kevin Woods, Philip Conjwayo and Michael Smith were sentenced for their part in a car bomb explosion at an ANC residence in Bulawayo in 1988

Messrs Smith, Woods and Barry Bawden were also prosecuted for a cross-border raid in 1987 on ANC offices and living quarters in Harare

Dennis Beahan, a British citizen, was sentenced for his efforts to help the other four men escape from prison

(b) Messrs Smith, Woods, Conjwayo and Bawden were imprisoned during 1988 and Mr Beahan during 1989

(5) Falls away

Gold/silver medallions issued for presidential inauguration

122 Mr K M ANDREW asked the Minister of Foreign Affairs

(1) Whether, with reference to his reply to Question No 255 placed on the Question Paper on 15 November 1994, any persons who were not official representatives of foreign governments received any of the (a) gold and (b) silver presidential inauguration medallions, if so, (i) who and (ii) why in each case,

(2) whether any of these medallions have not been distributed, if so, (a) how many in each case and (b) where are they currently being kept?

N213E

The MINISTER OF FOREIGN AFFAIRS

(1) It was decided by the National Inauguration Committee to present gold medallions to Heads of Delegation attending the Presidential Inauguration on 10 May 1994 and silver medallions to members of their suites to a maximum of four

Gold and silver medallions have also been presented as an exchange of gifts during official visits abroad and to delegations visiting South Africa at the discretion of the President, Deputy Presidents and the Minister of Foreign Affairs

(2) (a) 42 gold and 588 silver medallions have not been distributed

(b) The medallions are stored by the Department of Foreign Affairs Protocol Division, which controls the distribution of the medallions

Salaries/benefits paid to judges/members of the Industrial Court/magistrates/assessors

123 Mr D H M GIBSON asked the Minister of Justice

Hansard 2/5/95

Whether he will furnish details of the current salaries, inclusive of benefits, being paid to (a) judges, (b) members of the Industrial Court, (c) magistrates and (d) assessors, if not, why not, if so, (i) what are their salaries in each case, (ii) (aa) when did each of these categories last receive a salary increase and (bb) by what percentage was it increased at that time and (iii) in respect of what date is this information furnished?

252

N214E

The MINISTER OF JUSTICE

(i) Salaries and benefits

(a) Judges
Salaries

Supreme Court

Office	per annum
Chief Justice	R314 000
Judge of Appeal	R294 000
Judge President	R292 200
Deputy Judge President	R287 500
Judge	R285 000

Constitutional Court

Office	per annum
President	R314 000
Constitutional Judge	R294 000

The above-mentioned salaries are payable in terms of sections 2 and 10A of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No 88 of 1989) to judges of the Supreme Court and constitutional judges who are appointed in terms of sections 97, 99 and 104 of the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993) and section 10 of the Supreme Court Act, 1959 (Act No 59 of 1959) An allowance of R3 500 per annum is also payable to the Chief Justice, a Judge of Appeal, a Judge President, a Deputy Judge President and a Judge The Transkeian Judges' Remuneration and Conditions of Service Decree, 1990 (Decree No 19 of 1990) is owing to the provisions of section 229 of the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993) still in force In terms of the afore-mentioned Decree a salary of R237 000 per annum is payable to a judge who was appointed before 27 April 1994 as a judge of the Supreme Court of the former Transkei

Benefits

Parmed Medical Scheme

The following amounts as contributions by the State are paid in respect of judges to Parmed Medical Scheme

	Per month
Judge without dependants	R388,00
Judge with one dependant	R676,00
Judge with more than one dependant	R846,00

Making available of motor vehicles to judges

A Mercedes-Benz S320A or BMW 740iA or cheaper class sedan vehicle owned by the State, is made available to a permanent judge for use in the course of his or her official functions as well as for private purposes If a judge travels for a period of four years a distance of more than 60 000 kilometres for private purposes, he or she shall compensate the State for the distance travelled in excess of 60 000 kilometres

Gratuity payable to judges

(a) Judges of the Supreme Court
An amount gratuity is payable to a judge

(i) After the completion of 15 years' active service

(ii) After the completion of 20 years' active service

(iii) On attaining the age of 70 years and 10 years' active service

(iv) When discharged from active service

(b) Judges of the Constitutional Court

An amount gratuity is payable to a constitutional judge who is not a judge of the Supreme Court after the termination of his or her period of service of seven years

Gratuity payable to the surviving spouse of a judge

To the surviving spouse of a judge shall be paid an amount as gratuity which is equal to the amount of the gratuity which would have been payable to such judge had he or she not died but, was on the date of his or her death, discharged from active service

Salaries payable to judges of the Supreme Court after discharge from active service

A salary shall be paid in terms of section 5 of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No 88 of 1989) to a judge of the Supreme Court when he or she is discharged from active service In the case where he or she attains the age of 70 years and completes 15 years' active service, the section 5-salary will be 100% of his or her salary on discharge from active service

Pension payable to surviving spouse of a judge of the Supreme Court

In terms of section 8 of the Judges' Remuneration and Conditions of Employment Act, 1989, an amount as pension shall be paid to the surviving spouse of a judge who died The pension is equal to two thirds of the amount to which that judge would have been entitled if he or she was discharged from active service

(b) Members of the Industrial Court

The Industrial Court does not fall within the sphere of the activities of my Department My colleague the Minister of Labour might be in a position to assist you in this regard

(c) Magistrates

	Salary scale	*Average salary inclusive benefits*
Special Grade Chief Magistrate and Regional Court President	R148 599 (Fixed)	R200 076,90
Chief Magistrate	R126 411 (Fixed)	R183 101,07
Regional Magistrate	R111 867 – 121 563 – 126 411	R176 867,28
Senior Magistrate	R95 517 – 103 185 – 107 019 × 4 848 – 116 715	R157 126,45
Magistrate (3rd leg)	R64 980 – 69 510 – 75 312 – 81 114 – 87 849 – 91 683 × 3 834 – 103 185	R127 451,00
Magistrate (2nd leg)	R52 170 × 1 875 – 55 920 × 2 265 – 60 450	R 88 628,07
Magistrate (1st leg)	R33 408 × 1 254 – 37 170 × 1 875 – 46 545	R 58 389,52

Magistrates on the gradings of Special Grade Chief Magistrate, Regional Court President and Chief Magistrate also receive the following vehicle allowances

	Special Grade Chief Magistrate and Regional President	*Chief Magistrate*
Supplementary allowance (Running costs)	R 774,00	R 624,00 per month
Basic allowance	R4 530,73	R3 303,77 per month

(d) Assessors

Salaries and benefits

Summoned in terms of the Criminal Procedure Act, 1977 (Act No 51 of 1977) and the Inquests Act, 1959 (Act No 58 of 1959)

R360,00 per day or part thereof for actual attendance in court or in chambers when directed by the presiding judge

Summoned in terms of Magistrates' Courts Act, 1944 (Act No 32 of 1944)

R230,00 per day or part thereof for actual attendance in court or in chambers on request of the presiding officer

Assessors whose loss of income is more than R230,00 may approach the magistrate for an increased tariff to a maximum amount of R360,00 per day In both above-mentioned cases assessors are entitled to a transport and subsistence allowance

(ii) (aa) (a) Judges.

The salaries and allowances of judges of the Supreme Court mentioned in paragraph (i)(a)(A), were increased with effect from 1 December 1993 The salaries of judges of the Constitutional Court were determined with effect from 7 June 1994 by Proclamation R 21, 1995 in the *Gazette* of 24 March 1995 and therefore there were no salary increase yet The salaries of judges appointed before 27 April 1994 as judges of the Supreme Court of the former Transkei, were increased with effect from 1 July 1993

(b) Members of the Industrial Court

See (i)(b) above, please

(c) Magistrates

Special Grade Chief Magistrate and Regional Court President	— 1 December 1993
Chief Magistrate	— 1 July 1993
All other Magistrates	— 1 April 1994

(d) Assessors

1 March 1994

(bb) (a) Judges

The salaries of judges of the Supreme Court were increased with the following percentages

Chief Justice	20,31%
Judge of Appeal	20,25%
Judge President	20,25%
Deputy Judge President	20,29%
Judge	20,25%

The salaries of judges who were appointed before 27 April 1994 as judges of the Supreme Court of the former Transkei, were increased by 5,1%

(b) Members of the Industrial Court

See (i)(b) above, please

(c) Magistrates

Special Grade Chief Magistrate and Regional Court President	— 1,72%
Chief Magistrate	— 5%
All other Magistrates	— 3,4%

(d) Assessors

15%

(iii) 28 March 1995

Shortage of magistrates in KwaZulu-Natal

133 Mr D H M GIBSON asked the Minister of Justice

(1) Whether there is a shortage of magistrates in any areas in KwaZulu-Natal, if so, (a) what was the complement of magistrates, and (b) how many vacancies existed, in each such area as at the latest specified date for which information is available,

(2) whether any steps have been taken to fill these vacancies, if not, why not, if so, (a) what steps and (b) with what result in each case,

(3) whether he will make a statement on the matter?

N253E

The MINISTER OF JUSTICE

(1) Yes

(a) The establishments of the various magistrates' offices in KwaZulu-Natal jointly provide for 301 posts of Magistrate

(b) On 1 March 1995 21 posts of Magistrate were vacant in the area

(2) (a) and (b) As a result of the implementation of the Magistrates Act, 1993 there was a delay in the filling of vacancies of Magistrate Before the implementation of the Act, officials who had sufficient experience were appointed as Magistrates in terms of section 9(1) of the Magistrates Court Act, 1944 Under this Act, the appointment of officials as Magistrates was considered by the Department When it was found suitable, an official was appointed in a vacant post of Magistrate

The Magistrates Act, 1993 came into operation on 11 March 1993

The Regulations for Judicial Officers in Lower Courts, 1994 promulgated in terms of this Act determine the requirements and procedures for the appointment, promotion and transfer of Magistrates As a result of the new requirements for appointment as Magistrate, it was no longer possible to simply appoint experienced officials as Magistrates Persons desirous of being appointed as magistrates had to apply for appointment It was thus necessary to recruit candidates for appoint-

Tearful activist says cops used baby as bait

By CHARL DE VILLIERS

A HUSHED conference this week heard a veteran anti-apartheid activist tell how police threatened to abduct his daughter to flush him from hiding during the 1986 state of emergency

Choking back tears, Johnny Issel said he did not expect apologies from his persecutors, only the truth

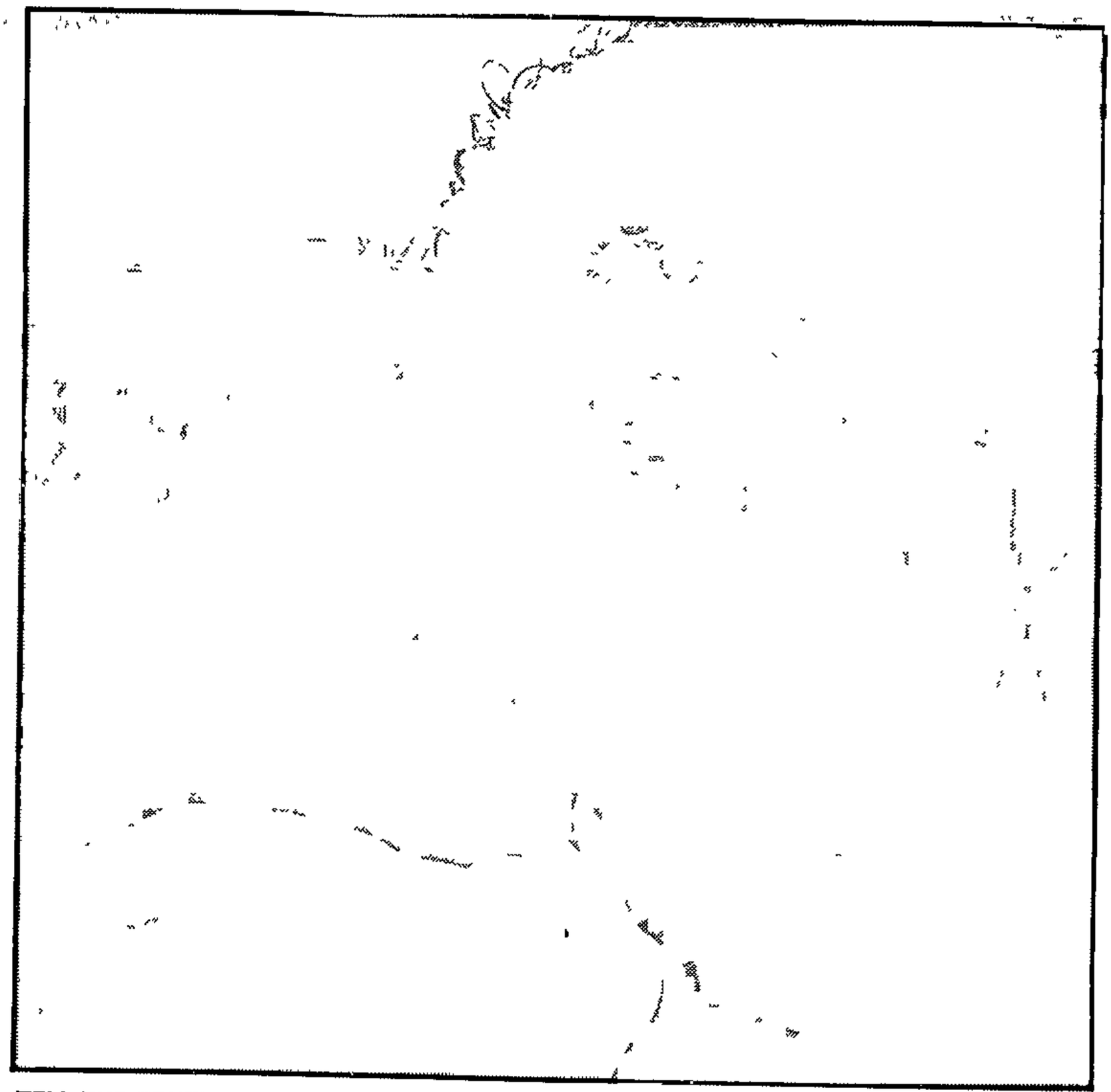
His brief, but jarring, outburst came during a panel discussion on the psychological aspects of the Truth and Reconciliation Commission, held under the auspices of the Fourth International Symposium on the Contributions of Psychology to Peace

Mr Issel — a Western Cape provincial MP and banned and detained United Democratic Front stalwart — said activist friends were still suffering the emotional scars of their experiences in the 80s

He said police had twice tried to kill him and had threatened to take his then six-month-old daughter, Ruschka, from her grandmother in a bid to force him out of hiding

Recounting how police with dogs and machine guns nearly ran him to ground near Muizenberg one night in 1986, he said "If the truth commission comes about, those responsible for crimes must not apologise I'd just like my children to know"

The audience, who earlier heard Justice in Transition representative Alex Boraine argue that disclosure was an act of healing, watched in silence as Mr Issel, 48, was led back to his seat wiping his eyes



TELL THE TRUTH . . Johnny Issel wants his children to know about police repression

Brandon Hamber, a psychologist with the Wits University Project for the Study of Violence and Reconciliation, said trauma survivors would not escape their pain by trying to forget it

"Psychological restoration and healing can only occur through providing space for survivors to feel heard, and for every detail of the traumatic event to be re-experienced in a safe environment"

At the same time, retelling stories could not replace the need to address the causes of violence and develop mechanisms to prevent its re-occurrence

The commission had to be capable of dealing with psychological trauma and mediating feelings of revenge, bitterness and anger To do so it would need to be buttressed by a network of mental healthcare specialists, he said

Irrespective of whether the commission took place, South Africa's 4 000 psychologists needed to develop a comprehensive mental healthcare plan, he argued

Peace could only be achieved through constructive engagement with the past. It could not be brokered on paper, nor could stability rely on new national symbols or anthems

The commission could provide an excellent opportunity to develop psychological services

Ann Anderson, of Psychologists for Social Responsibility in Washington DC, said probes such as the United Nations Yugoslavia war crimes tribunal and South Africa's own truth commission faced enormous expectations from victims and survivors

In the case of the Yugoslavia inquiry, now extended to Rwanda, the tribunal should perhaps choose cases which were symbolic enough to represent the many that would not be heard, she said.

ST 2/7/95

(252)

Man who will keep the public service on its toes

By CARMEL RICKARD

A BITTER political wrangle over the appointment of a public protector ended this week when all MPs except those from the National Party gave their backing to Durban advocate Selby Baqwa

One of two candidates for the post, Mr Baqwa now becomes one of the most powerful people in the country The interim constitution mandates him to oversee the behaviour of civil servants Acting on his own initiative or on complaints by the public, he must root out corruption, end bureaucratic rudeness or unfairness and speed up unduly delayed official decision-making

Only the courts are off-limits for his investigations Every other arm of government, at every level, must open their doors and their books when he asks

No organ of state, no civil servant, no member of the government from the president down, may interfere with his work

He can enter any building and seize anything relevant to his inquiries He can order anyone to answer questions and hand over any document which he may need

The man who will wield these powers, Selby Alan Masibonge Baqwa, 44, freely concedes he lacks a strong national profile and that it would be reasonable for the public to look blank when they hear his name

His surname should not be unfamiliar, however His sister Lillian Baqwa, also a lawyer, was a member of the Goldstone commission Mr Baqwa has never served on that body, despite reports to the contrary

Within progressive legal circles he is known as the man who took over the presidency of the National Association of Democratic Lawyers when its previous head, Pius Langa, took up a seat on the Constitutional Court

But while he may be relatively unknown to the rest of the community, he has recently made his name in the Eastern Cape

Public servants in the region know him only too well as a member of the Browde judicial commission of inquiry, he has been looking into bureaucratic malpractice there.

The commission was appointed after allegations that many civil servants helped themselves to increases, promotions and perks just before the change in government

So far commissioners have concentrated on the former Transkei and Ciskei — where they have been strongly criticised by civil servants who want to maintain the perks they enjoyed under the previous governments

Mr Baqwa says his experiences on this commission have been very helpful in preparing him for the new job

"When you see the abuses that have gone on — including overt dishonesty like getting into computers and changing salary figures — you realise how much can go wrong in government

"What we have seen in the Browde commission should be a big warning I hope the new government learns that it must put financial and other checks in place as early as possible"

Mr Baqwa started out as an attorney, then joined the Durban Bar in 1988 He has taught candidate attorneys at Natal University's school for legal practice and, as part-time professor of law, has lectured on mercantile law at the same university

He says his lack of profile will help him in the new job. "As far as the public is concerned, I won't bring a lot of baggage with me They can get to know me in this context"

There has also been concern about whether he is too close to the ANC Mr Baqwa says the job — and his own personality — demand scrupulous fairness In addition, the constitution lays down a system of checks and balances which would expose any tendency to favour any group For example, regular report-backs to Parliament must include details of how each case is being handled

These and other safeguards appear to have won over the initially sceptical Inkatha Freedom Party After grilling him at the initial hearings on his political history and its influence on his work, IFP MPs voted for him this week

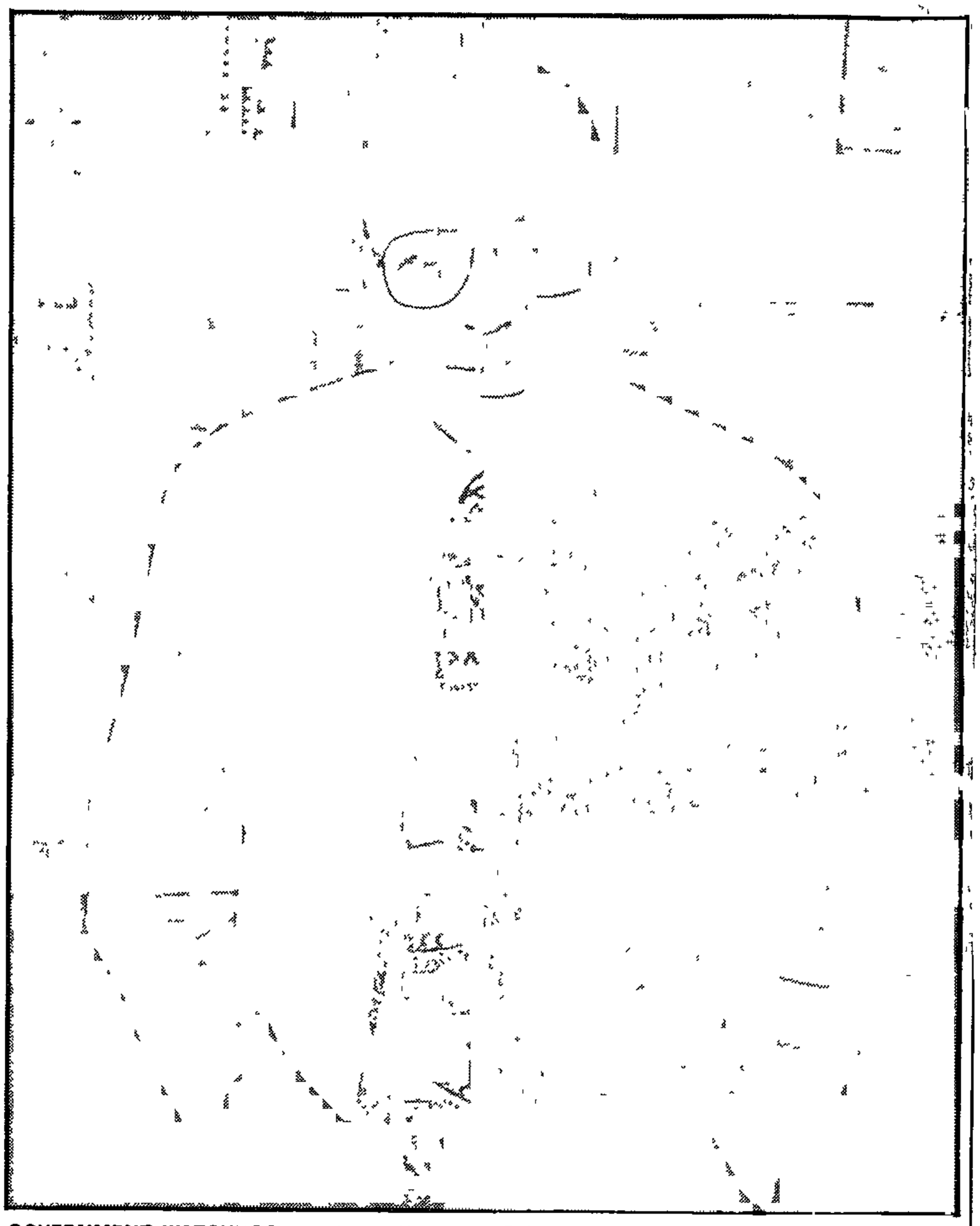
Some people ask whether the soft-spoken Mr Baqwa will be tough enough for the post Will he ferret out the baddies with the ferocity and determination that the job requires?

The former university boxer throws a punch of his own "If people drag their feet because I am Mister Nice Guy I will use my powers most strongly."

He envisages a team of provincial public protectors with whom he will work closely, although the public may approach his office directly if they choose

He says he wants to start with a publicity drive which would inform the public about his office, what it does and the treatment to which they are entitled from civil servants

"I am not just looking for corruption or maladministration We insist that the public be treated with dignity Civil servants must be polite and realise they are the servants of the public and not the other way round," he said



GOVERNMENT WATCHDOG . Public Protector Selby Baqwa says if people 'drag their feet because I am Mister Nice Guy, I will use my powers most strongly' Picture: RICHARD SHOREY

ST 2/7/95

(252)

'Ministries must work to protect witnesses'

(252) ARG 3/7/95

There is an urgent need for the ministries of police, justice and correctional services to join forces and establish a co-ordinated and well considered witness protection scheme A report by DAVID YUTAR

WHO's afraid of telling the truth?

If the experience of Cape Peninsula courts dealing with gang-related crimes is anything to go by, the answer is everyone

Inadequate witness protection schemes, coupled with liberal bail policies, have resulted in scared witnesses becoming increasingly reluctant to come forward and testify in court

A senior prosecutor says the problem of witness intimidation has reached chronic proportions "Hundreds of cases, especially gang-related ones, collapse because witnesses called by the state are terrified to testify," he said

According to Chris Ferndale of the Western Cape Anti-Crime Forum, the intimidation of state witnesses is a major obstacle in attempts to stamp out gang and drug-related crime on the Cape Flats

There is an urgent need for the government ministries of police, justice and prisons to join forces and establish a co-ordinated and well thought-out witness protection scheme, according to Mr Ferndale

The forum's conference in May focused on the problem of state witnesses who become victims of violent crime

"All too often the person who comes to court to testify as a witness, especially in a case of violent or gang-related crime, becomes a victim himself," said Mr Ferndale

"There are hundreds of cases that remain unresolved because witnesses are too scared to testify in court"

This is particularly relevant in communities on the Cape Flats, such as Elsies River and Manenberg, where gang warfare terrifies communities

"In these areas the police often admit that although they know who committed a particular crime, they cannot proceed against the culprit because they know that people called as witnesses will be terrified to testify," said Mr Ferndale

"I know of gangsters who have appeared in court five or six times charged with the same type of offence

"But they walk away from court scot-free because witnesses are too scared to come to court and testify against them"

If it is not the actual perpetrator of a violent crime or a person charged who threatens a witness, it is a member of a gang to whom messages are quickly relayed, even from gang members in prison

Mr Ferndale mentioned a woman who attended the recent Anti-Crime Forum meeting and said she had been threatened after appearing as a witness in a gang-related case

"Unknown to us there was a gang member at the meeting and that same evening the woman had to flee her home and one of her children was abducted

"The gang then literally took over her house for the weekend"

In the Bo-Kaap gangsters set alight the home of a Neighbourhood Watch member who had laid a charge against a drug dealer

Part of the problem was that in some communities gang members had "taken over our courts and have created an atmosphere hostile to any witness"

In one incident gang members started shooting one another in a Goodwood court

Incidents of shooting and violent assaults had occurred at the Wynberg and Athlone courts as well, Mr Ferndale said

The Deputy Attorney-General of the Cape, J C Gerber, said his department was aware of the problem of witness intimidation and was doing everything possible to alleviate it

He said that, under the Criminal Procedure Act, a witness might apply to the Attorney-General to "be placed in detention or protective custody"

Apart from protective custody in a police cell, the Act provides for the witness to be placed in a hotel or "any other place where the police have control"

It would then be up to the police to ensure the person's safety, said Mr Gerber

Mr Gerber admitted it is unfair to witnesses to remove them from their homes to a place of safety while an accused person is "free to walk around on bail"

In many gang-related cases the state opposes bail for this very reason, he said

One constructive step the Attorney-General's office has taken is to instruct courts to provide special witness rooms in cases where the intimidation of witnesses is likely to occur

Many courts, such as those in Parow and Wynberg, make use of such rooms.

The new constitution has exacerbated the problem because an accused person is now entitled to a list of state witnesses

But if the state shows there is a real possibility of intimidation, a court can rule that such identities not be revealed, Mr Gerber said

"We are also looking at the possible use of closed circuit TV, as is used in sexual offences courts

"The problem is that our law requires an accused person to be able to see a witness when he testifies against him

"Seeing the face and expression of the witness is also vital during cross-examination to test his credibility"

Another possible solution to the problem of intimidation is the use of shields or barriers, which would enable the court, but not the accused, to see the witness

Mr Gerber said that since his department met community members at the Anti-Crime Forum in May, the Attorney-General had "assigned bail applications to experienced prosecutors and postponed them so as to give police a chance to prepare for trial more thoroughly"

But Mr Ferndale remained adamant that not enough was being done to solve the problem

"What is needed is a joint venture between the departments of justice, police and correctional services," he said

"We know that the state lacks the finance for an holistic programme But we would at least like to see a statement of intent by the state on a co-ordinated witness protection programme

"Victims of violence and witnesses must have a right to protection which is enshrined in the law"

Legal workers launch go-slow

Umtata July 3 — Workers in the justice department in all districts of the former Transkei have embarked on a go-slow in an attempt to force Justice Minister Dullah Omar to respond to their grievances.

The convenor of the Workers' Crisis Committee and the president of the South African Civil Servants Association, Khandiyeza Nqadala, said the decision was taken at last week's meeting after Omar failed to arrive to address them. Their grievances relate to promotions and poor working conditions. — Sapa.

Star 4/7/95

Hearing for Land Court judges

CT 5/7/95 (252)

STAFF REPORTER

JUDGES appointed to the Land Claims Court should have a thorough knowledge of forced removals and the impact they had on the communities affected.

This was said yesterday by Professor Nick Olivier before the Judicial Service Commission which was interviewing nominees for appointment to the court

Prof Olivier, who is a legal academic, author, and senior consultant to the Department of Land Affairs, was the last of eight nominees to be interviewed yesterday.

An announcement on the appointments to the court is expected to be made tomorrow

Asked by Mr Chief Justice M M Corbett what level of expertise a judge on the Land Claims Court should have, Prof Olivier said persons appointed had to be "impartial and have a thorough knowledge" of what was at hand

"In particular this would apply to removals and the history of removals It would also apply to the legislation applied for removals and the different categories of removals, including the geographic consequences of removals and the socio-economic impact on communities and individuals concerned."

Apart from dealing with the legacies of apartheid and colonialism, judges should also be "development orientated". They should try to bridge the gaps and bring about reconciliation.

Asked how he saw the function of the court, especially in regard to the fact that it would be mainly dealing with black claimants, Prof Olivier said: "In principle each land claim should be mediated by the Land Commission Only in serious matters where there is no mediation should the matter be passed to the land Claims Court "

The Land Claims Court should help shape the direction of land policy issues, he said

Death Row prisoners to stay put

(252)

Death Row prisoners reprieved by the scrapping of capital punishment will remain in maximum security and will not be transferred to other prisons or sections, the Department of Justice said yesterday.

They will be divided into groups like all other prisoners, spokesman Amanda Haasbroek said, adding that alternative sentences for them were under consideration

The Constitutional Court recently scrapped the death penalty, saying it was unconstitutional

There are 453 people on Death Row countrywide, including rightwingers Clive Derby-Lewis and Janus Waluz sentenced to death for the murder of SA Communist Party leader Chris Hani

Removing the gallows would, however, take some time, Correctional Services spokesman Brigadier Chris Olckers said

A plan to dismantle the gallows was "on the table" and was in the process of being finalised

The Commissioner of Correctional Services will, on receipt of the report, decide what action to take. — Sapa.

Star 7/7/95

The price you pay for justice

(252)

JEAN LE MAY
Staff Reporter

■ The Hoexter Commission on rationalising the Supreme Court will look into the high costs of litigation, says commission member Justice Ramon Leon.

ARG 8/7/95

A VERY senior advocate once said that accepting an appointment to the Bench was the equivalent of committing an act of insolvency

He was joking, of course — but there is an uneasy truth in his words, because judges earn about R250 000 a year while there are senior "silks" in Cape Town who make R1,4 million a year

The Cape Bar Council has recommended that a senior advocate may charge R16 000 for the first day of his appearance in court (this includes pre-trial work) and R8 000 on succeeding days

Advocates' fees in Johannesburg are said to be even higher Karel Tip, a member of the Johannesburg Bar Council's fee committee, declined to disclose figures, saying he did not have the scale of recommended fees with him and could not remember them off-hand

Fees are usually negotiated before the case goes to court so not everybody pays the maximum But a tenth principle has been added to the classic Nine Principles of Law laid down by the jurists, and that is How much money can you afford to spend on it?

"The party with the most money to spend has a much better chance of succeeding The amount of money you have to spend is a reality," a city lawyer admitted

So questions are now being asked whether the new Hoexter Commission on the rationalisation of the Supreme Court will achieve anything towards keeping down the enormous costs of litigation

"Certainly the question of legal costs will be looked at indirectly," Mr Justice Ramon Leon, a member of the commission, told Weekend Argus

"We may well take the question of costs into consideration under the term of reference which deals with improved access to justice for civil litigants"

Gerald Josman, a member of the fees committee of the Cape Bar Council, said the fees charged by silks were not the issue

"What is relevant is the fees charged by juniors," he said (averaging about R5 500 for the first day of a trial including pre-trial work) "We are working on proposals which will make juniors available through the Legal Aid Board at substantially lower cost to the client"

Mr Tipp said the Johannesburg Bar Council had not touched at all on costs in its submission to the commission

The council had concentrated on the commission's other terms of reference, he said

The commission has been asked to decide whether the jurisdiction of existing courts should be extended or whether each of the nine provinces should be given its own court

It has also been asked to look into the need, if any, for specialist courts for civil cases (such as the one operating in Johannesburg) and for circuit courts for civil cases (like the one operating in the Western Cape)

Supreme Courts countrywide landed up where they are now because of historical divisions of the country into provinces and, later, into "homelands"

There are four provincial divisions with courts in Cape Town, Kimberley, Johannesburg, Pretoria, Durban, Maritzburg, Grahamstown, Port Elizabeth and Bloemfontein, and four formerly "independent" homelands with courts in Umtata (Transkei), Bisho (Ciskei), Thohoyandou (Venda), Mmabatho (Bophuthatswana)

The Western Cape, the Northern Cape, the Free State and KwaZulu-Natal will be little affected, but the difficulty could be over the placing of courts in the former Transvaal and the former Eastern Cape

The Transvaal has now been split into four provinces — Gauteng, North-West, Northern Transvaal and Eastern Transvaal — but the only Supreme Courts are in Johannesburg and Pretoria

The question is, will new courts be established in new provincial capitals such as Pietersburg?

Hugo verdict pains public

(252) Sowetan 10/7/95

By Ruth Bhengu

THE small farming community of Bloempark outside Vanderbijlpark is still reeling from shock over the sentence passed on farmer Alexander Hugo, who shot dead 10-year-old Vusi Nkolonzi last year for starting a veld fire

Just over a week ago, Hugo received a four-year jail sentence for culpable homicide, but will serve only 18 months before undergoing correctional supervision However, instead of being divided along racial lines by this incident, residents seem to have been drawn closer together

Some white farmers have pledged their support for Vusi's parents and have described this sentence as "disgraceful" "I know how Vusi's mother feels because I lost my son three years ago," said Mrs Lulu Jordaan, the wife of a neighbouring farmer whose children used to play with Vusi.

Funeral parlour owner Mr Litau Litau said although Hugo's sentence angered most residents, it did not strain community relations."We know that a few farmers around here are not friendly, but we have coexisted without serious problems," he said "I think the sentence is bizarre I am fed up that Hugo got such a ridiculously light sentence "

Retired police captain Mr Hans Aswegen said he had been dubbed a "*kafferboetie*", because he had always got along with black people, but said this did not bother him "I think every right-thinking person is sore that Hugo got off so lightly," he said

"This sentence is as good as an acquittal. Even if he goes to prison, he might be out in a year's time I don't believe that justice was done here "

Although most people criticised Hugo, Mr Samuel Maya — who has been working for the Hugos for more than a year — said they were good people. "Alexander's parents are heartbroken and have been crying ever since this thing happened," said Maya

"Even Alexander is a good person Ever since I started working here, I have never heard a cross word from him He has always treated me well

"I still don't know what got into him the day he shot that little boy," Maya said although Hugo's parents had not been to see the Nkolonzi family, they had sent him to find out what the family needed for the funeral arrangements.

"The Nkolonzi family sent me back to tell my employer they did not need anything. I could understand they were in pain," he said.

"This is a very unfortunate thing that has happened and I am saddened that everyone is going through this pain "

Vusi's mother, Mrs Jane Nkolonzi, is still bewildered by the ramifications of Hugo's sentence

"I can't understand how he could have received such a light sentence when I have lost my son," she said "My wish was that he should be locked up for a long time because I will never see my son again "

Lawyers' pay hikes 'lawful'

CT 11/7/95

OWN CORRESPONDENT

(252)

EAST LONDON Salary increases and lump-sum payments to former Department of Justice officials in Transkei were lawful and should not have become the subject of a public probe, the Browde Commission of Inquiry heard yesterday

Eight state advocates, attorneys and law advisers who benefited from the 1994 salary increases, backdated to 1991, also questioned the validity of the inquiry

"This commission has no jurisdiction, as the complaint was brought by the provincial finance minister and not by the national minister," their legal representative, Mr Dawid van Zyl said

He claimed a 1994 Transitional Executive Committee resolution that halted upgrading of public service positions was "null and void".

The commission, headed by Mr Justice Jules Browde, was appointed by President Nelson Mandela in February this year to investigate irregular promotions and salary increases in the South African and former TBVC civil services between April 1993 and September last year

The commission investigator, Mr Wollie Wolmarans, said eight senior officials had received substantial salary increases in February last year

'NUREMBERG-STYLE TRIALS NOT POLICY'

ANC call 'out of line'

CT 12/7/95

(252)

THE ANC'S HEAD OFFICE has distanced itself from a call by its kwaZulu/Natal branch for the death penalty to be imposed on those convicted of apartheid crimes.

THE ANC's head office has firmly distanced itself from calls by its kwaZulu/Natal branch for "Nuremberg-style" trials and for the death penalty to be imposed for apartheid crimes

National spokesman Mr Ronnie Mamoepa said yesterday the call was "very unfortunate" and did not reflect ANC policy

"Their position remains at odds with ANC thinking We reiterate the right to life as enshrined in the interim constitution and fully support the abolition of the death penalty by the Constitutional Court"

Mr Mamoepa said the ANC did not subscribe to "selective justice or Nuremberg-style trials" It had consistently advocated the need for a truth and reconciliation commission as a means of "ensuring the healing of our nation"

The ANC in kwaZulu/Natal said on Monday it wanted security forces in the province to be purged of elements allegedly involved in dirty tricks against opponents of the National Party

"There are still rotten eggs in the security forces who worked to undermine the ANC," provincial ANC spokesman Mr Dumisane Makhaye said

He called on the government to consider keeping the death penalty for people who were guilty of apartheid crimes but who refused to volunteer information

He said Nuremberg-type trials should be considered "in the light of the new evidence of the collusion of National Party (NP) leaders in the killing of our people"

Mr Makhaye's statement followed new claims of covert activities carried out against the NP's opponents after the ANC and other political parties were unbanned and allegedly endorsed by the former government

Former president Mr F W de Klerk has denied claims that he knew of secret attempts to discredit the ANC after its unbanning in 1990 "These revelations also confirm that the IFP is nothing but (an) extension of the notorious apartheid covert forces," Mr Makhaye said — Political Staff, Reuter

Clash looms on 'kingdom'

SPECIAL CORRESPONDENT

[illegible]

'Let them hang' — SA in a new survey

(252) ARG 15/7/95

Own Correspondent

MOST South Africans favour the retention of hanging, despite the Constitutional Court ruling abolishing the death penalty

This is the finding of a new survey by Markinor conducted in major metropolitan areas of Gauteng, Durban, Maritzburg, Bloemfontein and East London

Of the 2 000 people interviewed, half were asked if they supported the death penalty in principle The remainder were asked the same question but with "qualified scenarios" — rape, child abuse, murder or treason

In principle, 62 percent wanted capital punishment and women backed it more than men Three quarters of the white people, 55 percent of black people and 58 percent of coloured people voted in its favour.

"Support for the death penalty in black metropolitan areas has increased by 30 percent since the 1993 survey. Only 26 percent of all people are against it," said Willem Coetzee, who co-ordinated the study.

When capital punishment is linked to a villainous act a different scenario emerges High treason stands as the exception Only 35 percent of respondents thought death was fair punishment.

Murdering a child gained the highest vote for the death penalty at 78 percent, while 70 percent thought it was fitting punishment for the murder of an adult

Rapists should die, said 63 percent of those interviewed. But murdering a policeman was more serious — 65 percent were convinced criminals guilty of this should die For serious child abuse, 61 percent voted for capital punishment

Mr Coetzee said all interviews were conducted "face to face" with adults over 16 The 2 000-strong sample was made up of 1 000 black, 640 white, 240 coloured and 120 Indian people.

The respondents came from a comprehensive range of environments, including squatter communities

Most South Africans back capital punishment – poll

By TROYE LUND

South Africans favour capital punishment despite the Constitutional Court's ruling against it, according to a new survey

The study by Markinor was conducted in Gauteng, Durban, Maritzburg, Bloemfontein and East London, and of the 2 000 people interviewed, half were asked if they supported the death penalty in principle The remaining half were asked the same question but with qualified scenarios — rape, child abuse, murder or treason

In principle, 62% wanted capital punishment, and women backed it more than men Three-quarters of whites, 55% of blacks and 58% of coloureds voted for it

"Support for the death penalty in black metropolitan areas has increased by 30% since a 1993 survey," Willem Coetzee, who co-ordinated the study, said this week.

When capital punishment is linked to a villainous act, a different scenario emerges High treason stands as the exception Only 35% of respondents thought death was fair

Murdering a child gained the highest vote for the death penalty at 78% while 70% thought the noose was fitting for murdering an adult

A total of 63% of those interviewed said rapists should die But murdering a policeman was more serious — 65% were convinced criminals guilty of this crime should go to the gallows For serious child abuse, 61% voted for capital punishment

(252) Star 15/7/95

Omar supports more pay demand

Sowetan 17/7/95

(252)

THE proposed five percent increase for magistrates was not enough and their disappointment was appreciated, Justice minister Dullar Omar said at the weekend

Omar was reacting to reports last week that some magistrates were threatening to embark on a go-slow which could lead to a full-scale strike if their salaries and conditions of service were not improved

About 40 magistrates from Pretoria reportedly signed a memorandum threatening a strike and another from Durban voiced a similar warning

In a statement, Omar said his department had been trying to address magistrates' grievances in spite of being given only one percent of the national budget

Issue discussed

He said he had discussed the issue with the minister responsible for the Public Service Commission and the Minister of Finance, as well as the cabinet

He also had the support of all political parties

"The cabinet reaffirmed its recognition of the independence of the judiciary and its commitment to the improvement of salary and service conditions of all professionals in the Department of Justice

Matter of agency

"To this end I am promoting, as a matter of urgency, the rationalisation of the magistrates' profession, and the restructuring of the Magistrates' Commission, in consultation with all stake-holders," he said — *Sapa*

SA courts 'equal to best in the world'

☐ *But some changes coming*

ARG 18/7/95 (252)

The Argus Correspondent

PORT ELIZABETH — Justice Minister Dullah Omar said on his first visit to the Port Elizabeth Magistrate's Court yesterday that South Africa had a court structure that was equal to the best in the world

He thanked everyone who had played a role in ensuring the administration of justice was kept at this high level

Mr Omar said that after the national elections there was great uncertainty but now, after one year, South Africa could be proud it had ensured the continued functioning of the courts

He said his visit to Port Elizabeth was a goodwill one, and he was not here to "make demands"

Mr Omar said while South Africa would take the best of the former administration into the new South Africa, some measures of change were envisaged One of these was to make the courts more representative of the population

This had already been agreed in principle

Mr Omar said there were fears as to how this would take place and if the standard of justice could be maintained

The constitution differed from any other previously known in South Africa It ensured the constitution and not parliament, was supreme.

Mr Omar said South Africa had a Bill of Rights There had been arguments that this protected criminals and not victims This was not the purpose of the Bill of Rights, although criminals and accused people also had rights

The essence of the courts was that a person was innocent until proven guilty

He said the country had to look at how it could apply the Bill of Rights so that victims were protected A human rights culture was required

The Department of Justice needed to ensure that when justice was dispensed, it was acceptable to the community as a whole

As a Minister in the Department of Justice he would fully support the courts if they refused bail and passed heavy sentences where necessary

The courts would remain independent He would not pass down orders to magistrates and judges

BACK HOME: Lifelong anti-apartheid fighter Archbishop Trevor Huddlestone is welcomed at an Anglican retirement home near Johannesburg by Walter Sisulu after his return from England to South Africa. It is 39 years since he was forced out of the country because of his battle for racial equality. Asked if he had retired, he replied "No, that is one of the many advantages of being part of the church."

Truth commission: Plea for neutrality

(252) CT 20/7/95

JOHANNESBURG: Thirty-one human rights groups and religious organisations yesterday called on President Nelson Mandela to ensure no political figures were appointed to the truth commission to probe human rights crimes under apartheid

Mr Mandela earlier signed the Promotion of National Unity and Reconciliation Bill into law

Justice Minister Mr Dullah Omar said yesterday that his department's indemnity office had already received about 2 000 applications for indemnity. He said this number was expected to increase

Mr Jody Kollapen, a spokesman for the organisations and a representative of Lawyers for Human Rights (LHR), said "The truth and reconciliation commission will be required to ask politically embarrassing questions and may be forced to make politically unpopular recommendations."

It was essential that commissioners were chosen on the basis of their track records in working for human rights The names of nominees should be published for public scrutiny, he said

Mr Mandela said he would announce the names of truth commissioners soon, adding that they would be people of good standing but not of high political profile

● The Freedom Front yesterday expressed its "disappointment" that the amnesty date had not been changed to May 10, 1994 — Sapa-Reuter

'Path opened to reconciliation'

Mandela puts signature to 'truth' law

(252)

BD 20/7/95

Adrian Hadland

PRETORIA — President Nelson Mandela signed truth commission legislation into law yesterday but warned "South Africans everywhere" to prepare themselves for participation in the process

After signing the Promotion of National Unity and Reconciliation Act, Mandela said organisations, victims and all of SA "must join the work that lies ahead".

The Act's passage marked a moment of enormous significance in SA's history "We can now deal with our past, establish the truth that has so long been denied us, and lay the basis for genuine reconciliation"

Only by knowing the truth could SA hope to heal "the terrible open wounds that are the legacy of apartheid" But this process could not be allowed to rest only with the truth commission and its three committees — the amnesty committee, the human rights violations committee and the reparations and rehabilitation committee

People and communities across the country should begin to organise so that they could also be part of the initiative

Justice Minister Dullah Omar said more than 2 000 applications for amnesty had already been received by government. "No doubt there will be many more" If human rights violators did not apply for amnesty, they would be subject to prosecution

At a news conference, representatives of 31 non-governmental organisations called on Mandela to appoint to the truth commission only those who had a long track record of working for human rights The commission's effectiveness would depend on the calibre and integrity of its commissioners, a spokesman said It would need to be accountable to the interests of citizens and the ideals of human rights "rather than to politicians and political parties"

The organisations called for a transparent process of appointing commissioners, free of "political horsetrading" Nominees' names should be publicised for comment, the backgrounds and track record of every candidate should be checked while public hearings should be held so that the candidates' commitment to human rights could be questioned and their past evaluated.

Speaking on behalf of Amnesty International, human rights activist Sheena Duncan said if the commission was to be accepted as credible and capable, commissioners had to be selected by a process which raised public confidence and ensured commissioners had been chosen on the basis of "their demonstrated commitment" to human rights advocacy

Mandela said the procedure for appointing commissioners was under discussion and an announcement would be made. But he stressed government was committed to transparency, hinting that a more public process than was originally envisaged could be adopted According to the Act, the President appoints the commissioners in consultation with the Cabinet.

The truth commission is expected to be up and running within two or three months

The Freedom Front — the only party to vote against the Bill in Parliament — said it was disappointed the legislation had been signed without postponing the December 5 1993 amnesty cut-off date

● Picture: Page 3

THE NATION

2 000 ask for Truth Commission amnesty

ARG 20/7/95 (252)

PRETORIA — About 2 000 applications for amnesty received so far will come before the Truth and Reconciliation Commission, says Justice Minister Dullah Omar

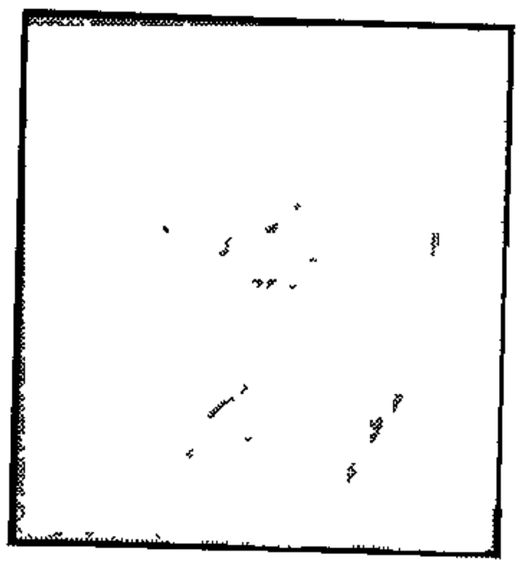
"I have no doubt there will be many more applications," he told journalists at President Mandela's official Pretoria residence yesterday

Mr Mandela earlier signed the Promotion of National Unity and Reconciliation Bill into law It provides for the setting up of the Truth and Reconciliation Commission

Mr Omar said Mr Mandela would determine a deadline for applications

"It is very important that the process envisaged by the commission be completed expeditiously If persons do not submit applications within the time fixed by the president by proclamation, they will forfeit the right to amnesty"

Mr Omar said the Act made provision for the suspension of criminal trials pending applications for amnesty, but this would not be automatic



Dullah Omar

"There are many things which have happened which are clearly not political in character Where that is clear, the trials will continue"

Mr Omar said the cut-off date of December 6 1993 for political crimes could not be changed easily There would have to be a "very, very good reason" relating to "the issue of violence"

Moving the cut-off date would also require an amendment to the constitution

Mr Omar emphasised that people did not have to fear the Truth Commission It was not designed for a "witch-hunt"

"At the same time it is very important that the truth about our past should be known"

No attempt would be made by the commission to cover up for anyone who had committed gross violations of human rights

Mr Omar said the Act did not preclude prosecutions If evidence of gross violations of human rights emerged, the attorneys-general of the country were duty-bound to prosecute

● The African National Congress gave its full support to Mr Mandela's signing of the Promotion of National Unity and Reconciliation Act

"The Act could not have been signed at a more appropriate moment than when there are revelations of the National Party government's conspiracy to undermine the ANC and its allies prior to the elections," ANC spokesman Ronnie Mamoepa said in a statement

He said the NP and its proxies should take advantage of the climate created by the enactment of the legislation "to confess to the world in general and our country in particular the crimes against humanity"

The Gauteng provisional cabinet also gave its support to the signing of the bill

Premier Tokyo Sexwale said it would make South Africa "come to terms with our past, current existence and prepare us for the future"

He added "The underpinning essence of national soul-searching remains reconciliation, hence the passing of the Act" — Sapa

Bar Council decision favours wealthy, claim advocates

Row over Sandton chambers

(252) Star 20/7/95

BY TAMSEN DE BEER

The Johannesburg Bar is facing a revolt by some of its members following a decision by the Bar Council in favour of opening legal consultation facilities and an arbitration centre in Sandton

The Bar's 530 members are due to vote on the issue after 40 Bar members signed a petition calling for a general meeting, circumventing normal procedure whereby members present their views to committees which make recommendations to the council

The dissenters say the move will favour wealthy practitioners able to afford the cost of opening offices in Sandton

"How I foresaw the outcome is that it would be buried in the committees The Bar Council would go ahead anyway," said one of the signatories, a Johannesburg advocate who asked not to be named and expressed serious concerns about the "undemocratic nature" of the council's decision

The advocate said the council had been prompted to take up the matter to avert a fragmentation of the Bar after certain senior members implied they would move their consultation rooms with or without the Bar's agreement

Bar Council chairman Michael Kuper said the decision was not final and would "ultimately depend upon the view of the Bar as a whole" According to Kuper, existing chambers in Johannesburg's central business district were inconveniently situated for many clients and attorneys located in the northern suburbs

But the advocate who signed the petition said he was not convinced the move had been properly investigated or debated, or that Sandton was the right place for the facilities

"Why not Baragwanath, or the East Rand, or the West Rand? There are clients all over The Bar is starting to dismember itself from its chambers," he said.

He said limited space in Sandton would result in a loss for those who could not afford to pay for consultation facilities there, and claimed the move would favour only certain wealthier legal practitioners

The advocate said that while the move might ultimately be a "good thing", he and other practitioners had not been able to express their opinions

'It won't become a witchhunt'

Mandela signs law for truth commission

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20/7/95

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Star 20/7/95

BY MONDLI MAKHANYA
POLITICAL REPORTER

President Nelson Mandela yesterday signed legislation to establish a truth commission to inquire into human rights abuses under apartheid.

The president's signing of the Promotion of National Unity and National Reconciliation Bill marks the final step in the tortuous establishment of the commission, which has become a centrepiece of the Government's programme

Pledging that the commission would not become a witchhunt against any parties or individuals, Mandela said the body would be used "to deal with our past, establish the truth that has so long been denied us, and lay the basis for reconciliation"

Mandela told a media conference at his Mahlambandlopfu residence that the Government would strive to appoint non-political people to the body He said the commissioners would be "persons of good standing, highly respected and not of a high political profile".

"There is a strong and urgent call from communities and human rights organisations that these critical appointments should not be tainted by political horse-trading, but that the commissioners should be people known and respected for their proven commitment to human rights and reconciliation "

PRESIDENT pledges that no parties or individuals will be targeted and the body will be used 'to deal with our past'

The composition of the truth body is likely to be a thorny issue as various parties, particularly the Freedom Front and the Inkatha Freedom Party, fear it may be turned into a witchhunt of the ANC's enemies

In terms of the Bill, the president appoints commissioners in consultation with the Cabinet Mandela said he would make the process transparent and would announce what procedure he intended following

Yesterday a coalition of 30 human rights lobby groups and non-governmental organisations warned against making "political appointments" to the commission The coalition, which includes Lawyers for Human Rights, the South African Council of Churches and the South African National Civic Organisation, called for the names of nominees to be made available for public comment and for candidates to be subjected to public hearings

Coalition spokesman Graeme Simpson said commissioners would have to be of a high calibre and integrity as they would have to "ask politically embarrassing questions".

"The commission will also have to be trusted by survivors of human rights abuses and by the families of victims before they agree to testify before it

"It will not get this support if the appointees are chosen on political considerations rather than on their integrity and ability "

The commission will be comprised of an amnesty committee, which will hear applications for amnesty, the committee on gross human rights violations, which will hear from victims and make recommendations on how to ensure the violations do not happen again, and the committee on reparations, which will look at compensating and counselling victims

Justice Minister Dullah Omar ruled out the possibility of changing the December 5 1993 cut-off date for amnesty There would have to be "very good reasons" for shifting the date as this would entail amending the constitution

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20/7/95

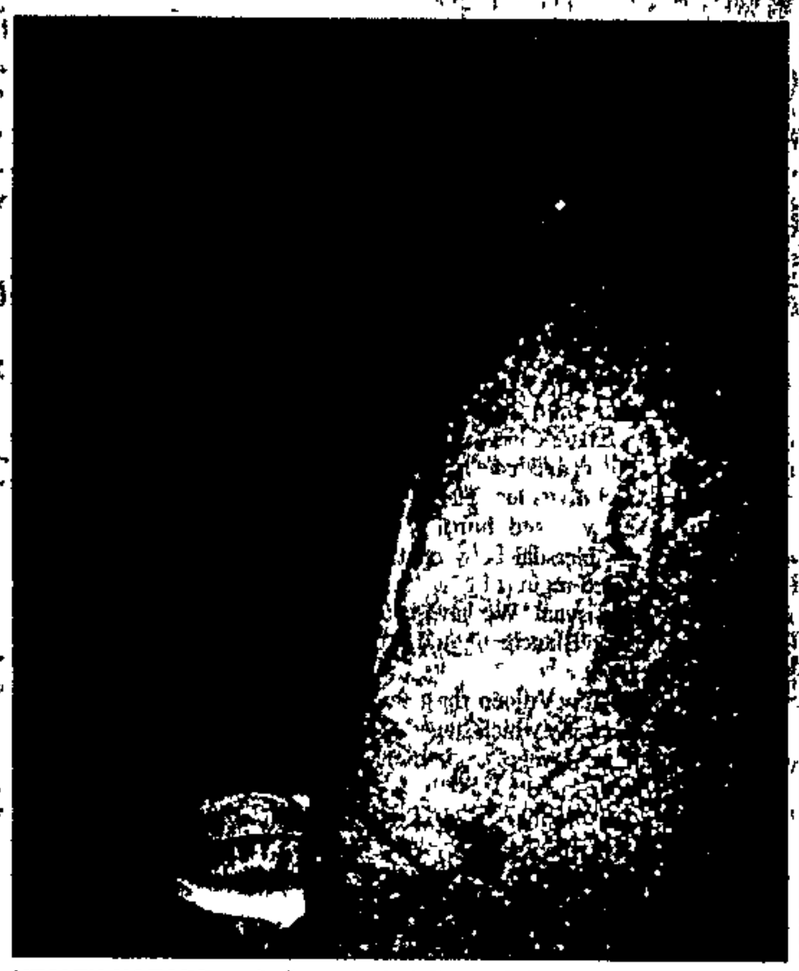
The dotted line . . . President Nelson Mandela, watched by Justice Minister Dullah Omar, signs the Bill which will establish the Truth Commission. PICTURE ETIENNE ROTHBART

FEATURE

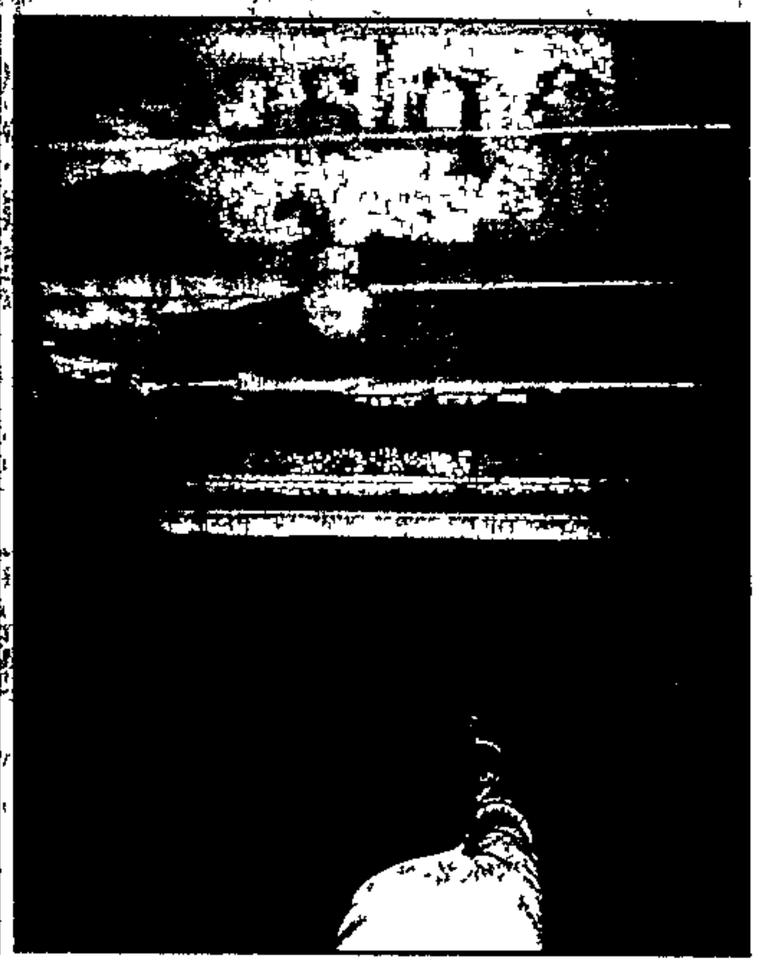
Pretoria court is raising a big stink

(252) Sowetan 20/7/95

All authorities deny responsibility for filthy court, says **McKeed Kotlolo**



HEALTH HAZARD . A disgusted visitor points to a toilet at the Mamelodi Magistrate's Court.



Court visitors describe the worn-out ceilings hanging from the rafters as a death trap. PICS McKEED KOTLOLO

THE ALWAYS PACKED Mamelodi Magistrate's Court in Pretoria has been described by local residents and by relatives of awaiting-trial prisoners as a "death trap"

A visit this week by *Sowetan* to the court buildings revealed the unhealthy conditions that members of the public and awaiting-trialists have to endure during court hearings

The building has two courtrooms, with cells in the basement for awaiting-trial prisoners before and after their court appearances

When *Sowetan* arrived at the court before 9am on Tuesday, only a court orderly in one of the courtrooms was busy at his desk The public remained outside to avoid the strong stench from flooded sewerage and a broken water pump

All doors and most windows of the courtrooms were open to let the stench out, despite the chill that came from the flooded cells in the basement

The water in the basement covered about a third of the stairs leading from the cells to the courtrooms One could even hear the sound of running water while sitting in court

Sources told *Sowetan* the "floods' in the cells started last week, but nothing was done until Tuesday morning when plumbers cleared the water and fixed the broken pump

During the flooding, awaiting-trial prisoners were kept in a police van outside the building despite the bitingly cold winter weather

The matter was first reported in *Sowetan* about two years ago At the time authorities promised to do everything in their power to fix the building

An elderly mother, whose son appeared in court on Monday, said "Prisoners from various police stations and prisons were kept in the van from about 9 30am until about 3 30pm when the court adjourns for the day"

She described the neglected building with worn out ceilings hanging from the rafters as a death trap

A plumber who fixed the pump on Tuesday stood almost waist deep in water He said the toilets in the basement were submerged in freezing water

The public toilets have been blocked for more than six months but have not been attended to by the authorities, despite numerous complaints by the public

The stench from soiled floors and toilet seats kept would be users at a distance [illegible] toilets had no doors and the white waterbasin for washing hands had turned brown from dirt Other basins had grown rigid as a result of the stagnant water

Sources at the [illegible] members of the public are [illegible] for court officials Only [illegible] are allowed to use them and are [illegible] at a time

A Department of Justice spokesman in Pretoria Mr Charles Robbie confirmed the ongoing problems at Mamelodi Magistrate's Court

"I haven't been to the premises myself but I have heard of the occasional flooding as well as the state of toilets" he said

He told *Sowetan* his department did not own any buildings The Mamelodi court belonged to the local authority and was in the process of being handed over to the Department of Public Works

However, this was denied by Mamelodi City Council spokesman Mr Velelemi Mashumi who stressed that the building belonged to the Justice Department

Lawyers for Human Rights said it would comment after investigating conditions under which awaiting-trial prisoners were kept at the court

A spokesman for the environmental section of the Department of Health, Mr Paul Brits, said they were not aware of the problem and promised to launch an immediate investigation

NTEXT

MAIL & GUARDIAN
July 21 to 27 1995

The new Police Bill balances human rights with the need to combat crime, writes **Azhar Cachalia**

Police vs human rights

WM 21-27/7/95 (252)

IT is probably true that crime has become the factor which occupies the minds of South Africans more than any other issue in our new democracy. As the police, courts and communities battle to deal with the problem, we constantly hear arguments for the need for more police powers to combat crime. Calls for the reimposition of the death penalty and the denial of bail for arrested suspects are now commonplace This, of course, raises the question as to whether we will succeed in creating the human rights culture so many people have fought for.

It should be borne in mind that South Africa is not the only country that has grappled with the tension between creating a human rights culture, on the one hand, and combating crime effectively, on the other. Our Constitutional Court has, in two inspired judgments, outlawed the death penalty and declared unconstitutional a provision in the Criminal Procedure Act which imposed a burden of proof on an accused person to show that a confession made to a magistrate was not made voluntarily.

In this latter case, the Court found that, by placing the burden of proof on an accused person, his right to remain silent as well as his right not to be compelled to give evidence against himself was violated However, it is important to emphasise that the Court explicitly recognised the pressing social need for the effective prosecution of crime and noted that, in some cases, the prosecution may require reasonable presumptions of law to assist it in this task.

In so noting, I believe the Court sent out the correct signal for the need to maintain a human rights culture while acknowledging the need of the authorities (police and prosecutors) to have sufficient powers at their disposal to combat crime.

In assessing whether the legislature has got the balance right and not conferred excessive power on the authorities, a court will scrutinise a law to ensure that it is reasonable and justifiable in an open and democratic society based on freedom and equality and, further, that the essential content of the right has not been negated. In some instances, such as where the fundamental rights of accused persons are involved, the authorities will have to show that, in addition to being reasonable, the intrusion into the accused person's rights is also necessary.

The about-to-be-published Police Bill confers certain powers on the police to deal with various problems. In assessing whether these powers will survive constitutional scrutiny, the Ministry of Safety and Security will, if required, have to persuade the Constitutional Court that these problems are of pressing social concern and that the way the laws have been drafted meets the requirements set out above (reasonableness and justifiability).

Section 13(2) of the Bill requires a member of the SAPS to use "only the minimum force which is reasonable in the circumstances" to exercise any power or perform any duty under the Act. While this is no more than a restatement of the common law position, its inclusion in the draft will perform an important educative function within the service.

The drafting team looked very carefully at whether these powers were required. Having decided that they were, the drafters had to ensure that these powers would survive Constitutional scrutiny

Section 13(6) of the draft Bill empowers the National or Provincial Commissioner "where it is reasonable in the circumstances in order to restore public order or to ensure the safety of the public in a particular area" to effect the cordoning off of a particular area. The area may be cordoned off for a period of 24 hours, during which period the police may, without warrant, conduct searches in the area.

This section empowers the police to deal with the problem that has been confronted in many areas where large numbers of arms come into the area and virtual war zones develop, which makes policing impossible and the safety and security of persons become seriously threatened.

The drafters have built in certain safeguards to minimise the abuse which may occur when the police are compelled to use this power Firstly, only the National or Provincial Commissioner may order the cordoning off. Secondly, the cordoning off period cannot exceed 24 hours. It is to be expected that the National or Provincial Commissioner will only use such a wide power if there is a request from the community or a community policing forum in the area and the National or Provincial Commissioner accepts that there is no other way to restore public order or to ensure the safety of the public in the area.

Section 13(7) and section 13(8) empower the police to set up roadblocks to assist in the detection and combating of crime and to conduct searches at such road blocks. These powers also infringe the rights of persons under the Constitution, which guarantees freedom of movement and privacy. Again, it is the view of the drafting team that these powers are necessary for the police to effectively perform their duties An important provision and safeguard is that where any member executes a search at a road block, such member "shall, upon demand of any person whose rights have been affected by any (search or seizure)" exhibit to such person the written authorisation for the setting up of the road block.

The police have powers under numerous pieces of legislation to deal with particular problems. The Criminal Procedure Act, the Drugs and Drug Trafficking Act and the Arms and Ammunition Act confer certain powers on the police The powers set out in the Bill are in addition to the powers which exist in any other legislation.

In conferring additional powers upon the police in the draft Bill, the drafting team looked very carefully at whether these powers were required. Having decided that they were, the drafters had to ensure that these powers would survive Constitutional scrutiny. In so doing, we were consciously alert to the guideline set by the Ministry of Safety and Security of building a human rights culture on the one hand, while effectively combating crime on the other.

Whether the drafting team achieves this delicate balance will be up to Parliament in the first instance and, ultimately, if necessary, the Constitutional Court

Azhar Cachalia is advisor to the Ministry of Safety and Security and chairperson of the Police Bill drafting team

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Social and economic rights demanded

(252) BD 21/7/95

Tim Cohen

CAPE TOWN — More than 200 organisations are gearing up for a campaign to lobby for the inclusion of social and economic rights in the constitution and for the scrapping of the current property protection clause

Organisers say the campaign will consist of pledges of support, including some from regional premiers and church officials, a petition and a street march in Cape Town

The march is to take place on August 1 and will coincide with the Constitutional Assembly debate on social and economic rights.

Social and economic rights, or second- and third-generation rights, include such rights as housing and social welfare.

The organisations include civic and development organisations and trade unions. Development Action Group director Jacqui Boulle said the ad hoc campaign on social and economic rights hoped to gain the support of some Cosatu unions, although Cosatu had expressed support for the inclusion of social and economic rights as directives only.

The campaign is specifically pressing for the full inclusion of social and economic rights to make these rights justiciable, which they would not be if they were directives.

It has already made submissions to the Constitutional Assembly.

As the right to free speech did not entitle citizens to go to court to demand government financed the establishment of newspapers, development rights would not entitle anybody to demand government fund their homes.

But the enshrinement of these rights would ensure that the courts protected them from being stripped away and ignored by the state.

The campaign wantsthe property clause in its current form scrapped from the final constitution.

It says the existing property clause would entrench existing property rights, especially rights to land — often gained illegitimately.

● See Page 10

the fight at tourists

(34)

...us department was planning to ...onal conference in September ...ted departments such as safety ...y and other stakeholders would ...the search for effective strate... ...bat crime against tourists.

...establishment last week of a ...ourism directorate in the tour... ...ment, government's initiatives ...tourism would be bolstered,

...directorate consisted of about ...n three different directorates: ...policy — which would focus on ...nalysis, policy and strategy; ...ation — which would address ...nternational liaison; and ...investment and training — ...ld focus on incentive schemes ...resource development.

...eased capacity should contrib... ...ding up a number of initiatives ...nder way.

...nclude the preparation of a ...r on Tourism, the development ...m strategy and structures, as ...entive schemes for the indus... ...said.

...sm development section of Sa... ...so hold a conference on safety ...y for the Gauteng region on ...Details would be available lat... ...sman said.

Malay group wants writings

A CAPE Town-based Malay cultural group has launched a bid to have the writings of Sheik Yussuf, the Indonesian exile who brought Islam to SA in the 1600s, returned to SA.

The 29 manuscripts, written in indecipherable ancient Makaserese, are stored at Jakarta's Central Museum in Indonesia and Leiden University Library in Holland, Forum for Malay Culture in SA spokeswoman Tasneem Kalam told a parliamentary committee yesterday.

The committee is hearing public submissions on draft legislation on the proposed pan South African language board.

Kalam said the forum wanted the board, which has not yet been set up, to help secure the return of the documents.

If red tape made this impossible, the forum requested certified copies of the manuscripts be made available. — Sapa.

Free electric fill-up 'could curb pollution'

BD 21/7/95

FREE inner city "fill-up" points for electric vehicles would curb pollution, Eskom suggested yesterday.

Environment Minister Dawie de Villiers, at a recent international global environmental conference, had mooted taxation or penalties for those responsible for urban pollution, the utility company said.

De Villiers felt a road fuel duty and other penalties could lead to faster development of electrical transport and better use of other options for private transport and deliveries.

Eskom national electric vehicle programme head Carel Snyman said. "It's encouraging to see our government representatives adopt a positive attitude.

"While we are not a vehicle manufacturer, we have for several years conducted an awareness programme to alert the public to the environmental and cost benefits of electric transport options."

Eskom was facilitating a process to deliver affordable electric vehicles and the appropriate infrastructure, said Snyman.

"For example, service stations could accept the concept of selling electric fuel alongside the traditional petrol pump."

A free "electrical fill-up" would cost the government less than combating greenhouse gases. It could also be an effective way to subsidise the taxi industry.

Home owners could have "smart plug" recharging systems that automatically topped up vehicles during less expensive off-peak periods late at night.

Eskom expected that most electric vehicles were likely to be charged at low-demand times, helping to contain the electricity price at peak usage times.

California had found that by the age of 12, children had lost about 15% of their lung capacity because of air pollution. — Sapa.

The race is on to appoint Truth Commissioners

(252)

WM 21-27/4/95

Gaye Davis

JUSTICE Minister Dullah Omar said on Thursday he would be meeting with President Nelson Mandela, "hopefully within the next few days", to finalise the procedure for appointing members of the Truth Commission

Urgency will be the watchword the 18-month lifespan of the Truth Commission started ticking away this week, when President Mandela's signature marked the passage into law of the Promotion of National Unity and Reconciliation Act

Omar would not be drawn on the possibility of prospective commissioners being interviewed in public hearings, which a range of South African organisations, and Amnesty International, called for this week. "We need to get the commission going as quickly as possible but, at the same time, the commission has to enjoy broad support," he said

However, he was adamant that political horsetrading would play no role in the appointment of commission members "The President is also strongly of the view that there be no political appointments as such, and that the commission enjoy the confidence of the public at large "

While there had been "no such pressures thus far", the fact that President Mandela would have to consult with the various political parties and the Cabinet opened the possibility of the process "degenerating into a horse-trading exercise"

"We are absolutely determined not to allow this to happen," he said

A coalition of human rights and community-based organisations this week expressed the same fear, saying the effectiveness of the Truth Commission would rest on the calibre and integrity of its commissioners.

"The human rights community has fought long and hard for the establishment of an effective Truth Commission," the coalition said "The government can expect the strongest resistance if it jeopardises the entire endeavour by staffing (it) with political appointees "

It called for names of nominees to be made public so their track records could be scrutinised and comments made, in addition to public hearings where each nominee would be questioned on their commitment to human rights and past activities in this regard

Theologian Frank Chikane is still a contender for chairing the commission Sources said, however, there were concerns in National Party quarters over his activities within the United Democratic Front and the fact that he was a victim of dirty tricks in a 1989 poisoning attempt.

Other names doing the rounds include those of Dr Alex Boraine, director of Justice in Transition, Yasmin Soeker of the World Conference on Religion and Peace, Black Sash veteran Mary Burton, political philosopher Professor Andre du Toit, and UCT professor of public law Hugh Corder.

Minister Omar said he would be asking individuals, organisations and institutions to submit nominations to be passed on to President Mandela. Neither he nor the president had so far approached anyone, he said

"To have started any discussions before Parliament had completed its work would have been contemptuous. The president made it clear he would do nothing until the democratic process had taken its course. Having signed the Bill, he is now prepared to take the next step"

He expected an announcement on the appointment process to be made "very soon", he added

'Let human rights lead SA foreign policy'

WM 21-27/7/95 (252)

Justin Pearce

SOUTH AFRICA is lagging way behind its neighbours in committing itself to internationally recognised human rights agreements — and Amnesty International (AI) has urged the government to rectify the situation and make the promotion of human rights a cornerstone of its foreign policy

"South Africa has a tremendous reputation and prestige in the world," said AI international law expert Professor Menno Kamminga. "We would now like to see South Africa play its role in the world by promoting human rights"

Of the 17 most crucial human rights treaties, South Africa has ratified or acceded to only two South Africa has signed six further treaties, but in such cases the signature alone is not legally binding While this situation is the result of South Africa's former pariah status, Kamminga said the present government ought to move fast to redress the situation

South Africa has acceded to the Geneva Conventions, which govern the treatment of prisoners of war, and recently ratified the Convention on the Rights of the Child The South African state has yet to commit itself to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture, among others

South Africa and Swaziland are the only two Southern African countries that have not ratified the African Charter on Human and Peoples' Rights

As well as encouraging South Africa to join the world community in committing itself to the treaties, AI is lobbying support for a regional Human Rights Commission (HRC) for Southern Africa.

The idea of a regional HRC emerged from a meeting of Southern African Development Community (SADC) foreign ministers last year, and is on the agenda of the forthcoming SADC summit AI is to launch a campaign to ensure that the proposal is not blocked by hostile forces at the summit.

Kamminga said the international treaties and the presence of the regional HRC would provide an "insurance policy" for South African citizens, since a constitutional bill of rights was in itself not a sufficient guarantee against human rights abuses

"I was impressed with the constitutional discussions in South Africa, which made people think about things — but implementation is what counts The Soviet Union, for example, had a beautiful constitution

"If South Africa signed treaties, it would be bound by international law to the protection of human rights"

Kamminga said regionally based human rights agreements such as the proposed Southern African HRC had proved particularly effective watchdogs. In Europe, for example, the majority of cases reported to the European Human Rights Commission had proved successful

"Governments can't afford not to comply," Kamminga noted

(252) ST 23/7/95

Mogoba emerges as new favourite to head the truth commission

By CARMEL RICKARD

SERIOUS lobbying has begun over the appointment of members to the truth commission, after President Nelson Mandela signed the controversial bill into law this week.

Methodist Bishop Stanley Mogoba, a former Robben Island prisoner, is widely regarded as likely to head the commission.

The new Promotion of National Unity and Reconciliation Act requires a panel of between 11 and 17 commissioners to examine gross human rights violations since 1960.

While the new law details the functions and powers of the commission, it does not say how its members will be chosen

The non-governmental human rights community wants an open process, with an opportunity for the public to comment on nominees — who should all have a long track record of working for human rights.

More than 30 human rights groups, including the Human Rights Committee and the Centre for Applied Legal Studies, said this week that they would not co-operate with the commission if the government did not heed their demands

In response, Mr Mandela and the Minister of Justice, Dullah Omar, promised there would be no political horse-trading. Mr Mandela has also undertaken to announce the selection mechanism as soon as possible

A Cape Town-based inter-faith group has already submitted a list of nominees to Mr Mandela, among them Bishop Mogoba; Anglican priest Michael Lapsley, who lost an eye and both hands in an anti-ANC bomb attack; Hindu lawyer Yasmin Sooka of the World Conference on Religion and Peace, and psychologist Tom Winslow, who heads the Trauma Centre for the Victims of Violence and Torture. Further lists are likely to follow from other groups as soon as the president announces the selection procedure

CONTENDER ... Stanley Mogoba

Other possible nominees include the former general secretary of South African Council of Churches, Frank Chikane, Alex Boraine, the director of Justice in Transition; Black Sash and human rights stalwarts Sheena Duncan and Mary Burton; and Anglican Archbishop Desmond Tutu, who retires soon but who is likely to be unavailable because of overseas commitments

Attorney Lilian Baqwa of the Goldstone commission, the head of Lawyers for Human Rights, Jody Kollapen; Johannesburg Methodist minister Mvume Dandala; the former executive director of the Institute for Multi-Party Democracy, Oscar Dhlomo, Catholic priest and ANC MP Smangaliso Mkhatshwa; and the former general secretary of the Southern African Catholic Bishops' Conference, Brother Jude Pieterse, are also mentioned.

Other church-connected possibilities include Catholic Archbishop Denis Hurley, Peter Kerchhoff of the Maritzburg Agency for Christian Social Awareness, and Paddy Kearney, director of the Durban ecumenical social-justice organisation, Diakonia Council of Churches

A difficult slot to fill is that of the judge or retired judge to head the Truth Commission's Amnesty Committee. Among those tipped for this job is Mr Justice Andrew Wilson of Durban, highly regarded because of his handling of cases on emergency regulations and, more particularly, the Trust Feeds case, involving attacks by security forces on members of the United Democratic Front. The newly appointed Mr Justice Edwin Cameron, and Mr Justice Willem Heath of the Supreme Court in Bisho, are also likely to be nominated

Attorneys head for highest court

(252)

DRAFT legislation enabling attorneys to represent clients in the Supreme Court and Constitutional Court was tabled in Parliament yesterday.

The Right of Appearance in Courts Bill confirms the right of advocates to appear in any court and extends the right of audience in the superior courts to attorneys.

An attorney who wishes to represent clients in the Supreme Court is required to apply to the registrar of a provincial division of the Supreme Court.

An attorney who has acquired the right to appear in the Supreme Court may also appear in the Constitutional Court.

CT 25/7/95

Only attorneys who hold the Baccalaureus Legum (LLB) or an equivalent degree and who have at least five years' experience may acquire right of audience in the Supreme Court.

A memorandum to the bill said the rule that only advocates may appear in the Supreme Court was obsolete, as it hampered competition between the professions.

Such competition served to raise standards and resulted in a stronger Bar and Side Bar.

The bill also provides that the Supreme Court may suspend or withdraw an attorney's right to appear in the Supreme Court if it is satisfied that the attorney is "not a fit and proper person to appear" in the higher court. — Sapa

Customary right to be challenged

BD 25/7/93 (252)

Susan Russell

THE Legal Resources Centre is challenging the male right of succession under SA customary law which, if successful, will have far-reaching implications for millions

Legal procedings have been instituted on behalf of Mildred Mthembu, whose husband died intestate in August 1993, and her seven-year-old daughter.

He was gunned down by an unknown attacker

His widow and her daughter lost not only their sole breadwinner, but found that under customary law they were not entitled to inherit his estate, which became property of the eldest male child or his heir

In this instance, the sole heir to the estate is the child's grandfather

The LRC's constitutional litigation unit intends taking the case to court on the grounds that the customary law of succession infringes on the right to equality guaranteed by the constitution because it discriminates on the basis of gender as well as race

LRC candidate attorney Ron Paschke said customary law is an important and valid element of the legal system, and is adhered to by millions.

He said, however, that some elements were discriminatory and particularly affected black rural women who were arguably the most oppressed group in SA society.

In terms of the Black Administration Act, succession was generally governed by "black law and custom"

Paschke said there were certain exceptions.

These were when a person had been married in community of property or under ante-nuptial contract, or where the relevant minister had given a special directive that the property of a particular individual should devolve "as if the said black had been a European".

In practice a directive of this sort was, however, seldom given.

He pointed out the constitution recognised customary law, but like all other laws of the country, was subordinate to the chapter on fundamental rights as far as it was inconsistent with those provisions

Some lawyers believe that while the tradition of male inheritance, with its built-in obligation to maintain female family members, might have worked in a tribal system where women did not earn money, it was arguably outdated in modern urban life where traditional family structures had become fragmented by the migrant labour system

Section 31 of the constitution gives everyone the right to participate in the culture of his or her choice

Paschke pointed out, however, that black women did not have much say in customary law

Court rights Bill is tabled

(252)

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Gildenhuys appointed to land court

(252)

PRETORIA: President Nelson Mandela has appointed former National Peace Secretariat chairman Dr Antonie Gildenhuys as a Land Claims Court judge, the president's office said yesterday. Land rights activist Mr Alan Dodson and former Black Lawyers' Association legal educationalist Mr Justice Moloto were also appointed as judges.

CT 27/7/95

Socioeconomic and human rights go hand in hand

(252)

BUS. DAY/FINAL 27 JUL 1995

KADER ASMAL and RONALD ROBERTS

BD 27/7/95

THE constitutional debate over social and economic rights is central to broader debates over black economic empowerment This overlap remains unrecognised. In the recent words of The Economist, black economic empowerment has so far delivered only a "blacker shade of pale" — isolated black executives beholden to white conglomerates and unable to deliver real change.

Meanwhile, in constitutional debates, opponents of socioeconomic rights try desperately to conjure a brick wall of unaffordability Although 60% of employed Afrikaners are employed by the state, and although our state and parastatal finances remain skewed by yesterday's pension rights, sceptics suddenly insist that socioeconomic rights are a Utopian departure from harsh business realities

This is where black economic empowerment comes in. Sceptics see societal initiatives incorrectly as a static and fragile thing — finite and easily exhausted In fact, the Masakhane campaign envisages government as a pump-primer for the limitless initiatives of citizens, including entrepreneurs. Sceptics, employing an outdated statist lens and unable to see beyond the fiscus, understate available resources badly. State funding is merely the tip of the iceberg.

A minimum floor of socioeconomic rights would enable individuals to initiate economically useful activity — like recipients of fishing rods rather than fish. Sceptics, transfixed by the alleged costs of the fishing rods, remain blind to the enormous and self-sustaining harvest of fish that would follow. By bolstering black economic initiatives, socioeconomic rights will expand — rather than consuming — societal resources. Given adequate provision Transkei women, who now spend three hours a day fetching water, could initiate more productive activities Lawyerly debates on these issues have long lacked basic economic and business literacy.

Already, in areas such as medical services, water infrastructure, schoolchild nutrition, housing and local government services, effective public-private partnerships are under way Far from bankrupting the country, government's social initiatives are fuelling new private profit What is missing is an efficient index of need, charting the contours of misery in our country, and attracting the energies of this new public-private machinery.

We need a powerful constitutional currency to reflect needs that existing price mechanisms, skewed by years of apartheid, continue to ignore The J$E trembles upon the irrelevant mutterings of the ancient regime's hold over politicians, but remains unmoved by homelessness, sickness, starvation, illiteracy and thirst — all major economic threats.

Tremendous demand for our essential economic goods goes unsupplied. Every day profit goes begging Socioeconomic rights could induce a supply-side response from a lethargic business community and reduce these problems of market failure This means new opportunities for the state and business to meet neglected needs.

Building on an important commercial insight — that consumers know their own needs best — the constitution can galvanise communities to define new markets Top-down state legislation is no substitute for giving citizens direct voice through basic constitutional rights

ASMAL

The practice of red-lining in the insurance industry is a good example of the overlap between efficiency and socioeconomic rights. Red-lining can be criticised powerfully on moral, political and constitutional grounds But it is also bad business. An insurance market goes unserved, not because of the principles of actuarial science rigorously applied, but rather because insurance executives prefer a quiet life. Similarly the housing industry, bloated by luxury mansion hyperprofits, lacks the inclination and the efficiency to serve the low-cost housing sector where margins are thinner and the need greatest.

Socioeconomic rights could discourage the inefficiency of effortless profit-taking by tilting the internal profit of companies towards what economists call the "allocative efficiency" of society as a whole Private profit-seeking decisions would then advance simultaneously the efficient overall allocation of resources throughout the economy

Increased allocative efficiency in business will mean more resources for organisations and individuals previously denied commercial funding for non-commercial reasons The non-government organisation, community-based organisation and small business sectors, properly perceived, are not needy supplicants for charity. Rather, through a lens of allocative efficiency, they become a valuable guide to previously ignored social needs.

Such organisations have long served the communities which were relegated to apartheid's business blind spot. They know existing needs as well as existing infrastructures that can be upgraded to serve these needs Business co-operati with them would mean real chang unlike the empty-vessel corpora exhibitionism of many black ec nomic empowerment deals.

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Dear Sir,

TRANSPORTING the debate over socioeconomic rights several steps backwards from where we left it, Steven Friedman (Second generation rights will not benefit the poor, Business Day, August 7) wholly ignores our central argument (Socioeconomic rights and human rights go hand in hand, Business Day, July 27) that socioeconomic rights are workable, not utopian.

Friedman instead revives the old chestnut that by "writing policy into the constitution" socioeconomic rights empower an elite judiciary at the expense of the majority — as though the judiciary, rather than the democratically elected Constitutional Assembly, would be responsible for placing such rights in the constitution.

The central dogma in Friedman's approach is the untenable distinction between a court telling a government what is forbidden (Friedman's view of civil and political rights) versus telling government what it actively must do (his view of socioeconomic rights). Friedman thinks constitutions should do the first, not the second.

But the civil and political rights to a fair trial, to freedom of information, to humane prison conditions rather than cruel and unhuman incarceration — all these and others require that the state actively do things. Even the right to property requires an expensive contract-enforcement bureaucracy.

Ultimately, Friedman objects not that socioeconomic rights require governments to do things, but rather that they require government to do *new* things neglected by the elitist legal system bequeathed us by the past. This is what places him firmly in the 19th century. Hopefully our courts, transformed through a regime of socioeconomic rights, will escape that fate.

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Extra judges are appointed

Bonile Ngqiyaza

THREE additional judges had been appointed to the Land Claims Court after consultation between President Nelson Mandela and the court's president Fikile Bam, the president's office said yesterday

The three appointees were Alan Dodson, Antonie Gildenhuys and Justice Moloto. A further judge would be appointed after consulting the Judicial Services Commission and Bam

The president said the anticipated workload of the court made it "desirable" that up to five new judges be appointed.

"The Land Claims Court has a critical role to play in ensuring we deal effectively and fairly with the sensitive issue of redressing past discrimination in respect of land ownership and occupation" Mandela said.

Dodson, an attorney in a Cape Town firm, has experience in the field of human rights He has been involved in land development matters as advisory board member of the Western Cape-based Surplus Peoples Project.

Gildenhuys, a practising attorney in Johannesburg, is an acknowledged expert in property law, water law, the law regarding town and regional planning, and general commercial law. He is also a leading authority on expropriation law.

Moloto is an attorney with experience in contract and property law, constitutional matters and the administration of estates

Embassies 'represent

This announcement appea

Fears that parties may 'hijack' process

Strong lobby ahead of Truth Commission

Star 27/7/95 (252)

■ BY MONDLI MAKHANYA
POLITICAL REPORTER

Intense political lobbying is set to begin in the next week ahead of the selection of Truth and Reconciliation Commission members

With President Nelson Mandela due to announce the procedure for choosing commissioners within days, political parties and human rights organisations are gearing themselves to ensure that acceptable and credible candidates are selected to sit on the commission

The commission is expected to begin its work in October

The names of clerics Bishop Stanley Mogoba and the Rev Frank Chikane are being bandied about in human rights circles as potential candidates for the chairmanship of the body

There are also strong lobbies in the human rights field that want lawyer Lillian Baqwa and Graeme Simpson of the Centre for the Study of Violence

Human rights activists Sheena Duncan and Mary Burton, and Catholic cleric Brother Jude Pieterse, are also in the running for nomination

Already non-governmental organisations (NGOs) have submitted a proposal to Mandela and Justice Minister Dullah Omar mapping out a "transparent" way of selecting commissioners

The organisations are concerned that the process may be hijacked by political parties wanting to get their "own people" on to the body

"We want a commission that will be, first and foremost, acountable to the truth, human rights and victims," said a spokesman

The process advocated by NGOs would be driven by a panel of five people consisting of representatives of the Office of the President, the Justice Ministry, a human rights lawyer and the NGOs.

The panel would preside over a 6-week-long process that would include public nominations, a period for public comment and open hearings

This proposal is likely to be rejected by the Government, which wants to get the deliberations off the ground soon

Improved protection advocated for Truth Commission

(252) BD 27/7/95

witnesses

Kevin O'Grady

PRETORIA — Witnesses testifying at the Truth Commission would have to be protected, at great expense, from those who wanted their evidence to remain secret, said Enver Daniels, special adviser to Justice Minister Dullah Omar, yesterday

Regardless of the cost to taxpayers, calculated at R4,5m in the past year, of the Goldstone commission's and others' protection schemes, they were deemed "inefficient" and "unsatisfactory" by those who were being protected

At an Idasa workshop on witness protection programme policy yesterday, Daniels said an "efficient, comprehensive" programme would be vital to the success of the commission Bungling of the sort detailed at the workshop by former security policeman Paul Erasmus during his 17 months in Goldstone's care would not encourage people to testify

Erasmus had told how the "safe house" in which he and his family were kept in Pinetown, near Durban, and its telephone and utility accounts were registered in the commission's name. The child of a nearby bar owner knew Erasmus was a protected witness and constantly asked his young daughter what her father had done, said the former policeman

Daniels said there were "forces who fear the truth . and will stop at nothing to prevent the international community from hearing the truth

"We have to ensure the Truth Commission is not hindered in any way by witnesses who fear to testify because they are afraid for their safety."

Antoinette de Jager, a member of Transvaal attorney-general Jan d'Oliviera's team investigating alleged police crimes, said several policemen, including four retired generals, implicated by witnesses for the Goldstone Commission, could be prosecuted soon.

"We have been working full-time for a year investigating the allegations in the Goldstone report, and we are expecting further prosecutions"

De Jager called for help from the private and public sectors in providing "some hope of a future for witnesses", who could find themselves unemployed after testifying and being in hiding

It was agreed at the workshop that a new witness protection programme should be driven by the justice department with input from the departments of safety and security, correctional services, welfare and non-government organisations such as Lawyers for Human Rights

Idasa executive director Wilmot James said the concept had to have "maximum independence from political parties"

It was suggested that programmes be driven by demand, starting with one for the Truth Commission Daniels agreed to ask Omar to set up a task group.

3 more land court judges named

(252) Star 27/7/95

President Nelson Mandela has appointed three additional judges to the Land Claims Court after consulting the court's president Mr Justice Fikele Bam.

The court's expected workload made it desirable that five judges be appointed, Mandela said.

The three are Alan Dodson, Dr Antonie Gildenhuys and Mr Justice Moloto A further judge would be appointed after consulting the Judicial Service Commission and Bam.

Mandela said the names submitted did not include women and he hoped suitable candidates would come forward. He added. "The court has a critical role to play in ensuring we deal effectively and fairly with the sensitive issue of redressing past discrimination in respect of land ownership and occupation." — Sapa.

More judges for LCC

Sowetan 27/4/95 (252)

MR JUSTICE Bakone Moloto, a veteran lawyer and activist, is one of three judges who were appointed to the Land Claims Court yesterday

The other two, announced by President Nelson Mandela, are former chairman of the National Peace Secretariat Dr Antonie Gildenhuys and Cape human rights lawyer Mr Alan Dodson

The appointments will complete the composition of the court to be presided over by Johannesburg lawyer Mr Fikile Bam.

Gildenhuys and Moloto, a former national executive director of the Black Lawyers Association, were picked from a short list of five nominees

The other two were KwaZulu-Natal advocate Mr Frank Sithole and Mr Dimpheletse Moshidi of Johannesburg who is also a BLA executive member

While it was expected that an affirmative appointment would be made, the absence of a woman in the final selection would impact negatively on the legitimacy of the court, according to earlier expert opinion.

However, the only woman candidate, Mrs Vuyiswa Ramphele, withdrew shortly before the interviews of nine candidates in Cape Town

Mr Justice Moloto ... appointed to the Land Claims Court yesterday.

FW urged to confess 'crimes'

(252)

CT 28/7/95

JOHANNESBURG: The ANC yesterday urged Deputy President F W de Klerk and other leaders to confess to crimes it says were committed under apartheid, saying this would be in their best interest because the truth would emerge anyway

"We call on Mr De Klerk to confess to the nation the truth about the attempts to undermine the ANC, to vilify individuals and even in some cases to expedite effectively the murders of political opponents of the apartheid regime," ANC deputy secretary-general Ms Cheryl Carolus said.

Violations

Most South Africans did not want revenge, she said. "They just want the truth."

But where charges were laid against those who committed "gross violations" the law would have to take its course.

In reaction, the NP accused the ANC of political intolerance, saying it looked as if the organisation was preparing for a witch-hunt.

Sapa

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Star 28/7/95

Lawyers feel new law will enhance Bar

(252)

■ BY HELEN GRANGE

The Association of Law Societies (ALS) has welcomed the draft legislation extending rights of audience in the Supreme Court and Constitutional Court to suitably qualified attorneys

ALS president Tony Hardy said the draft legislation — contained in the Right of Appearance in Courts Bill — was a vindication of the association's standpoint and in the public interest

The Bill was tabled in Parliament on Monday, and says the rule that only advocates may appear in the Supreme Court is obsolete and has become a millstone

"Greater competition between the professions, together with more experience, can result in rising standards and a stronger Bar and Side Bar," it says

The Bill also provides that the Supreme Court may suspend or withdraw an attorney's right to appear in the Supreme Court if it is satisfied that the attorney is "not a fit and proper person to appear" in the higher court

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Sapa

'Sitting targets': Slack supreme court security slammed by attorney

(252) ARG 29/9/95

Own Correspondent

JOHANNESBURG. — Advocates, attorneys and court officials are jittery about inadequate security at the Rand Supreme Court, according to an attorney who initiated an investigation into the matter.

"There is absolutely no effective supervision. There are frequent gatherings outside the court. Witnesses and court officials are sitting targets for fanatics with grievances of any kind," the attorney, who wishes to remain anonymous, said.

"A few months ago someone walked into one of the courts wearing pouches of petrol which he threatened to set alight. Often the judge president himself is in court."

The Department of Justice, however, said that while the safety of judges, court personnel and the public was important, this had to be weighed against the accessibility of courts to all people.

Justice Department chief liaison officer Charles Rabie said the Department of Public Works had been asked to boost security by training staff regularly and by getting more metal detectors and X-ray machines.

"The limitation of the public's access to the building was considered five years ago and the cost was estimated at R3 million," he said.

"Due to financial constraints and the fact that we consider it more viable to spend this money on building more courts where there are none, this project was placed on hold."

The Johannesburg attorney approached a security company to investigate the security situation at the supreme court.

Above all, security at the main entrance of the court, the security spokesman and attorney said, was outdated. They claimed the X-ray and metal detecting device people were supposed to walk through, could not recognise all metals.

"Some people do not even go through the machine. If and when they do, the screen is so jumpy and snowy it is impossible to establish an accurate reading. People wearing guns, especially the new ceramic ones, can just walk through it," said the security company's spokesman.

Other points of concern included the 30 unmanned entrances to the building and "an explosion enhancing" room beneath the building which is left open as old papers awaiting recycling are stored in it.

"Officials at the court are so demoralised at the lack of response to requests to upgrade the system that they are on the point of resigning. In the present situation they can really do nothing to secure the rambling old building."

People at Supreme Court are sitting targets for fanatics, says attorney

(252) Star 29/7/95

Advocates, attorneys and court officials are concerned about inadequate security at the Rand Supreme Court in Johannesburg, according to an attorney who initiated an investigation into the matter.

"There is absolutely no effective supervision. There are frequent gatherings outside the court. Witnesses and court officials are sitting targets for fanatics with grievances of any kind," the attorney said.

"Often the judge president himself is in court," the attorney pointed out.

"A few months ago, someone walked into one of the courts wearing pouches of petrol which he threatened to set alight."

The attorney approached a private security company to assess the situation. He and the head of the security company approached the *Saturday Star* with their findings but asked to remain anonymous because they had received co-operation from, and gained the confidence of, officials who could lose their jobs for participating in the investigation.

The attorney and the security company have provided the *Saturday Star* with details of numerous security weaknesses at the court.

The Department of Justice said in response that, while the safety of judges, court personnel and the public was important, this had to be weighed against the accessibility of courts to all people.

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Committee set to boost economy

Croats capture key town

Bosnian Serbs further south reported a build-up of Croatian government troops at Karlovac, about 60km south of Zagreb, and of Serb fighters in Knin, a general mobilisation has been declared.

The enclave is a last obstacle to a union of Serb-controlled territories on both sides of the Croatian-Bosnian border. Zagreb says it will not let it fall because its capture would threaten its security.

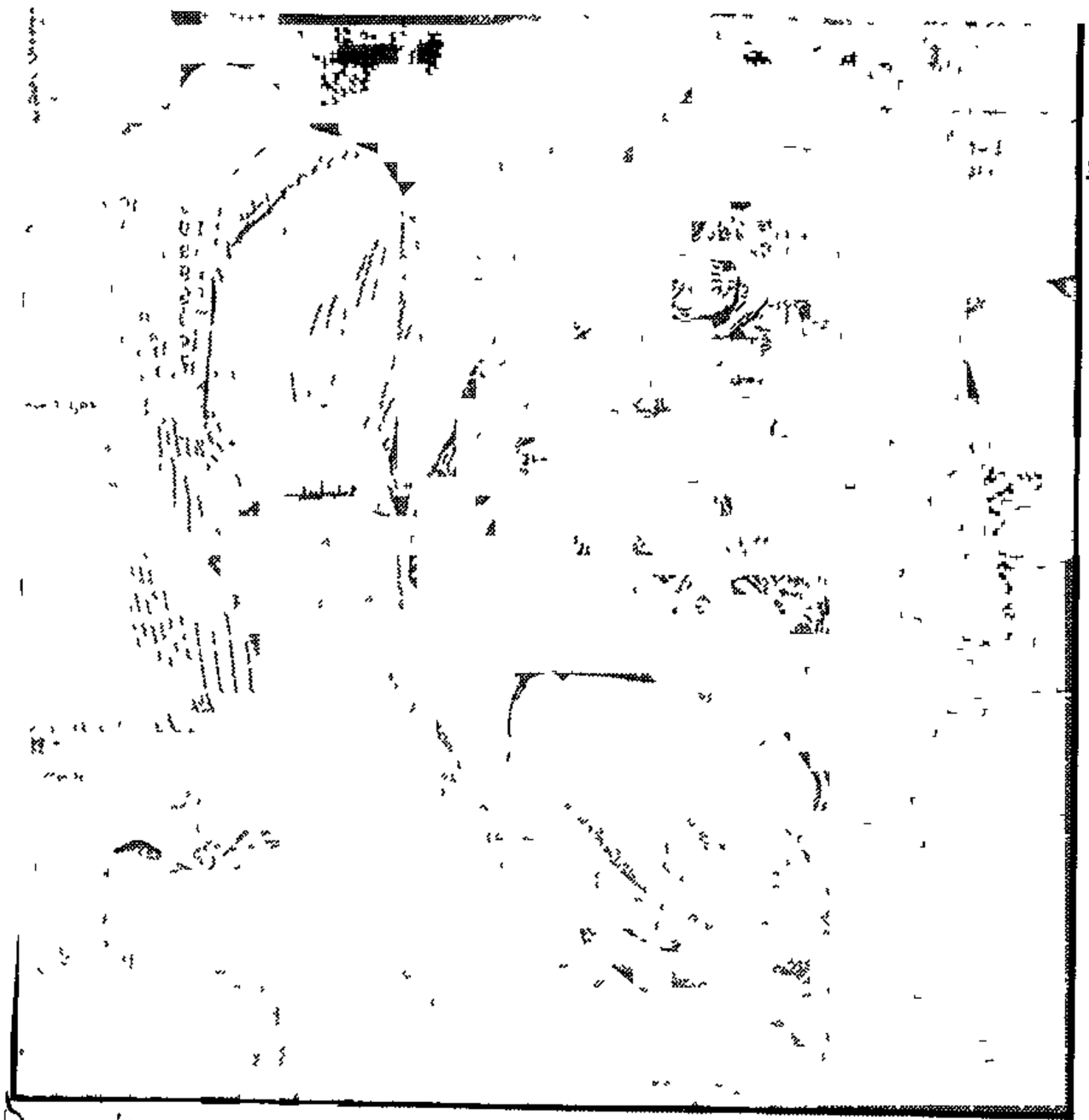
UN fears new conflagration as Croats capture key town

Bosnian Croat forces announced the capture of the Serb-held town of Grahovo yesterday.

Fierce fighting engulfed the Bihac enclave in northwest Bosnia. United Nations officials have fears they would be a wider conflagration.

Army sources said Bosnian Croat forces had seized the town — on the supply route linking Knin, the capital of the self-declared republic of Serb Krajina — and the Bihac

US nod Murdoc



Sexual harassment takes many forms, from verbal innuendo and inappropriate gestures to rape.

Supplement compiled by DAVID YUTAR

Advice for the not-so-rich

(252) ARG 31/7/95

By TONY HUTCHINSON
Deputy Director
Legal Aid Board

FREE legal assistance is provided through the Legal Aid Board for those people who cannot afford to pay for a lawyer

In the past it was available only to those who qualified as "indigent" in terms of a strict legal definition, but our new constitution changes this substantially

Section 25 of the interim constitution obliges the state to provide legal aid to an accused person where the person would be subjected to a "substantial injustice" were the legal services not provided

If there is any danger of a person being sentenced to imprisonment without the option of a fine, he is automatically entitled to legal representation

The question asked is simply Can the accused afford to engage the services of an attorney or not?

Until now an accused wishing to obtain legal aid would have to pass a means test, which still applies in civil matters.

The term "indigent" means a single person whose *calculated* monthly income does not exceed R500

'Calculated income' is someone's income after deductions for income tax, UIF, medical and pension payments

If the person is married, calculated income increases to R1 000 for the couple, with an additional R150 per dependent child

What is the Legal Aid Board?

It is a statutory organisation, established by its own Act of parliament in 1969 and funded largely by central government

The Legal Aid Board has 12 members, one of whom must be a judge of the Supreme Court and who acts as chairman The others are members of the legal profession or otherwise knowledgeable in legal aid matters

The administration of legal aid is done in Pretoria although the board has 11 regional offices throughout the country

What legal aid is available?

Legal aid is available for most legal problems with a few exceptions.

It is excluded in civil matters such as defamation claims.

But otherwise any ordinary matter which comes before a court, including labour disputes, can qualify for legal aid

Who can represent you?

IN civil matters, the person suing has the freedom to choose his own attorney

If the client does not have an attorney, legal aid officers have a list of qualified attorneys who are appointed on a rotation basis

In criminal matters the appointment of attorneys has been done largely on a rotation basis

How does one get legal aid?

IN all major centres the board has its own offices manned by its own staff

In the Cape Town area it has three offices

There is also a legal aid officer at every Magistrate's Court

The board also operates legal aid through law clinics established in co-operation with most universities and some non-governmental organisations

How can one get more information?

Any legal aid officer will be able to answer any questions on the legal aid scheme

The Legal Aid Head Office may be contacted in Pretoria on ☎ (012) 341 8751

Patricia de Lille

PAC wants 'Nuremberg' trials in South Africa

(252)

PAN-AFRICANIST Congress MP Patricia de Lille has rejected the truth and reconciliation commission and has called for Nuremberg-style trials in South Africa. ARG 31/7/95

Addressing more than 1 000 people at a rally in Guguletu yesterday, she said the commission was flawed and the PAC did not recognise it Not a single member of the PAC or the Azanian People's Liberation Army would confess to the commission

Mrs De Lille said PAC members should invade farms and take them by force.

She accused the government of corruption, claiming more than 36 provincial government cheques had mysteriously disappeared

No benefits had been forthcoming from the government's reconstruction and development programme and people were becoming disillusioned.

She urged South Africans not to vote for empty promises in the local government elections

"The honourable minister without portfolio should make an honourable exit," she said.

Her statement that housing policy was a disaster was greeted with applause. — Sapa.

Protection under SA law is not watertight

ARG 31/7/95 (252)

□ *But harassment can be fought*

By MANAGAY REDDY, Senior Lecturer, Department of Public Law, University of Durban Westville

SEXUAL harassment is one of the most compelling problems confronting women in society.

It stands at a crossroads, encompassing both economic coercion and an aspect of violence against women.

Broadly defined, sexual harassment refers to the imposition of unwanted and repeated sexual requirements in the work environment

Its distinguishing feature is that it occurs in the context of relationships of unequal power

The consequence is that the submission to or rejection of the sexually harassing conduct by the individual is used as the basis for employment decisions affecting the individual

Sexually harassing conduct may range from verbal innuendo and inappropriate gestures to rape

When this type of behaviour occurs in the work setting, the victim's livelihood is often endangered

This is because of the implicit message from the harasser that non-compliance will lead to reprisals which may include demotions, transfers, unsatisfactory job evaluations, general undermining of the victim's work, sarcasm, denial of raises, benefits and promotions and dismissal

Remedies

UNDER South African law, a victim of sexual harassment may seek redress in terms of civil remedies provided by the Law of Delict (Civil Wrongs) or in terms of the labour law

Redress may also be sought in terms of the Criminal Law.

Delictual Remedies

THIS option entitles the victim to sue her employer in a civil court for the damages she suffered as a result of sexual harassment.

Damages here may only be recovered for the wrongful and intentional impairment of her physical integrity, dignity or reputation

There is no barrier to the employer also being sued where the harasser is merely a client of the employer

However, the employer will only be liable if it is proved that he or she knew that the client was harassing the employee and failed to take steps to prevent the harassment

Where the harasser is a co-worker of the victim, the employer may, in some instances, be held vicariously or even personally liable for the action of that employee

Some disadvantages to suing in delict are the high costs of litigation and the fact that damages cannot be recovered for lost employment or promotion opportunities or for reinstatement

Labour law remedies

IN terms of the Labour Relations Act of 1956, sex discrimination amounts to an unfair labour practice.

Sexual harassment is undoubtedly a form of sex discrimination

In terms of the Act, victims of harassment have the remedy of having the sexually harassing conduct declared an unfair labour practice

This entitles the court to place the successful applicant in the position he or she would have enjoyed but for the unfair labour practice.

The courts are also empowered to award damages in compensation for the financial loss suffered through lost promotion opportunities

A disadvantage of the labour law is that only employees and not potential employees may seek redress

Criminal law remedies

THE victim of sexual harassment may be the recipient of pinching, grabbing, patting, leering and various other forms of touching.

Under the criminal law sexual harassment may amount to any of the following crimes against the person: rape, assault or indecent assault

Harassing conduct may amount to *crimen injuria* and extortion

But a major disadvantage of criminal law is that action must be brought against the harasser personally.

Thus environment harassment may be immune from this sanction.

A further disadvantage is the heavy burden of proof on the prosecution

This is a difficult burden of proof in all criminal cases, but more so in cases of harassment which are most likely to have occurred behind closed doors

New legislation

THE primary problem with existing laws is that they do not specifically address the issue of sexual harassment.

The obvious solution is the creation of new legislation tailored specifically for this unique problem.

Such legislation was recently proposed in the form of the Equal Opportunities Bill

However, the bill's proposals appear to be fraught with difficulties

The narrow definition of sexual harassment in the bill is limited to situations where there is a structured relationship such as employment between harasser and victim

And sexual harassment is confined to "conduct of a sexual nature".

Conduct based on sex which may affect the dignity of workers, is not covered by the definition

Thus the bill seems to have overlooked the question of power which many argue is a central issue

Sexual harassment is *not* an expression of sexual desire

It is regarded as a demonstration by men of power politics

As affirmative action programmes encourage more women into occupations that are traditionally male-dominated, the frequency of sexual harassment is likely to increase.

The law remains a powerful tool for the victim of sexual harassment who should be encouraged to use it to her best advantage.

Proposed fees rule attacked

(252)

Star 31/7/95

■ BY HELEN GRANGE

Laws allowing only lawyers to charge fees for legal services are being challenged by a Durban-based mediator, who has taken the matter to the Constitutional Court.

Stan Posthumus of The Mediation Foundation contends in documents before the court that provisions in the Attorneys Act, and a rule in the Uniform Rules of Court, effectively close the legal profession off to non-practitioners.

Discriminatory

This state of affairs, he says, is discriminatory and unconstitutional in terms of the right of an individual to free economic activity.

The offending provision in the Attorneys Act reserves to attorneys the right to draw up civil court documents.

Says Posthumus in his affidavit. "The effect of this provision is to discriminate against me and all other individuals who cannot afford to pay for the services of an attorney to draw up court documents for use in a civil court.

"... It also allows a monopoly for the attorneys," he adds.

The constitutional right to equality, fairness and justice was also offended by the provision in that the individual's right to free choice regarding who can be consulted and paid for assistance with civil cases was limited.

Posthumus was convicted in 1993 in the Natal Provincial Division of contravening the Attorneys Act on the grounds that he was charging for mediation services in divorce matters, despite having no LLB degree.

After completing his degree last year, Posthumus applied for admission to the Society of Advocates but was rejected because of the convictions against him.

'I'll emigrate'

Posthumus said that if the Constitutional Court did not adequately address the current "discriminatory and inaccessible" legal system, he would leave the country.

The Constitutional Court has yet to set a date for the hearing.

Invade farms – De Lille

Cape Town — PAC MP Patricia de Lille yesterday rejected the Truth and Reconciliation Commission and called for Nuremburg-style trials in South Africa

Addressing more than 1 000 people at a rally in Guguletu, Cape Town, she said the commission was flawed and the PAC did not recognise it

Not a single member of the PAC or Azanian People's Liberation Army would confess to the commission, she said

De Lille said PAC members should invade farms and take them by force

She accused the Government of corruption, claiming more than 36 provincial government cheques had mysteriously disappeared

De Lille said no benefits had been forthcoming from the Government's Reconstruction and Development programme and people were becoming disillusioned

She urged South Africans not to vote for empty promises in the local government elections

"The honourable Minister without Portfolio should make an honourable exit," she said, adding that Minister Jay Naidoo employed countless white consultants who were unproductive

De Lille's statement that SA's housing policy was a disaster was greeted with applause

PAC general-secretary Maxwell Nedzivhanane said in a letter read on his behalf that the PAC had no intention of forming an alliance with the Inkatha Freedom Party, but would offer it moral support — Sapa

(252) Star 31/7/95